

1 AN ACT concerning public utilities.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 5. The Public Utilities Act is amended by  
5 changing Sections 9-220, 16-102, and 16-111 and adding  
6 Section 16-111.3 as follows:

7 (220 ILCS 5/9-220) (from Ch. 111 2/3, par. 9-220)

8 Sec. 9-220. Rate changes based on changes in fuel costs.

9 (a) Notwithstanding the provisions of Section 9-201, the  
10 Commission may authorize the increase or decrease of rates  
11 and charges based upon changes in the cost of fuel used in  
12 the generation or production of electric power, changes in  
13 the cost of purchased power, or changes in the cost of  
14 purchased gas through the application of fuel adjustment  
15 clauses or purchased gas adjustment clauses. The Commission  
16 may also authorize the increase or decrease of rates and  
17 charges based upon expenditures or revenues resulting from  
18 the purchase or sale of emission allowances created under the  
19 federal Clean Air Act Amendments of 1990, through such fuel  
20 adjustment clauses, as a cost of fuel. For the purposes of  
21 this paragraph, cost of fuel used in the generation or  
22 production of electric power shall include the amount of any  
23 fees paid by the utility for the implementation and operation  
24 of a process for the desulfurization of the flue gas when  
25 burning high sulfur coal at any location within the State of  
26 Illinois irrespective of the attainment status designation of  
27 such location; but shall not include transportation costs of  
28 coal (i) except to the extent that for contracts entered into  
29 on and after the effective date of this amendatory Act of  
30 1997, the cost of the coal, including transportation costs,  
31 constitutes the lowest cost for adequate and reliable fuel

1 supply reasonably available to the public utility in  
2 comparison to the cost, including transportation costs, of  
3 other adequate and reliable sources of fuel supply reasonably  
4 available to the public utility, or (ii) except as otherwise  
5 provided in the next 3 sentences of this paragraph. Such  
6 costs of fuel shall, when requested by a utility or at the  
7 conclusion of the utility's next general electric rate  
8 proceeding, whichever shall first occur, include  
9 transportation costs of coal purchased under existing coal  
10 purchase contracts. For purposes of this paragraph "existing  
11 coal purchase contracts" means contracts for the purchase of  
12 coal in effect on the effective date of this amendatory Act  
13 of 1991, as such contracts may thereafter be amended, but  
14 only to the extent that any such amendment does not increase  
15 the aggregate quantity of coal to be purchased under such  
16 contract. Nothing herein shall authorize an electric utility  
17 to recover through its fuel adjustment clause any amounts of  
18 transportation costs of coal that were included in the  
19 revenue requirement used to set base rates in its most recent  
20 general rate proceeding. Cost shall be based upon uniformly  
21 applied accounting principles. Annually, the Commission shall  
22 initiate public hearings to determine whether the clauses  
23 reflect actual costs of fuel, gas, power, or coal  
24 transportation purchased to determine whether such purchases  
25 were prudent, and to reconcile any amounts collected with the  
26 actual costs of fuel, power, gas, or coal transportation  
27 prudently purchased. In each such proceeding, the burden of  
28 proof shall be upon the utility to establish the prudence of  
29 its cost of fuel, power, gas, or coal transportation  
30 purchases and costs. The Commission shall issue its final  
31 order in each such annual proceeding for an electric utility  
32 by December 31 of the year immediately following the year to  
33 which the proceeding pertains, provided, that the Commission  
34 shall issue its final order with respect to such annual

1 proceeding for the years 1996 and earlier by December 31,  
2 1998.

3 (b) A public utility providing electric service, other  
4 than a public utility described in subsections (e) or (f) of  
5 this Section, may at any time during the mandatory transition  
6 period file with the Commission proposed tariff sheets that  
7 eliminate the public utility's fuel adjustment clause and  
8 adjust the public utility's base rate tariffs by the amount  
9 necessary for the base fuel component of the base rates to  
10 recover the public utility's average fuel and power supply  
11 costs per kilowatt-hour for the 2 most recent years for which  
12 the Commission has issued final orders in annual proceedings  
13 pursuant to subsection (a), where the average fuel and power  
14 supply costs per kilowatt-hour shall be calculated as the sum  
15 of the public utility's prudent and allowable fuel and power  
16 supply costs as found by the Commission in the 2 proceedings  
17 divided by the public utility's actual jurisdictional  
18 kilowatt-hour sales for those 2 years. Notwithstanding any  
19 contrary or inconsistent provisions in Section 9-201 of this  
20 Act, in subsection (a) of this Section or in any rules or  
21 regulations promulgated by the Commission pursuant to  
22 subsection (g) of this Section, the Commission shall review  
23 and shall by order approve, or approve as modified, the  
24 proposed tariff sheets within 60 days after the date of the  
25 public utility's filing. The Commission may modify the  
26 public utility's proposed tariff sheets only to the extent  
27 the Commission finds necessary to achieve conformance to the  
28 requirements of this subsection (b). During the 5 years  
29 following the date of the Commission's order, but in any  
30 event no earlier than January 1, 2007 2005, a public utility  
31 whose fuel adjustment clause has been eliminated pursuant to  
32 this subsection shall not file proposed tariff sheets  
33 seeking, or otherwise petition the Commission for,  
34 reinstatement of a fuel adjustment clause.

1           (c) Notwithstanding any contrary or inconsistent  
2 provisions in Section 9-201 of this Act, in subsection (a) of  
3 this Section or in any rules or regulations promulgated by  
4 the Commission pursuant to subsection (g) of this Section, a  
5 public utility providing electric service, other than a  
6 public utility described in subsection (e) or (f) of this  
7 Section, may at any time during the mandatory transition  
8 period file with the Commission proposed tariff sheets that  
9 establish the rate per kilowatt-hour to be applied pursuant  
10 to the public utility's fuel adjustment clause at the average  
11 value for such rate during the preceding 24 months, provided  
12 that such average rate results in a credit to customers'  
13 bills, without making any revisions to the public utility's  
14 base rate tariffs. The proposed tariff sheets shall  
15 establish the fuel adjustment rate for a specific time period  
16 of at least 3 years but not more than 5 years, provided that  
17 the terms and conditions for any reinstatement earlier than 5  
18 years shall be set forth in the proposed tariff sheets and  
19 subject to modification or approval by the Commission. The  
20 Commission shall review and shall by order approve the  
21 proposed tariff sheets if it finds that the requirements of  
22 this subsection are met. The Commission shall not conduct  
23 the annual hearings specified in the last 3 sentences of  
24 subsection (a) of this Section for the utility for the period  
25 that the factor established pursuant to this subsection is in  
26 effect.

