

1 production of electric power shall include the amount of any
2 fees paid by the utility for the implementation and operation
3 of a process for the desulfurization of the flue gas when
4 burning high sulfur coal at any location within the State of
5 Illinois irrespective of the attainment status designation of
6 such location; but shall not include transportation costs of
7 coal (i) except to the extent that for contracts entered into
8 on and after the effective date of this amendatory Act of
9 1997, the cost of the coal, including transportation costs,
10 constitutes the lowest cost for adequate and reliable fuel
11 supply reasonably available to the public utility in
12 comparison to the cost, including transportation costs, of
13 other adequate and reliable sources of fuel supply reasonably
14 available to the public utility, or (ii) except as otherwise
15 provided in the next 3 sentences of this paragraph. Such
16 costs of fuel shall, when requested by a utility or at the
17 conclusion of the utility's next general electric rate
18 proceeding, whichever shall first occur, include
19 transportation costs of coal purchased under existing coal
20 purchase contracts. For purposes of this paragraph "existing
21 coal purchase contracts" means contracts for the purchase of
22 coal in effect on the effective date of this amendatory Act
23 of 1991, as such contracts may thereafter be amended, but
24 only to the extent that any such amendment does not increase
25 the aggregate quantity of coal to be purchased under such
26 contract. Nothing herein shall authorize an electric utility
27 to recover through its fuel adjustment clause any amounts of
28 transportation costs of coal that were included in the
29 revenue requirement used to set base rates in its most recent
30 general rate proceeding. Cost shall be based upon uniformly
31 applied accounting principles. Annually, the Commission shall
32 initiate public hearings to determine whether the clauses
33 reflect actual costs of fuel, gas, power, or coal
34 transportation purchased to determine whether such purchases

1 were prudent, and to reconcile any amounts collected with the
2 actual costs of fuel, power, gas, or coal transportation
3 prudently purchased. In each such proceeding, the burden of
4 proof shall be upon the utility to establish the prudence of
5 its cost of fuel, power, gas, or coal transportation
6 purchases and costs. The Commission shall issue its final
7 order in each such annual proceeding for an electric utility
8 by December 31 of the year immediately following the year to
9 which the proceeding pertains, provided, that the Commission
10 shall issue its final order with respect to such annual
11 proceeding for the years 1996 and earlier by December 31,
12 1998.

13 (b) A public utility providing electric service, other
14 than a public utility described in subsections (e) or (f) of
15 this Section, may at any time during the mandatory transition
16 period file with the Commission proposed tariff sheets that
17 eliminate the public utility's fuel adjustment clause and
18 adjust the public utility's base rate tariffs by the amount
19 necessary for the base fuel component of the base rates to
20 recover the public utility's average fuel and power supply
21 costs per kilowatt-hour for the 2 most recent years for which
22 the Commission has issued final orders in annual proceedings
23 pursuant to subsection (a), where the average fuel and power
24 supply costs per kilowatt-hour shall be calculated as the sum
25 of the public utility's prudent and allowable fuel and power
26 supply costs as found by the Commission in the 2 proceedings
27 divided by the public utility's actual jurisdictional
28 kilowatt-hour sales for those 2 years. Notwithstanding any
29 contrary or inconsistent provisions in Section 9-201 of this
30 Act, in subsection (a) of this Section or in any rules or
31 regulations promulgated by the Commission pursuant to
32 subsection (g) of this Section, the Commission shall review
33 and shall by order approve, or approve as modified, the
34 proposed tariff sheets within 60 days after the date of the

1 public utility's filing. The Commission may modify the
2 public utility's proposed tariff sheets only to the extent
3 the Commission finds necessary to achieve conformance to the
4 requirements of this subsection (b). During the 5 years
5 following the date of the Commission's order, but in any
6 event no earlier than January 1, 2007 2005, a public utility
7 whose fuel adjustment clause has been eliminated pursuant to
8 this subsection shall not file proposed tariff sheets
9 seeking, or otherwise petition the Commission for,
10 reinstatement of a fuel adjustment clause.

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

1 that the factor established pursuant to this subsection is in
2 effect.

3 (d) A public utility providing electric service, or a
4 public utility providing gas service may file with the
5 Commission proposed tariff sheets that eliminate the public
6 utility's fuel or purchased gas adjustment clause and adjust
7 the public utility's base rate tariffs to provide for
8 recovery of power supply costs or gas supply costs that would
9 have been recovered through such clause; provided, that the
10 provisions of this subsection (d) shall not be available to a
11 public utility described in subsections (e) or (f) of this
12 Section to eliminate its fuel adjustment clause.
13 Notwithstanding any contrary or inconsistent provisions in
14 Section 9-201 of this Act, in subsection (a) of this Section,
15 or in any rules or regulations promulgated by the Commission
16 pursuant to subsection (g) of this Section, the Commission
17 shall review and shall by order approve, or approve as
18 modified in the Commission's order, the proposed tariff
19 sheets within 240 days after the date of the public utility's
20 filing. The Commission's order shall approve rates and
21 charges that the Commission, based on information in the
22 public utility's filing or on the record if a hearing is held
23 by the Commission, finds will recover the reasonable, prudent
24 and necessary jurisdictional power supply costs or gas supply
25 costs incurred or to be incurred by the public utility during
26 a 12 month period found by the Commission to be appropriate
27 for these purposes, provided, that such period shall be
28 either (i) a 12 month historical period occurring during the
29 15 months ending on the date of the public utility's filing,
30 or (ii) a 12 month future period ending no later than 15
31 months following the date of the public utility's filing.
32 The public utility shall include with its tariff filing
33 information showing both (1) its actual jurisdictional power
34 supply costs or gas supply costs for a 12 month historical

1 period conforming to (i) above and (2) its projected
2 jurisdictional power supply costs or gas supply costs for a
3 future 12 month period conforming to (ii) above. If the
4 Commission's order requires modifications in the tariff
5 sheets filed by the public utility, the public utility shall
6 have 7 days following the date of the order to notify the
7 Commission whether the public utility will implement the
8 modified tariffs or elect to continue its fuel or purchased
9 gas adjustment clause in force as though no order had been
10 entered. The Commission's order shall provide for any
11 reconciliation of power supply costs or gas supply costs, as
12 the case may be, and associated revenues through the date
13 that the public utility's fuel or purchased gas adjustment
14 clause is eliminated. During the 5 years following the date
15 of the Commission's order, a public utility whose fuel or
16 purchased gas adjustment clause has been eliminated pursuant
17 to this subsection shall not file proposed tariff sheets
18 seeking, or otherwise petition the Commission for,
19 reinstatement or adoption of a fuel or purchased gas
20 adjustment clause. Nothing in this subsection (d) shall be
21 construed as limiting the Commission's authority to eliminate
22 a public utility's fuel adjustment clause or purchased gas
23 adjustment clause in accordance with any other applicable
24 provisions of this Act.

25 (e) Notwithstanding any contrary or inconsistent
26 provisions in Section 9-201 of this Act, in subsection (a)
27 of this Section, or in any rules promulgated by the
28 Commission pursuant to subsection (g) of this Section, a
29 public utility providing electric service to more than
30 1,000,000 customers in this State may, within the first 6
31 months after the effective date of this amendatory Act of
32 1997, file with the Commission proposed tariff sheets that
33 eliminate, effective January 1, 1997, the public utility's
34 fuel adjustment clause without adjusting its base rates, and

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

23 (f) Notwithstanding any contrary or inconsistent
24 provisions in Section 9-201 of this Act, in subsection (a) of
25 this Section, or in any rules or regulations promulgated by
26 the Commission pursuant to subsection (g) of this Section, a
27 public utility providing electric service to more than
28 500,000 customers but fewer than 1,000,000 customers in this
29 State may, within the first 6 months after the effective date
30 of this amendatory Act of 1997, file with the Commission
31 proposed tariff sheets that eliminate, effective January 1,
32 1997, the public utility's fuel adjustment clause and adjust
33 its base rates by the amount necessary for the base fuel
34 component of the base rates to recover 91% of the public