27           (d) A public utility providing electric service, or a  
28 public utility providing gas service may file with the  
29 Commission proposed tariff sheets that eliminate the public  
30 utility's fuel or purchased gas adjustment clause and adjust  
31 the public utility's base rate tariffs to provide for  
32 recovery of power supply costs or gas supply costs that would  
33 have been recovered through such clause; provided, that the  
34 provisions of this subsection (d) shall not be available to a

1 public utility described in subsections (e) or (f) of this  
2 Section to eliminate its fuel adjustment clause.  
3 Notwithstanding any contrary or inconsistent provisions in  
4 Section 9-201 of this Act, in subsection (a) of this Section,  
5 or in any rules or regulations promulgated by the Commission  
6 pursuant to subsection (g) of this Section, the Commission  
7 shall review and shall by order approve, or approve as  
8 modified in the Commission's order, the proposed tariff  
9 sheets within 240 days after the date of the public utility's  
10 filing. The Commission's order shall approve rates and  
11 charges that the Commission, based on information in the  
12 public utility's filing or on the record if a hearing is held  
13 by the Commission, finds will recover the reasonable, prudent  
14 and necessary jurisdictional power supply costs or gas supply  
15 costs incurred or to be incurred by the public utility during  
16 a 12 month period found by the Commission to be appropriate  
17 for these purposes, provided, that such period shall be  
18 either (i) a 12 month historical period occurring during the  
19 15 months ending on the date of the public utility's filing,  
20 or (ii) a 12 month future period ending no later than 15  
21 months following the date of the public utility's filing.  
22 The public utility shall include with its tariff filing  
23 information showing both (1) its actual jurisdictional power  
24 supply costs or gas supply costs for a 12 month historical  
25 period conforming to (i) above and (2) its projected  
26 jurisdictional power supply costs or gas supply costs for a  
27 future 12 month period conforming to (ii) above. If the  
28 Commission's order requires modifications in the tariff  
29 sheets filed by the public utility, the public utility shall  
30 have 7 days following the date of the order to notify the  
31 Commission whether the public utility will implement the  
32 modified tariffs or elect to continue its fuel or purchased  
33 gas adjustment clause in force as though no order had been  
34 entered. The Commission's order shall provide for any

1 reconciliation of power supply costs or gas supply costs, as  
2 the case may be, and associated revenues through the date  
3 that the public utility's fuel or purchased gas adjustment  
4 clause is eliminated. During the 5 years following the date  
5 of the Commission's order, a public utility whose fuel or  
6 purchased gas adjustment clause has been eliminated pursuant  
7 to this subsection shall not file proposed tariff sheets  
8 seeking, or otherwise petition the Commission for,  
9 reinstatement or adoption of a fuel or purchased gas  
10 adjustment clause. Nothing in this subsection (d) shall be  
11 construed as limiting the Commission's authority to eliminate  
12 a public utility's fuel adjustment clause or purchased gas  
13 adjustment clause in accordance with any other applicable  
14 provisions of this Act.

15 (e) Notwithstanding any contrary or inconsistent  
16 provisions in Section 9-201 of this Act, in subsection (a)  
17 of this Section, or in any rules promulgated by the  
18 Commission pursuant to subsection (g) of this Section, a  
19 public utility providing electric service to more than  
20 1,000,000 customers in this State may, within the first 6  
21 months after the effective date of this amendatory Act of  
22 1997, file with the Commission proposed tariff sheets that  
23 eliminate, effective January 1, 1997, the public utility's  
24 fuel adjustment clause without adjusting its base rates, and  
25 such tariff sheets shall be effective upon filing. To the  
26 extent the application of the fuel adjustment clause had  
27 resulted in net charges to customers after January 1, 1997,  
28 the utility shall also file a tariff sheet that provides for  
29 a refund stated on a per kilowatt-hour basis of such charges  
30 over a period not to exceed 6 months; provided however, that  
31 such refund shall not include the proportional amounts of  
32 taxes paid under the Use Tax Act, Service Use Tax Act,  
33 Service Occupation Tax Act, and Retailers' Occupation Tax Act  
34 on fuel used in generation. The Commission shall issue an

1 order within 45 days after the date of the public utility's  
2 filing approving or approving as modified such tariff sheet.  
3 If the fuel adjustment clause is eliminated pursuant to this  
4 subsection, the Commission shall not conduct the annual  
5 hearings specified in the last 3 sentences of subsection (a)  
6 of this Section for the utility for any period after  
7 December 31, 1996 and prior to any reinstatement of such  
8 clause. A public utility whose fuel adjustment clause has  
9 been eliminated pursuant to this subsection shall not file a  
10 proposed tariff sheet seeking, or otherwise petition the  
11 Commission for, reinstatement of the fuel adjustment clause  
12 prior to January 1, 2007 2005.

13 (f) Notwithstanding any contrary or inconsistent  
14 provisions in Section 9-201 of this Act, in subsection (a) of  
15 this Section, or in any rules or regulations promulgated by  
16 the Commission pursuant to subsection (g) of this Section, a  
17 public utility providing electric service to more than  
18 500,000 customers but fewer than 1,000,000 customers in this  
19 State may, within the first 6 months after the effective date  
20 of this amendatory Act of 1997, file with the Commission  
21 proposed tariff sheets that eliminate, effective January 1,  
22 1997, the public utility's fuel adjustment clause and adjust  
23 its base rates by the amount necessary for the base fuel  
24 component of the base rates to recover 91% of the public  
25 utility's average fuel and power supply costs for the 2 most  
26 recent years for which the Commission, as of January 1, 1997,  
27 has issued final orders in annual proceedings pursuant to  
28 subsection (a), where the average fuel and power supply costs  
29 per kilowatt-hour shall be calculated as the sum of the  
30 public utility's prudent and allowable fuel and power supply  
31 costs as found by the Commission in the 2 proceedings divided  
32 by the public utility's actual jurisdictional kilowatt-hour  
33 sales for those 2 years, provided, that such tariff sheets  
34 shall be effective upon filing. To the extent the

1 application of the fuel adjustment clause had resulted in net  
2 charges to customers after January 1, 1997, the utility shall  
3 also file a tariff sheet that provides for a refund stated on  
4 a per kilowatt-hour basis of such charges over a period not  
5 to exceed 6 months. Provided however, that such refund shall  
6 not include the proportional amounts of taxes paid under the  
7 Use Tax Act, Service Use Tax Act, Service Occupation Tax Act,  
8 and Retailers' Occupation Tax Act on fuel used in generation.  
9 The Commission shall issue an order within 45 days after the  
10 date of the public utility's filing approving or approving as  
11 modified such tariff sheet. If the fuel adjustment clause is  
12 eliminated pursuant to this subsection, the Commission shall  
13 not conduct the annual hearings specified in the last 3  
14 sentences of subsection (a) of this Section for the utility  
15 for any period after December 31, 1996 and prior to any  
16 reinstatement of such clause. A public utility whose fuel  
17 adjustment clause has been eliminated pursuant to this  
18 subsection shall not file a proposed tariff sheet seeking, or  
19 otherwise petition the Commission for, reinstatement of the  
20 fuel adjustment clause prior to January 1, 2007 2005.

21 (g) The Commission shall have authority to promulgate  
22 rules and regulations to carry out the provisions of this  
23 Section.

24 (Source: P.A. 90-561, eff. 12-16-97.)

25 (220 ILCS 5/16-102)

26 Sec. 16-102. Definitions. For the purposes of this  
27 Article the following terms shall be defined as set forth in  
28 this Section.