1 utility's average fuel and power supply costs for the 2 most
2 recent years for which the Commission, as of January 1, 1997,
3 has issued final orders in annual proceedings pursuant to
4 subsection (a), where the average fuel and power supply costs
5 per kilowatt-hour shall be calculated as the sum of the
6 public utility's prudent and allowable fuel and power supply
7 costs as found by the Commission in the 2 proceedings divided
8 by the public utility's actual jurisdictional kilowatt-hour
9 sales for those 2 years, provided, that such tariff sheets
10 shall be effective upon filing. To the extent the
11 application of the fuel adjustment clause had resulted in net
12 charges to customers after January 1, 1997, the utility shall
13 also file a tariff sheet that provides for a refund stated on
14 a per kilowatt-hour basis of such charges over a period not
15 to exceed 6 months. Provided however, that such refund shall
16 not include the proportional amounts of taxes paid under the
17 Use Tax Act, Service Use Tax Act, Service Occupation Tax Act,
18 and Retailers' Occupation Tax Act on fuel used in generation.
19 The Commission shall issue an order within 45 days after the
20 date of the public utility's filing approving or approving as
21 modified such tariff sheet. If the fuel adjustment clause is
22 eliminated pursuant to this subsection, the Commission shall
23 not conduct the annual hearings specified in the last 3
24 sentences of subsection (a) of this Section for the utility
25 for any period after December 31, 1996 and prior to any
26 reinstatement of such clause. A public utility whose fuel
27 adjustment clause has been eliminated pursuant to this
28 subsection shall not file a proposed tariff sheet seeking, or
29 otherwise petition the Commission for, reinstatement of the
30 fuel adjustment clause prior to January 1, 2007 2005.

31 (g) The Commission shall have authority to promulgate
32 rules and regulations to carry out the provisions of this
33 Section.

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

1 (220 ILCS 5/16-102)

2 Sec. 16-102. Definitions. For the purposes of this
3 Article the following terms shall be defined as set forth in
4 this Section.

5 "Alternative retail electric supplier" means every
6 person, cooperative, corporation, municipal corporation,
7 company, association, joint stock company or association,
8 firm, partnership, individual, or other entity, their
9 lessees, trustees, or receivers appointed by any court
10 whatsoever, that offers electric power or energy for sale,
11 lease or in exchange for other value received to one or more
12 retail customers, or that engages in the delivery or
13 furnishing of electric power or energy to such retail
14 customers, and shall include, without limitation, resellers,
15 aggregators and power marketers, but shall not include (i)
16 electric utilities (or any agent of the electric utility to
17 the extent the electric utility provides tariffed services to
18 retail customers through that agent), (ii) any electric
19 cooperative or municipal system as defined in Section 17-100
20 to the extent that the electric cooperative or municipal
21 system is serving retail customers within any area in which
22 it is or would be entitled to provide service under the law
23 in effect immediately prior to the effective date of this
24 amendatory Act of 1997, (iii) a public utility that is owned
25 and operated by any public institution of higher education of
26 this State, or a public utility that is owned by such public
27 institution of higher education and operated by any of its
28 lessees or operating agents, within any area in which it is
29 or would be entitled to provide service under the law in
30 effect immediately prior to the effective date of this
31 amendatory Act of 1997, (iv) a retail customer to the extent
32 that customer obtains its electric power and energy from that
33 customer's own cogeneration or self-generation facilities,
34 (v) an entity that owns, operates, sells, or arranges for the

1 installation of a customer's own cogeneration or
2 self-generation facilities, but only to the extent the entity
3 is engaged in owning, selling or arranging for the
4 installation of such facility, or operating the facility on
5 behalf of such customer, provided however that any such third
6 party owner or operator of a facility built after January 1,
7 1999, complies with the labor provisions of Section 16-128(a)
8 as though such third party were an alternative retail
9 electric supplier, or (vi) an industrial or manufacturing
10 customer that owns its own distribution facilities, to the
11 extent that the customer provides service from that
12 distribution system to a third-party contractor located on
13 the customer's premises that is integrally and predominantly
14 engaged in the customer's industrial or manufacturing
15 process; provided, that if the industrial or manufacturing
16 customer has elected delivery services, the customer shall
17 pay transition charges applicable to the electric power and
18 energy consumed by the third-party contractor unless such
19 charges are otherwise paid by the third party contractor,
20 which shall be calculated based on the usage of, and the base
21 rates or the contract rates applicable to, the third-party
22 contractor in accordance with Section 16-102.

23 "Base rates" means the rates for those tariffed services
24 that the electric utility is required to offer pursuant to
25 subsection (a) of Section 16-103 and that were identified in
26 a rate order for collection of the electric utility's base
27 rate revenue requirement, excluding (i) separate automatic
28 rate adjustment riders then in effect, (ii) special or
29 negotiated contract rates, (iii) delivery services tariffs
30 filed pursuant to Section 16-108, (iv) real-time pricing, or
31 (v) tariffs that were in effect prior to October 1, 1996 and
32 that based charges for services on an index or average of
33 other utilities' charges, but including (vi) any subsequent
34 redesign of such rates for tariffed services that is

1 authorized by the Commission after notice and hearing.

2 "Competitive service" includes (i) any service that has
3 been declared to be competitive pursuant to Section 16-113 of
4 this Act, (ii) contract service, and (iii) services, other
5 than tariffed services, that are related to, but not
6 necessary for, the provision of electric power and energy or
7 delivery services.

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

26 "Delivery services" means those services provided by the
27 electric utility that are necessary in order for the
28 transmission and distribution systems to function so that
29 retail customers located in the electric utility's service
30 area can receive electric power and energy from suppliers
31 other than the electric utility, and shall include, without
32 limitation, standard metering and billing services.

33 "Electric utility" means a public utility, as defined in
34 Section 3-105 of this Act, that has a franchise, license,

1 permit or right to furnish or sell electricity to retail
2 customers within a service area.

3 "Mandatory transition period" means the period from the
4 effective date of this amendatory Act of 1997 through January
5 1, 2007 2005.

6 "Municipal system" shall have the meaning set forth in
7 Section 17-100.

8 "Real-time pricing" means charges for delivered electric
9 power and energy that vary on an hour-to-hour basis for
10 nonresidential retail customers and that vary on a periodic
11 basis during the day for residential retail customers.

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

29 "Service area" means (i) the geographic area within which
30 an electric utility was lawfully entitled to provide electric
31 power and energy to retail customers as of the effective date
32 of this amendatory Act of 1997, and includes (ii) the
33 location of any retail customer to which the electric utility
34 was lawfully providing electric utility services on such

1 effective date.

2 "Small commercial retail customer" means those
3 nonresidential retail customers of an electric utility
4 consuming 15,000 kilowatt-hours or less of electricity
5 annually in its service area.

6 "Tariffed service" means services provided to retail
7 customers by an electric utility as defined by its rates on
8 file with the Commission pursuant to the provisions of
9 Article IX of this Act, but shall not include competitive
10 services.

11 "Transition charge" means a charge expressed in cents per
12 kilowatt-hour that is calculated for a customer or class of
13 customers as follows for each year in which an electric
14 utility is entitled to recover transition charges as provided
15 in Section 16-108:

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

1 customers, would have received electric power and energy
2 from the electric utility during the year immediately
3 preceding the date on which such customers were first
4 eligible for delivery service pursuant to Section 16-104,
5 or (ii) to the extent applicable, any contract rates,
6 including contracts or rates for consolidated or
7 aggregated billing, under which such customers were
8 receiving electric power and energy from the electric
9 utility during such year;

10 (2) less the amount of revenue, other than revenue
11 from transition charges and decommissioning rates, that
12 the electric utility would receive from such retail
13 customers for delivery services provided by the electric
14 utility, assuming such customers were taking delivery
15 services for all of their usage, based on the delivery
16 services tariffs in effect during the year for which the
17 transition charge is being calculated and on the usage
18 identified in paragraph (1);