29 "Alternative retail electric supplier" means every  
30 person, cooperative, corporation, municipal corporation,  
31 company, association, joint stock company or association,  
32 firm, partnership, individual, or other entity, their  
33 lessees, trustees, or receivers appointed by any court



1     whatsoever, that offers electric power or energy for sale,  
2     lease or in exchange for other value received to one or more  
3     retail customers, or that engages in the delivery or  
4     furnishing of electric power or energy to such retail  
5     customers, and shall include, without limitation, resellers,  
6     aggregators and power marketers, but shall not include (i)  
7     electric utilities (or any agent of the electric utility to  
8     the extent the electric utility provides tariffed services to  
9     retail customers through that agent), (ii) any electric  
10    cooperative or municipal system as defined in Section 17-100  
11    to the extent that the electric cooperative or municipal  
12    system is serving retail customers within any area in which  
13    it is or would be entitled to provide service under the law  
14    in effect immediately prior to the effective date of this  
15    amendatory Act of 1997, (iii) a public utility that is owned  
16    and operated by any public institution of higher education of  
17    this State, or a public utility that is owned by such public  
18    institution of higher education and operated by any of its  
19    lessees or operating agents, within any area in which it is  
20    or would be entitled to provide service under the law in  
21    effect immediately prior to the effective date of this  
22    amendatory Act of 1997, (iv) a retail customer to the extent  
23    that customer obtains its electric power and energy from that  
24    customer's own cogeneration or self-generation facilities,  
25    (v) an entity that owns, operates, sells, or arranges for the  
26    installation of a customer's own cogeneration or  
27    self-generation facilities, but only to the extent the entity  
28    is engaged in owning, selling or arranging for the  
29    installation of such facility, or operating the facility on  
30    behalf of such customer, provided however that any such third  
31    party owner or operator of a facility built after January 1,  
32    1999, complies with the labor provisions of Section 16-128(a)  
33    as though such third party were an alternative retail  
34    electric supplier, or (vi) an industrial or manufacturing

1 customer that owns its own distribution facilities, to the  
2 extent that the customer provides service from that  
3 distribution system to a third-party contractor located on  
4 the customer's premises that is integrally and predominantly  
5 engaged in the customer's industrial or manufacturing  
6 process; provided, that if the industrial or manufacturing  
7 customer has elected delivery services, the customer shall  
8 pay transition charges applicable to the electric power and  
9 energy consumed by the third-party contractor unless such  
10 charges are otherwise paid by the third party contractor,  
11 which shall be calculated based on the usage of, and the base  
12 rates or the contract rates applicable to, the third-party  
13 contractor in accordance with Section 16-102.

14 "Base rates" means the rates for those tariffed services  
15 that the electric utility is required to offer pursuant to  
16 subsection (a) of Section 16-103 and that were identified in  
17 a rate order for collection of the electric utility's base  
18 rate revenue requirement, excluding (i) separate automatic  
19 rate adjustment riders then in effect, (ii) special or  
20 negotiated contract rates, (iii) delivery services tariffs  
21 filed pursuant to Section 16-108, (iv) real-time pricing, or  
22 (v) tariffs that were in effect prior to October 1, 1996 and  
23 that based charges for services on an index or average of  
24 other utilities' charges, but including (vi) any subsequent  
25 redesign of such rates for tariffed services that is  
26 authorized by the Commission after notice and hearing.

27 "Competitive service" includes (i) any service that has  
28 been declared to be competitive pursuant to Section 16-113 of  
29 this Act, (ii) contract service, and (iii) services, other  
30 than tariffed services, that are related to, but not  
31 necessary for, the provision of electric power and energy or  
32 delivery services.

33 "Contract service" means (1) services, including the  
34 provision of electric power and energy or other services,

1 that are provided by mutual agreement between an electric  
2 utility and a retail customer that is located in the electric  
3 utility's service area, provided that, delivery services  
4 shall not be a contract service until such services are  
5 declared competitive pursuant to Section 16-113; and also  
6 means (2) the provision of electric power and energy by an  
7 electric utility to retail customers outside the electric  
8 utility's service area pursuant to Section 16-116. Provided,  
9 however, contract service does not include electric utility  
10 services provided pursuant to (i) contracts that retail  
11 customers are required to execute as a condition of receiving  
12 tariffed services, or (ii) special or negotiated rate  
13 contracts for electric utility services that were entered  
14 into between an electric utility and a retail customer prior  
15 to the effective date of this amendatory Act of 1997 and  
16 filed with the Commission.

17 "Delivery services" means those services provided by the  
18 electric utility that are necessary in order for the  
19 transmission and distribution systems to function so that  
20 retail customers located in the electric utility's service  
21 area can receive electric power and energy from suppliers  
22 other than the electric utility, and shall include, without  
23 limitation, standard metering and billing services.

24 "Electric utility" means a public utility, as defined in  
25 Section 3-105 of this Act, that has a franchise, license,  
26 permit or right to furnish or sell electricity to retail  
27 customers within a service area.

28 "Mandatory transition period" means the period from the  
29 effective date of this amendatory Act of 1997 through January  
30 1, 2007 2005.

31 "Municipal system" shall have the meaning set forth in  
32 Section 17-100.

33 "Real-time pricing" means charges for delivered electric  
34 power and energy that vary on an hour-to-hour basis for

1 nonresidential retail customers and that vary on a periodic  
2 basis during the day for residential retail customers.

3 "Retail customer" means a single entity using electric  
4 power or energy at a single premises and that (A) either (i)  
5 is receiving or is eligible to receive tariffed services from  
6 an electric utility, or (ii) that is served by a municipal  
7 system or electric cooperative within any area in which the  
8 municipal system or electric cooperative is or would be  
9 entitled to provide service under the law in effect  
10 immediately prior to the effective date of this amendatory  
11 Act of 1997, or (B) an entity which on the effective date of  
12 this Act was receiving electric service from a public utility  
13 and (i) was engaged in the practice of resale and  
14 redistribution of such electricity within a building prior to  
15 January 2, 1957, or (ii) was providing lighting services to  
16 tenants in a multi-occupancy building, but only to the extent  
17 such resale, redistribution or lighting service is authorized  
18 by the electric utility's tariffs that were on file with the  
19 Commission on the effective date of this Act.

20 "Service area" means (i) the geographic area within which  
21 an electric utility was lawfully entitled to provide electric  
22 power and energy to retail customers as of the effective date  
23 of this amendatory Act of 1997, and includes (ii) the  
24 location of any retail customer to which the electric utility  
25 was lawfully providing electric utility services on such  
26 effective date.

27 "Small commercial retail customer" means those  
28 nonresidential retail customers of an electric utility  
29 consuming 15,000 kilowatt-hours or less of electricity  
30 annually in its service area.

31 "Tariffed service" means services provided to retail  
32 customers by an electric utility as defined by its rates on  
33 file with the Commission pursuant to the provisions of  
34 Article IX of this Act, but shall not include competitive

1 services.