19 (3) less the market value for the electric power
20 and energy that the electric utility would have used to
21 supply all of such customers' electric power and energy
22 requirements, as a tariffed service, based on the usage
23 identified in paragraph (1), with such market value
24 determined in accordance with Section 16-112 of this Act;

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

31 (A) for nonresidential retail customers, an
32 amount equal to the greater of (i) 0.5 cents per
33 kilowatt-hour during the period October 1, 1999
34 through December 31, 2004, 0.6 cents per

1 kilowatt-hour in calendar year 2005, and 0.9 cents
2 per kilowatt-hour in calendar year 2006, multiplied
3 in each year by the usage identified in paragraph
4 (1), or (ii) an amount equal to the following
5 percentages of the amount produced by applying the
6 applicable base rates (adjusted as described in
7 subparagraph (1)(B)) or contract rate to the usage
8 identified in paragraph (1): 8% for the period
9 October 1, 1999 through December 31, 2002, 10% in
10 calendar years 2003 and 2004, 11% in calendar year
11 2005 and 12% in calendar year 2006; and

12 (B) for residential retail customers, an
13 amount equal to the following percentages of the
14 amount produced by applying the base rates in effect
15 on October 1, 1996 (adjusted as described in
16 subparagraph (1)(B)) to the usage identified in
17 paragraph (1): (i) 6% from May 1, 2002 through
18 December 31, 2002, (ii) 7% in calendar years 2003
19 and 2004, (iii) 8% in calendar year 2005, and (iv)
20 10% in calendar year 2006;

21 (5) divided by the usage of such customers
22 identified in paragraph (1),
23 provided that the transition charge shall never be less than
24 zero.

25 "Unbundled service" means a component or constituent part
26 of a tariffed service which the electric utility subsequently
27 offers separately to its customers.

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

29 (220 ILCS 5/16-111)

30 Sec. 16-111. Rates and restructuring transactions during
31 mandatory transition period.

32 (a) During the mandatory transition period,
33 notwithstanding any provision of Article IX of this Act, and

1 except as provided in subsections (b), (d), (e), and (f) of
2 this Section, the Commission shall not (i) initiate,
3 authorize or order any change by way of increase (other than
4 in connection with a request for rate increase which was
5 filed after September 1, 1997 but prior to October 15, 1997,
6 by an electric utility serving less than 12,500 customers in
7 this State), (ii) initiate or, unless requested by the
8 electric utility, authorize or order any change by way of
9 decrease, restructuring or unbundling (except as provided in
10 Section 16-109A), in the rates of any electric utility that
11 were in effect on October 1, 1996, or (iii) in any order
12 approving any application for a merger pursuant to Section
13 7-204 that was pending as of May 16, 1997, impose any
14 condition requiring any filing for an increase, decrease, or
15 change in, or other review of, an electric utility's rates or
16 enforce any such condition of any such order; provided,
17 however, that this subsection shall not prohibit the
18 Commission from:

19 (1) approving the application of an electric
20 utility to implement an alternative to rate of return
21 regulation or a regulatory mechanism that rewards or
22 penalizes the electric utility through adjustment of
23 rates based on utility performance, pursuant to Section
24 9-244;

25 (2) authorizing an electric utility to eliminate
26 its fuel adjustment clause and adjust its base rate
27 tariffs in accordance with subsection (b), (d), or (f) of
28 Section 9-220 of this Act, to fix its fuel adjustment
29 factor in accordance with subsection (c) of Section 9-220
30 of this Act, or to eliminate its fuel adjustment clause
31 in accordance with subsection (e) of Section 9-220 of
32 this Act;

33 (3) ordering into effect tariffs for delivery
34 services and transition charges in accordance with

1 Sections 16-104 and 16-108, for real-time pricing in
2 accordance with Section 16-107, or the options required
3 by Section 16-110 and subsection (n) of 16-112, allowing
4 a billing experiment in accordance with Section 16-106,
5 or modifying delivery services tariffs in accordance with
6 Section 16-109; or