2 "Transition charge" means a charge expressed in cents per  
3 kilowatt-hour that is calculated for a customer or class of  
4 customers as follows for each year in which an electric  
5 utility is entitled to recover transition charges as provided  
6 in Section 16-108:

7 (1) the amount of revenue that an electric utility  
8 would receive from the retail customer or customers if it  
9 were serving such customers' electric power and energy  
10 requirements as a tariffed service based on (A) all of  
11 the customers' actual usage during the 3 years ending 90  
12 days prior to the date on which such customers were first  
13 eligible for delivery services pursuant to Section  
14 16-104, and (B) on (i) the base rates in effect on  
15 October 1, 1996 (adjusted for the reductions required by  
16 subsection (b) of Section 16-111, for any reduction  
17 resulting from a rate decrease under Section 16-101(b),  
18 for any restatement of base rates made in conjunction  
19 with an elimination of the fuel adjustment clause  
20 pursuant to subsection (b), (d), or (f) of Section 9-220  
21 and for any removal of decommissioning costs from base  
22 rates pursuant to Section 16-114) and any separate  
23 automatic rate adjustment riders (other than a  
24 decommissioning rate as defined in Section 16-114) under  
25 which the customers were receiving or, had they been  
26 customers, would have received electric power and energy  
27 from the electric utility during the year immediately  
28 preceding the date on which such customers were first  
29 eligible for delivery service pursuant to Section 16-104,  
30 or (ii) to the extent applicable, any contract rates,  
31 including contracts or rates for consolidated or  
32 aggregated billing, under which such customers were  
33 receiving electric power and energy from the electric  
34 utility during such year;

1           (2) less the amount of revenue, other than revenue  
2 from transition charges and decommissioning rates, that  
3 the electric utility would receive from such retail  
4 customers for delivery services provided by the electric  
5 utility, assuming such customers were taking delivery  
6 services for all of their usage, based on the delivery  
7 services tariffs in effect during the year for which the  
8 transition charge is being calculated and on the usage  
9 identified in paragraph (1);

10           (3) less the market value for the electric power  
11 and energy that the electric utility would have used to  
12 supply all of such customers' electric power and energy  
13 requirements, as a tariffed service, based on the usage  
14 identified in paragraph (1), with such market value  
15 determined in accordance with Section 16-112 of this Act;

16           (4) less the following amount which represents the  
17 amount to be attributed to new revenue sources and cost  
18 reductions by the electric utility through the end of the  
19 period for which transition costs are recovered pursuant  
20 to Section 16-108, referred to in this Article XVI as a  
21 "mitigation factor":

22           (A) for nonresidential retail customers, an  
23 amount equal to the greater of (i) 0.5 cents per  
24 kilowatt-hour during the period October 1, 1999  
25 through December 31, 2004, 0.6 cents per  
26 kilowatt-hour in calendar year 2005, and 0.9 cents  
27 per kilowatt-hour in calendar year 2006, multiplied  
28 in each year by the usage identified in paragraph  
29 (1), or (ii) an amount equal to the following  
30 percentages of the amount produced by applying the  
31 applicable base rates (adjusted as described in  
32 subparagraph (1)(B)) or contract rate to the usage  
33 identified in paragraph (1): 8% for the period  
34 October 1, 1999 through December 31, 2002, 10% in

1 calendar years 2003 and 2004, 11% in calendar year  
2 2005 and 12% in calendar year 2006; and

3 (B) for residential retail customers, an  
4 amount equal to the following percentages of the  
5 amount produced by applying the base rates in effect  
6 on October 1, 1996 (adjusted as described in  
7 subparagraph (1)(B)) to the usage identified in  
8 paragraph (1): (i) 6% from May 1, 2002 through  
9 December 31, 2002, (ii) 7% in calendar years 2003  
10 and 2004, (iii) 8% in calendar year 2005, and (iv)  
11 10% in calendar year 2006;

12 (5) divided by the usage of such customers  
13 identified in paragraph (1),  
14 provided that the transition charge shall never be less than  
15 zero.

16 "Unbundled service" means a component or constituent part  
17 of a tariffed service which the electric utility subsequently  
18 offers separately to its customers.

19 (Source: P.A. 90-561, eff. 12-16-97; 91-50, eff. 6-30-99.)

20 (220 ILCS 5/16-111)

21 Sec. 16-111. Rates and restructuring transactions during  
22 mandatory transition period.

23 (a) During the mandatory transition period,  
24 notwithstanding any provision of Article IX of this Act, and  
25 except as provided in subsections (b), (d), (e), and (f) of  
26 this Section, the Commission shall not (i) initiate,  
27 authorize or order any change by way of increase (other than  
28 in connection with a request for rate increase which was  
29 filed after September 1, 1997 but prior to October 15, 1997,  
30 by an electric utility serving less than 12,500 customers in  
31 this State), (ii) initiate or, unless requested by the  
32 electric utility, authorize or order any change by way of  
33 decrease, restructuring or unbundling (except as provided in

1 Section 16-109A), in the rates of any electric utility that  
2 were in effect on October 1, 1996, or (iii) in any order  
3 approving any application for a merger pursuant to Section  
4 7-204 that was pending as of May 16, 1997, impose any  
5 condition requiring any filing for an increase, decrease, or  
6 change in, or other review of, an electric utility's rates or  
7 enforce any such condition of any such order; provided,  
8 however, that this subsection shall not prohibit the  
9 Commission from:

10 (1) approving the application of an electric  
11 utility to implement an alternative to rate of return  
12 regulation or a regulatory mechanism that rewards or  
13 penalizes the electric utility through adjustment of  
14 rates based on utility performance, pursuant to Section  
15 9-244;

16 (2) authorizing an electric utility to eliminate  
17 its fuel adjustment clause and adjust its base rate  
18 tariffs in accordance with subsection (b), (d), or (f) of  
19 Section 9-220 of this Act, to fix its fuel adjustment  
20 factor in accordance with subsection (c) of Section 9-220  
21 of this Act, or to eliminate its fuel adjustment clause  
22 in accordance with subsection (e) of Section 9-220 of  
23 this Act;

24 (3) ordering into effect tariffs for delivery  
25 services and transition charges in accordance with  
26 Sections 16-104 and 16-108, for real-time pricing in  
27 accordance with Section 16-107, or the options required  
28 by Section 16-110 and subsection (n) of 16-112, allowing  
29 a billing experiment in accordance with Section 16-106,  
30 or modifying delivery services tariffs in accordance with  
31 Section 16-109; or

32 (4) ordering or allowing into effect any tariff to  
33 recover charges pursuant to Sections 9-201.5, 9-220.1,  
34 9-221, 9-222 (except as provided in Section 9-222.1),



1 16-108, and 16-114 of this Act, Section 5-5 of the  
2 Electricity Infrastructure Maintenance Fee Law, Section  
3 6-5 of the Renewable Energy, Energy Efficiency, and Coal  
4 Resources Development Law of 1997, and Section 13 of the  
5 Energy Assistance Act of 1989.

6 After December 31, 2004, the provisions of this  
7 subsection (a) shall not apply to an electric utility whose  
8 average residential retail rate was less than or equal to 90%  
9 of the average residential retail rate for the "Midwest  
10 Utilities", as that term is defined in subsection (b) of this  
11 Section, based on data reported on Form 1 to the Federal  
12 Energy Regulatory Commission for calendar year 1995, and  
13 which served between 150,000 and 250,000 retail customers in  
14 this State on January 1, 1995 unless the electric utility or  
15 its holding company has been acquired by or merged with an  
16 affiliate of another electric utility subsequent to January  
17 1, 2002. This exemption shall be limited to this subsection  
18 (a) and shall not extend to any other provisions of this Act.

19 (b) Notwithstanding the provisions of subsection (a),  
20 each Illinois electric utility serving more than 12,500  
21 customers in Illinois shall file tariffs (i) reducing,  
22 effective August 1, 1998, each component of its base rates to  
23 residential retail customers by 15% from the base rates in  
24 effect immediately prior to January 1, 1998 and (ii) if the  
25 public utility provides electric service to (A) more than  
26 500,000 customers but less than 1,000,000 customers in this  
27 State on January 1, 1999, reducing, effective May 1, 2002,  
28 each component of its base rates to residential retail  
29 customers by an additional 5% from the base rates in effect  
30 immediately prior to January 1, 1998, or (B) at least  
31 1,000,000 customers in this State on January 1, 1999,  
32 reducing, effective October 1, 2001, each component of its  
33 base rates to residential retail customers by an additional  
34 5% from the base rates in effect immediately prior to January

1 1, 1998. Provided, however, that (A) if an electric utility's  
2 average residential retail rate is less than or equal to the  
3 average residential retail rate for a group of Midwest  
4 Utilities (consisting of all investor-owned electric  
5 utilities with annual system peaks in excess of 1000  
6 megawatts in the States of Illinois, Indiana, Iowa, Kentucky,  
7 Michigan, Missouri, Ohio, and Wisconsin), based on data  
8 reported on Form 1 to the Federal Energy Regulatory  
9 Commission for calendar year 1995, then it shall only be  
10 required to file tariffs (i) reducing, effective August 1,  
11 1998, each component of its base rates to residential retail  
12 customers by 5% from the base rates in effect immediately  
13 prior to January 1, 1998, (ii) reducing, effective October 1,  
14 2000, each component of its base rates to residential retail  
15 customers by the lesser of 5% of the base rates in effect  
16 immediately prior to January 1, 1998 or the percentage by  
17 which the electric utility's average residential retail rate  
18 exceeds the average residential retail rate of the Midwest  
19 Utilities, based on data reported on Form 1 to the Federal  
20 Energy Regulatory Commission for calendar year 1999, and  
21 (iii) reducing, effective October 1, 2002, each component of  
22 its base rates to residential retail customers by an  
23 additional amount equal to the lesser of 5% of the base rates  
24 in effect immediately prior to January 1, 1998 or the  
25 percentage by which the electric utility's average  
26 residential retail rate exceeds the average residential  
27 retail rate of the Midwest Utilities, based on data reported  
28 on Form 1 to the Federal Energy Regulatory Commission for  
29 calendar year 2001; and (B) if the average residential retail  
30 rate of an electric utility serving between 150,000 and  
31 250,000 retail customers in this State on January 1, 1995 is  
32 less than or equal to 90% of the average residential retail  
33 rate for the Midwest Utilities, based on data reported on  
34 Form 1 to the Federal Energy Regulatory Commission for

1 calendar year 1995, then it shall only be required to file  
2 tariffs (i) reducing, effective August 1, 1998, each  
3 component of its base rates to residential retail customers  
4 by 2% from the base rates in effect immediately prior to  
5 January 1, 1998; (ii) reducing, effective October 1, 2000,  
6 each component of its base rates to residential retail  
7 customers by 2% from the base rate in effect immediately  
8 prior to January 1, 1998; and (iii) reducing, effective  
9 October 1, 2002, each component of its base rates to  
10 residential retail customers by 1% from the base rates in  
11 effect immediately prior to January 1, 1998. Provided,  
12 further, that any electric utility for which a decrease in  
13 base rates has been or is placed into effect between October  
14 1, 1996 and the dates specified in the preceding sentences of  
15 this subsection, other than pursuant to the requirements of  
16 this subsection, shall be entitled to reduce the amount of  
17 any reduction or reductions in its base rates required by  
18 this subsection by the amount of such other decrease. The  
19 tariffs required under this subsection shall be filed 45 days  
20 in advance of the effective date. Notwithstanding anything to  
21 the contrary in Section 9-220 of this Act, no restatement of  
22 base rates in conjunction with the elimination of a fuel  
23 adjustment clause under that Section shall result in a lesser  
24 decrease in base rates than customers would otherwise receive  
25 under this subsection had the electric utility's fuel  
26 adjustment clause not been eliminated.

27 (c) Any utility reducing its base rates by 15% on August  
28 1, 1998 pursuant to subsection (b) shall include the  
29 following statement on its bills for residential customers  
30 from August 1 through December 31, 1998: "Effective August 1,  
31 1998, your rates have been reduced by 15% by the Electric  
32 Service Customer Choice and Rate Relief Law of 1997 passed by  
33 the Illinois General Assembly.". Any utility reducing its  
34 base rates by 5% on August 1, 1998, pursuant to subsection

1 (b) shall include the following statement on its bills for  
2 residential customers from August 1 through December 31,  
3 1998: "Effective August 1, 1998, your rates have been  
4 reduced by 5% by the Electric Service Customer Choice and  
5 Rate Relief Law of 1997 passed by the Illinois General  
6 Assembly."

7 Any utility reducing its base rates by 2% on August 1,  
8 1998 pursuant to subsection (b) shall include the following  
9 statement on its bills for residential customers from August  
10 1 through December 31, 1998: "Effective August 1, 1998, your  
11 rates have been reduced by 2% by the Electric Service  
12 Customer Choice and Rate Relief Law of 1997 passed by the  
13 Illinois General Assembly."

14 (d) During the mandatory transition period, but not  
15 before January 1, 2000, and notwithstanding the provisions  
16 of subsection (a), an electric utility may request an  
17 increase in its base rates if the electric utility  
18 demonstrates that the 2-year average of its earned rate of  
19 return on common equity, calculated as its net income  
20 applicable to common stock divided by the average of its  
21 beginning and ending balances of common equity using data  
22 reported in the electric utility's Form 1 report to the  
23 Federal Energy Regulatory Commission but adjusted to remove  
24 the effects of accelerated depreciation or amortization or  
25 other transition or mitigation measures implemented by the  
26 electric utility pursuant to subsection (g) of this Section  
27 and the effect of any refund paid pursuant to subsection (e)  
28 of this Section, is below the 2-year average for the same 2  
29 years of the monthly average yields of 30-year U.S. Treasury  
30 bonds published by the Board of Governors of the Federal  
31 Reserve System in its weekly H.15 Statistical Release or  
32 successor publication. The Commission shall review the  
33 electric utility's request, and may review the justness and  
34 reasonableness of all rates for tariffed services, in

1 accordance with the provisions of Article IX of this Act,  
2 provided that the Commission shall consider any special or  
3 negotiated adjustments to the revenue requirement agreed to  
4 between the electric utility and the other parties to the  
5 proceeding. In setting rates under this Section, the  
6 Commission shall exclude the costs and revenues that are  
7 associated with competitive services and any billing or  
8 pricing experiments conducted under Section 16-106.