7 (4) ordering or allowing into effect any tariff to
8 recover charges pursuant to Sections 9-201.5, 9-220.1,
9 9-221, 9-222 (except as provided in Section 9-222.1),
10 16-108, and 16-114 of this Act, Section 5-5 of the
11 Electricity Infrastructure Maintenance Fee Law, Section
12 6-5 of the Renewable Energy, Energy Efficiency, and Coal
13 Resources Development Law of 1997, and Section 13 of the
14 Energy Assistance Act of 1989.

15 After December 31, 2004, the provisions of this
16 subsection (a) shall not apply to an electric utility whose
17 average residential retail rate was less than or equal to 90%
18 of the average residential retail rate for the "Midwest
19 Utilities", as that term is defined in subsection (b) of this
20 Section, based on data reported on Form 1 to the Federal
21 Energy Regulatory Commission for calendar year 1995, and
22 which served between 150,000 and 250,000 retail customers in
23 this State on January 1, 1995 unless the electric utility or
24 its holding company has been acquired by or merged with an
25 affiliate of another public utility subsequent to January 1,
26 2002. This exemption shall be limited to this subsection (a)
27 and shall not extend to any other provisions of this Act.

28 (b) Notwithstanding the provisions of subsection (a),
29 each Illinois electric utility serving more than 12,500
30 customers in Illinois shall file tariffs (i) reducing,
31 effective August 1, 1998, each component of its base rates to
32 residential retail customers by 15% from the base rates in
33 effect immediately prior to January 1, 1998 and (ii) if the
34 public utility provides electric service to (A) more than

1 500,000 customers but less than 1,000,000 customers in this
2 State on January 1, 1999, reducing, effective May 1, 2002,
3 each component of its base rates to residential retail
4 customers by an additional 5% from the base rates in effect
5 immediately prior to January 1, 1998, or (B) at least
6 1,000,000 customers in this State on January 1, 1999,
7 reducing, effective October 1, 2001, each component of its
8 base rates to residential retail customers by an additional
9 5% from the base rates in effect immediately prior to January
10 1, 1998. Provided, however, that (A) if an electric utility's
11 average residential retail rate is less than or equal to the
12 average residential retail rate for a group of Midwest
13 Utilities (consisting of all investor-owned electric
14 utilities with annual system peaks in excess of 1000
15 megawatts in the States of Illinois, Indiana, Iowa, Kentucky,
16 Michigan, Missouri, Ohio, and Wisconsin), based on data
17 reported on Form 1 to the Federal Energy Regulatory
18 Commission for calendar year 1995, then it shall only be
19 required to file tariffs (i) reducing, effective August 1,
20 1998, each component of its base rates to residential retail
21 customers by 5% from the base rates in effect immediately
22 prior to January 1, 1998, (ii) reducing, effective October 1,
23 2000, each component of its base rates to residential retail
24 customers by the lesser of 5% of the base rates in effect
25 immediately prior to January 1, 1998 or the percentage by
26 which the electric utility's average residential retail rate
27 exceeds the average residential retail rate of the Midwest
28 Utilities, based on data reported on Form 1 to the Federal
29 Energy Regulatory Commission for calendar year 1999, and
30 (iii) reducing, effective October 1, 2002, each component of
31 its base rates to residential retail customers by an
32 additional amount equal to the lesser of 5% of the base rates
33 in effect immediately prior to January 1, 1998 or the
34 percentage by which the electric utility's average