9 (e) For the purposes of this subsection (e) all  
10 calculations and comparisons shall be performed for the  
11 Illinois operations of multijurisdictional utilities. During  
12 the mandatory transition period, notwithstanding the  
13 provisions of subsection (a), if the 2-year average of an  
14 electric utility's earned rate of return on common equity,  
15 calculated as its net income applicable to common stock  
16 divided by the average of its beginning and ending balances  
17 of common equity using data reported in the electric  
18 utility's Form 1 report to the Federal Energy Regulatory  
19 Commission but adjusted to remove the effect of any refund  
20 paid under this subsection (e), and further adjusted to  
21 include the annual amortization of any difference between the  
22 consideration received by an affiliated interest of the  
23 electric utility in the sale of an asset which had been sold  
24 or transferred by the electric utility to the affiliated  
25 interest subsequent to the effective date of this amendatory  
26 Act of 1997 and the consideration for which such asset had  
27 been sold or transferred to the affiliated interest, with  
28 such difference to be amortized ratably from the date of the  
29 sale by the affiliated interest to December 31, 2006, exceeds  
30 the 2-year average of the Index for the same 2 years by 1.5  
31 or more percentage points, the electric utility shall make  
32 refunds to customers beginning the first billing day of April  
33 in the following year in the manner described in paragraph  
34 (3) of this subsection. For purposes of this subsection (e),

1 the "Index" shall be the sum of (A) the average for the 12  
2 months ended September 30 of the monthly average yields of  
3 30-year U.S. Treasury bonds published by the Board of  
4 Governors of the Federal Reserve System in its weekly H.15  
5 Statistical Release or successor publication for each year  
6 1998 through 2006 ~~2004~~, and (B) (i) 4.00 percentage points  
7 for each of the 12-month periods ending September 30, 1998  
8 through September 30, 1999 or 8.00 percentage points if the  
9 electric utility's average residential retail rate is less  
10 than or equal to 90% of the average residential retail rate  
11 for the "Midwest Utilities", as that term is defined in  
12 subsection (b) of this Section, based on data reported on  
13 Form 1 to the Federal Energy Regulatory Commission for  
14 calendar year 1995, and the electric utility served between  
15 150,000 and 250,000 retail customers on January 1, 1995, (ii)  
16 7.00 percentage points for each of the 12-month periods  
17 ending September 30, 2000 through September 30, 2006 ~~2004~~ if  
18 the electric utility was providing service to at least  
19 1,000,000 customers in this State on January 1, 1999, or 9.00  
20 percentage points if the electric utility's average  
21 residential retail rate is less than or equal to 90% of the  
22 average residential retail rate for the "Midwest Utilities",  
23 as that term is defined in subsection (b) of this Section,  
24 based on data reported on Form 1 to the Federal Energy  
25 Regulatory Commission for calendar year 1995 and the electric  
26 utility served between 150,000 and 250,000 retail customers  
27 in this State on January 1, 1995, (iii) 11.00 percentage  
28 points for each of the 12-month periods ending September 30,  
29 2000 through September 30, 2006 ~~2004~~, but only if the  
30 electric utility's average residential retail rate is less  
31 than or equal to 90% of the average residential retail rate  
32 for the "Midwest Utilities", as that term is defined in  
33 subsection (b) of this Section, based on data reported on  
34 Form 1 to the Federal Energy Regulatory Commission for

1 calendar year 1995, the electric utility served between  
2 150,000 and 250,000 retail customers in this State on January  
3 1, 1995, and the electric utility offers delivery services on  
4 or before June 1, 2000 to retail customers whose annual  
5 electric energy use comprises 33% of the kilowatt hour sales  
6 to that group of retail customers that are classified under  
7 Division D, Groups 20 through 39 of the Standard Industrial  
8 Classifications set forth in the Standard Industrial  
9 Classification Manual published by the United States Office  
10 of Management and Budget, excluding the kilowatt hour sales  
11 to those customers that are eligible for delivery services  
12 pursuant to Section 16-104(a)(1)(i), and offers delivery  
13 services to its remaining retail customers classified under  
14 Division D, Groups 20 through 39 on or before October 1,  
15 2000, and, provided further, that the electric utility  
16 commits not to petition pursuant to Section 16-108(f) for  
17 entry of an order by the Commission authorizing the electric  
18 utility to implement transition charges for an additional  
19 period after December 31, 2006, or (iv) 5.00 percentage  
20 points for each of the 12-month periods ending September 30,  
21 2000 through September 30, 2006 ~~2004~~ for all other electric  
22 utilities or 7.00 percentage points for such utilities for  
23 each of the 12-month periods ending September 30, 2000  
24 through September 30, 2006 ~~2004~~ for any such utility that  
25 commits not to petition pursuant to Section 16-108(f) for  
26 entry of an order by the Commission authorizing the electric  
27 utility to implement transition charges for an additional  
28 period after December 31, 2006 or 11.00 percentage points for  
29 each of the 12-month periods ending September 30, 2005 and  
30 September 30, 2006 for each electric utility providing  
31 service to fewer than 6,500, or between 75,000 and 150,000,  
32 electric retail customers in this State on January 1, 1995 if  
33 such utility commits not to petition pursuant to Section  
34 16-108(f) for entry of an order by the Commission authorizing

1 the electric utility to implement transition charges for an  
2 additional period after December 31, 2006.

3 (1) For purposes of this subsection (e), "excess  
4 earnings" means the difference between (A) the 2-year  
5 average of the electric utility's earned rate of return  
6 on common equity, less (B) the 2-year average of the sum  
7 of (i) the Index applicable to each of the 2 years and  
8 (ii) 1.5 percentage points; provided, that "excess  
9 earnings" shall never be less than zero.

10 (2) On or before March 31 of each year 2000 through  
11 2007 2005 each electric utility shall file a report with  
12 the Commission showing its earned rate of return on  
13 common equity, calculated in accordance with this  
14 subsection, for the preceding calendar year and the  
15 average for the preceding 2 calendar years.

16 (3) If an electric utility has excess earnings,  
17 determined in accordance with paragraphs (1) and (2) of  
18 this subsection, the refunds which the electric utility  
19 shall pay to its customers beginning the first billing  
20 day of April in the following year shall be calculated  
21 and applied as follows:

22 (i) The electric utility's excess earnings  
23 shall be multiplied by the average of the beginning  
24 and ending balances of the electric utility's common  
25 equity for the 2-year period in which excess  
26 earnings occurred.

27 (ii) The result of the calculation in (i)  
28 shall be multiplied by 0.50 and then divided by a  
29 number equal to 1 minus the electric utility's  
30 composite federal and State income tax rate.

31 (iii) The result of the calculation in (ii)  
32 shall be divided by the sum of the electric  
33 utility's projected total kilowatt-hour sales to  
34 retail customers plus projected kilowatt-hours to be



1 delivered to delivery services customers over a one  
2 year period beginning with the first billing date in  
3 April in the succeeding year to determine a cents  
4 per kilowatt-hour refund factor.

5 (iv) The cents per kilowatt-hour refund factor  
6 calculated in (iii) shall be credited to the  
7 electric utility's customers by applying the factor  
8 on the customer's monthly bills to each  
9 kilowatt-hour sold or delivered until the total  
10 amount calculated in (ii) has been paid to  
11 customers.

12 (f) During the mandatory transition period, an electric  
13 utility may file revised tariffs reducing the price of any  
14 tariffed service offered by the electric utility for all  
15 customers taking that tariffed service, which shall be  
16 effective 7 days after filing.

17 (g) During the mandatory transition period, an electric  
18 utility may, without obtaining any approval of the Commission  
19 other than that provided for in this subsection and  
20 notwithstanding any other provision of this Act or any rule  
21 or regulation of the Commission that would require such  
22 approval:

23 (1) implement a reorganization, other than a merger  
24 of 2 or more public utilities as defined in Section 3-105  
25 or their holding companies;

26 (2) retire generating plants from service;

27 (3) sell, assign, lease or otherwise transfer  
28 assets to an affiliated or unaffiliated entity and as  
29 part of such transaction enter into service agreements,  
30 power purchase agreements, or other agreements with the  
31 transferee; provided, however, that the prices, terms and  
32 conditions of any power purchase agreement must be  
33 approved or allowed into effect by the Federal Energy  
34 Regulatory Commission; or

1           (4) use any accelerated cost recovery method  
2 including accelerated depreciation, accelerated  
3 amortization or other capital recovery methods, or record  
4 reductions to the original cost of its assets.

5           In order to implement a reorganization, retire generating  
6 plants from service, or sell, assign, lease or otherwise  
7 transfer assets pursuant to this Section, the electric  
8 utility shall comply with subsections (c) and (d) of Section  
9 16-128, if applicable, and subsection (k) of this Section, if  
10 applicable, and provide the Commission with at least 30 days  
11 notice of the proposed reorganization or transaction, which  
12 notice shall include the following information:

13                   (i) a complete statement of the entries that  
14 the electric utility will make on its books and  
15 records of account to implement the proposed  
16 reorganization or transaction together with a  
17 certification from an independent certified public  
18 accountant that such entries are in accord with  
19 generally accepted accounting principles and, if the  
20 Commission has previously approved guidelines for  
21 cost allocations between the utility and its  
22 affiliates, a certification from the chief  
23 accounting officer of the utility that such entries  
24 are in accord with those cost allocation guidelines;

25                   (ii) a description of how the electric utility  
26 will use proceeds of any sale, assignment, lease or  
27 transfer to retire debt or otherwise reduce or  
28 recover the costs of services provided by such  
29 electric utility;

30                   (iii) a list of all federal approvals or  
31 approvals required from departments and agencies of  
32 this State, other than the Commission, that the  
33 electric utility has or will obtain before  
34 implementing the reorganization or transaction;

1           (iv) an irrevocable commitment by the electric  
2 utility that it will not, as a result of the  
3 transaction, impose any stranded cost charges that  
4 it might otherwise be allowed to charge retail  
5 customers under federal law or increase the  
6 transition charges that it is otherwise entitled to  
7 collect under this Article XVI; and

8           (v) if the electric utility proposes to sell,  
9 assign, lease or otherwise transfer a generating  
10 plant that brings the amount of net dependable  
11 generating capacity transferred pursuant to this  
12 subsection to an amount equal to or greater than 15%  
13 of the electric utility's net dependable capacity as  
14 of the effective date of this amendatory Act of  
15 1997, and enters into a power purchase agreement  
16 with the entity to which such generating plant is  
17 sold, assigned, leased, or otherwise transferred,  
18 the electric utility also agrees, if its fuel  
19 adjustment clause has not already been eliminated,  
20 to eliminate its fuel adjustment clause in  
21 accordance with subsection (b) of Section 9-220 for  
22 a period of time equal to the length of any such  
23 power purchase agreement or successor agreement, or  
24 until January 1, 2005, whichever is longer; if the  
25 capacity of the generating plant so transferred and  
26 related power purchase agreement does not result in  
27 the elimination of the fuel adjustment clause under  
28 this subsection, and the fuel adjustment clause has  
29 not already been eliminated, the electric utility  
30 shall agree that the costs associated with the  
31 transferred plant that are included in the  
32 calculation of the rate per kilowatt-hour to be  
33 applied pursuant to the electric utility's fuel  
34 adjustment clause during such period shall not

1 exceed the per kilowatt-hour cost associated with  
2 such generating plant included in the electric  
3 utility's fuel adjustment clause during the full  
4 calendar year preceding the transfer, with such  
5 limit to be adjusted each year thereafter by the  
6 Gross Domestic Product Implicit Price Deflator.

7 (vi) In addition, if the electric utility  
8 proposes to sell, assign, or lease, (A) either (1)  
9 an amount of generating plant that brings the amount  
10 of net dependable generating capacity transferred  
11 pursuant to this subsection to an amount equal to or  
12 greater than 15% of its net dependable capacity on  
13 the effective date of this amendatory Act of 1997,  
14 or (2) one or more generating plants with a total  
15 net dependable capacity of 1100 megawatts, or (B)  
16 transmission and distribution facilities that either  
17 (1) bring the amount of transmission and  
18 distribution facilities transferred pursuant to this  
19 subsection to an amount equal to or greater than 15%  
20 of the electric utility's total depreciated original  
21 cost investment in such facilities, or (2) represent  
22 an investment of \$25,000,000 in terms of total  
23 depreciated original cost, the electric utility  
24 shall provide, in addition to the information listed  
25 in subparagraphs (i) through (v), the following  
26 information: (A) a description of how the electric  
27 utility will meet its service obligations under this  
28 Act in a safe and reliable manner and (B) the  
29 electric utility's projected earned rate of return  
30 on common equity, calculated in accordance with  
31 subsection (d) of this Section, for each year from  
32 the date of the notice through December 31, 2006  
33 2004 both with and without the proposed transaction.  
34 If the Commission has not issued an order initiating

1 a hearing on the proposed transaction within 30 days  
2 after the date the electric utility's notice is  
3 filed, the transaction shall be deemed approved.  
4 The Commission may, after notice and hearing,  
5 prohibit the proposed transaction if it makes either  
6 or both of the following findings: (1) that the  
7 proposed transaction will render the electric  
8 utility unable to provide its tariffed services in a  
9 safe and reliable manner, or (2) that there is a  
10 strong likelihood that consummation of the proposed  
11 transaction will result in the electric utility  
12 being entitled to request an increase in its base  
13 rates during the mandatory transition period  
14 pursuant to subsection (d) of this Section. Any  
15 hearing initiated by the Commission into the  
16 proposed transaction shall be completed, and the  
17 Commission's final order approving or prohibiting  
18 the proposed transaction shall be entered, within 90  
19 days after the date the electric utility's notice  
20 was filed. Provided, however, that a sale,  
21 assignment, or lease of transmission facilities to  
22 an independent system operator that meets the  
23 requirements of Section 16-126 shall not be subject  
24 to Commission approval under this Section.

25 In any proceeding conducted by the Commission  
26 pursuant to this subparagraph (vi), intervention  
27 shall be limited to parties with a direct interest  
28 in the transaction which is the subject of the  
29 hearing and any statutory consumer protection agency  
30 as defined in subsection (d) of Section 9-102.1.  
31 Notwithstanding the provisions of Section 10-113 of  
32 this Act, any application seeking rehearing of an  
33 order issued under this subparagraph (vi), whether  
34 filed by the electric utility or by an intervening

1 party, shall be filed within 10 days after service  
2 of the order.

3 The Commission shall not in any subsequent proceeding or  
4 otherwise, review such a reorganization or other transaction  
5 authorized by this Section, but shall retain the authority to  
6 allocate costs as stated in Section 16-111(i). An entity to  
7 which an electric utility sells, assigns, leases or transfers  
8 assets pursuant to this subsection (g) shall not, as a result  
9 of the transactions specified in this subsection (g), be  
10 deemed a public utility as defined in Section 3-105. Nothing  
11 in this subsection (g) shall change any requirement under the  
12 jurisdiction of the Illinois Department of Nuclear Safety  
13 including, but not limited to, the payment of fees. Nothing  
14 in this subsection (g) shall exempt a utility from obtaining  
15 a certificate pursuant to Section 8-406 of this Act for the  
16 construction of a new electric generating facility. Nothing  
17 in this subsection (g) is intended to exempt the transactions  
18 hereunder from the operation of the federal or State  
19 antitrust laws. Nothing in this subsection (g) shall require  
20 an electric utility to use the procedures specified in this  
21 subsection for any of the transactions specified herein. Any  
22 other procedure available under this Act may, at the electric  
23 utility's election, be used for any such transaction.

24 (h) During the mandatory transition period, the  
25 Commission shall not establish or use any rates of  
26 depreciation, which for purposes of this subsection shall  
27 include amortization, for any electric utility other than  
28 those established pursuant to subsection (c) of Section 5-104  
29 of this Act or utilized pursuant to subsection (g) of this  
30 Section. Provided, however, that in any proceeding to review  
31 an electric utility's rates for tariffed services pursuant to  
32 Section 9-201, 9-202, 9-250 or 16-111(d) of this Act, the  
33 Commission may establish new rates of depreciation for the  
34 electric utility in the same manner provided in subsection

1 (d) of Section 5-104 of this Act. An electric utility  
2 implementing an accelerated cost recovery method including  
3 accelerated depreciation, accelerated amortization or other  
4 capital recovery methods, or recording reductions to the  
5 original cost of its assets, pursuant to subsection (g) of  
6 this Section, shall file a statement with the Commission  
7 describing the accelerated cost recovery method to be  
8 implemented or the reduction in the original cost of its  
9 assets to be recorded. Upon the filing of such statement,  
10 the accelerated cost recovery method or the reduction in the  
11 original cost of assets shall be deemed to be approved by the  
12 Commission as though an order had been entered by the  
13 Commission.

14 (i) Subsequent to the mandatory transition period, the  
15 Commission, in any proceeding to establish rates and charges  
16 for tariffed services offered by an electric utility, shall  
17 consider only (1) the then current or projected revenues,  
18 costs, investments and cost of capital directly or indirectly  
19 associated with the provision of such tariffed services; (2)  
20 collection of transition charges in accordance with Sections  
21 16-102 and 16-108 of this Act; (3) recovery of any employee  
22 transition costs as described in Section 16-128 which the  
23 electric utility is continuing to incur, including recovery  
24 of any unamortized portion of such costs previously incurred  
25 or committed, with such costs to be equitably allocated among  
26 bundled services, delivery services, and contracts with  
27 alternative retail electric suppliers; and (4) recovery of  
28 the costs associated with the electric utility's compliance  
29 with decommissioning funding requirements; and shall not  
30 consider any other revenues, costs, investments or cost of  
31 capital of either the electric utility or of any affiliate of  
32 the electric utility that are not associated with the  
33 provision of tariffed services. In setting rates for  
34 tariffed services, the Commission shall equitably allocate

1 joint and common costs and investments between the electric  
2 utility's competitive and tariffed services. In determining  
3 the justness and reasonableness of the electric power and  
4 energy component of an electric utility's rates for tariffed  
5 services subsequent to the mandatory transition period and  
6 prior to the time that the provision of such electric power  
7 and energy is declared competitive, the Commission shall  
8 consider the extent to which the electric utility's tariffed  
9 rates for such component for each customer class exceed the  
10 market value determined pursuant to Section 16-112, and, if  
11 the electric power and energy component of such tariffed rate  
12 exceeds the market value by more than 10% for any customer  
13 class, may establish such electric power and energy component  
14 at a rate equal to the market value plus 10%. In any such  
15 case, the Commission may also elect to extend the provisions  
16 of Section 16-111(e) for any period in which the electric  
17 utility is collecting transition charges, using information  
18 applicable to such period.

19 (j) During the mandatory transition period, an electric  
20 utility may elect to transfer to a non-operating income  
21 account under the Commission's Uniform System of Accounts  
22 either or both of (i) an amount of unamortized investment tax  
23 credit that is in addition to the ratable amount which is  
24 credited to the electric utility's operating income account  
25 for the year in accordance with Section 46(f)(2) of the  
26 federal Internal Revenue Code of 1986, as in effect prior to  
27 P.L. 101-508, or (ii) "excess tax reserves", as that term is  
28 defined in Section 203(e)(2)(A) of the federal Tax Reform Act  
29 of 1986, provided that (A) the amount transferred may not  
30 exceed the amount of the electric utility's assets that were  
31 created pursuant to Statement of Financial Accounting  
32 Standards No. 71 which the electric utility has written off  
33 during the mandatory transition period, and (B) the transfer  
34 shall not be effective until approved by the Internal Revenue



1 Service. An electric utility electing to make such a  
2 transfer shall file a statement with the Commission stating  
3 the amount and timing of the transfer for which it intends to  
4 request approval of the Internal Revenue Service, along with  
5 a copy of its proposed request to the Internal Revenue  
6 Service for a ruling. The Commission shall issue an order  
7 within 14 days after the electric utility's filing approving,  
8 subject to receipt of approval from the Internal Revenue  
9 Service, the proposed transfer.

10 (k) If an electric utility is selling or transferring to  
11 a single buyer 5 or more generating plants located in this  
12 State with a total net dependable capacity of 5000 megawatts  
13 or more pursuant to subsection (g) of this Section and has  
14 obtained a sale price or consideration that exceeds 200% of  
15 the book value of such plants, the electric utility must  
16 provide to the Governor, the President of the Illinois  
17 Senate, the Minority Leader of the Illinois Senate, the  
18 Speaker of the Illinois House of Representatives, and the  
19 Minority Leader of the Illinois House of Representatives no  
20 later than 15 days after filing its notice under subsection  
21 (g) of this Section or 5 days after the date on which this  
22 subsection (k) becomes law, whichever is later, a written  
23 commitment in which such electric utility agrees to expend \$2  
24 billion outside the corporate limits of any municipality with  
25 1,000,000 or more inhabitants within such electric utility's  
26 service area, over a 6-year period beginning with the  
27 calendar year in which the notice is filed, on projects,  
28 programs, and improvements within its service area relating  
29 to transmission and distribution including, without  
30 limitation, infrastructure expansion, repair and replacement,  
31 capital investments, operations and maintenance, and  
32 vegetation management.

33 (Source: P.A. 90-561, eff. 12-16-97; 90-563, eff. 12-16-97;  
34 91-50, eff. 6-30-99.)

1 (220 ILCS 5/16-111.3 new)

2 Sec. 16-111.3. Transition period earnings calculations.

3 At such time as the Board of Governors of the Federal Reserve  
4 System ceases to include the monthly average yields of  
5 30-year U.S. Treasury bonds in its weekly H.15 Statistical  
6 Release or successor publication, the Monthly Treasury  
7 Long-Term Average Rates (25 years and above) published by the  
8 Board of Governors of the Federal Reserve System in its  
9 weekly H.15 Statistical Release or successor publication  
10 shall instead be used to establish a rate for the purpose of  
11 calculating the Index defined in subsection (e) of Section  
12 16-111 of this Act, and at such time, such Monthly Treasury  
13 Long-Term Average Rates (25 years and above) shall also be  
14 used in place of the monthly average yields of 30-year U.S.  
15 Treasury bonds in the rate of return calculation required by  
16 subsection (d) of Section 16-111. An electric utility shall  
17 also remove the effects, if any, of any impairment due to the  
18 application of Statement of Financial Accounting Standards  
19 No. 142, which was issued in June 2001, when making the  
20 calculations required by this Section or by subsections (d)  
21 and (e) of Section 16-111.

22 Section 99. Effective date. This Act takes effect upon  
23 becoming law.