1 residential retail rate exceeds the average residential
2 retail rate of the Midwest Utilities, based on data reported
3 on Form 1 to the Federal Energy Regulatory Commission for
4 calendar year 2001; and (B) if the average residential retail
5 rate of an electric utility serving between 150,000 and
6 250,000 retail customers in this State on January 1, 1995 is
7 less than or equal to 90% of the average residential retail
8 rate for the Midwest Utilities, based on data reported on
9 Form 1 to the Federal Energy Regulatory Commission for
10 calendar year 1995, then it shall only be required to file
11 tariffs (i) reducing, effective August 1, 1998, each
12 component of its base rates to residential retail customers
13 by 2% from the base rates in effect immediately prior to
14 January 1, 1998; (ii) reducing, effective October 1, 2000,
15 each component of its base rates to residential retail
16 customers by 2% from the base rate in effect immediately
17 prior to January 1, 1998; and (iii) reducing, effective
18 October 1, 2002, each component of its base rates to
19 residential retail customers by 1% from the base rates in
20 effect immediately prior to January 1, 1998. Provided,
21 further, that any electric utility for which a decrease in
22 base rates has been or is placed into effect between October
23 1, 1996 and the dates specified in the preceding sentences of
24 this subsection, other than pursuant to the requirements of
25 this subsection, shall be entitled to reduce the amount of
26 any reduction or reductions in its base rates required by
27 this subsection by the amount of such other decrease. The
28 tariffs required under this subsection shall be filed 45 days
29 in advance of the effective date. Notwithstanding anything to
30 the contrary in Section 9-220 of this Act, no restatement of
31 base rates in conjunction with the elimination of a fuel
32 adjustment clause under that Section shall result in a lesser
33 decrease in base rates than customers would otherwise receive
34 under this subsection had the electric utility's fuel

1 adjustment clause not been eliminated.

2 (c) Any utility reducing its base rates by 15% on August
3 1, 1998 pursuant to subsection (b) shall include the
4 following statement on its bills for residential customers
5 from August 1 through December 31, 1998: "Effective August 1,
6 1998, your rates have been reduced by 15% by the Electric
7 Service Customer Choice and Rate Relief Law of 1997 passed by
8 the Illinois General Assembly.". Any utility reducing its
9 base rates by 5% on August 1, 1998, pursuant to subsection
10 (b) shall include the following statement on its bills for
11 residential customers from August 1 through December 31,
12 1998: "Effective August 1, 1998, your rates have been
13 reduced by 5% by the Electric Service Customer Choice and
14 Rate Relief Law of 1997 passed by the Illinois General
15 Assembly.".

16 Any utility reducing its base rates by 2% on August 1,
17 1998 pursuant to subsection (b) shall include the following
18 statement on its bills for residential customers from August
19 1 through December 31, 1998: "Effective August 1, 1998, your
20 rates have been reduced by 2% by the Electric Service
21 Customer Choice and Rate Relief Law of 1997 passed by the
22 Illinois General Assembly.".

23 (d) During the mandatory transition period, but not
24 before January 1, 2000, and notwithstanding the provisions
25 of subsection (a), an electric utility may request an
26 increase in its base rates if the electric utility
27 demonstrates that the 2-year average of its earned rate of
28 return on common equity, calculated as its net income
29 applicable to common stock divided by the average of its
30 beginning and ending balances of common equity using data
31 reported in the electric utility's Form 1 report to the
32 Federal Energy Regulatory Commission but adjusted to remove
33 the effects of accelerated depreciation or amortization or
34 other transition or mitigation measures implemented by the

1 electric utility pursuant to subsection (g) of this Section
2 and the effect of any refund paid pursuant to subsection (e)
3 of this Section, is below the 2-year average for the same 2
4 years of the monthly average yields of 30-year U.S. Treasury
5 bonds published by the Board of Governors of the Federal
6 Reserve System in its weekly H.15 Statistical Release or
7 successor publication. The Commission shall review the
8 electric utility's request, and may review the justness and
9 reasonableness of all rates for tariffed services, in
10 accordance with the provisions of Article IX of this Act,
11 provided that the Commission shall consider any special or
12 negotiated adjustments to the revenue requirement agreed to
13 between the electric utility and the other parties to the
14 proceeding. In setting rates under this Section, the
15 Commission shall exclude the costs and revenues that are
16 associated with competitive services and any billing or
17 pricing experiments conducted under Section 16-106.

18 (e) For the purposes of this subsection (e) all
19 calculations and comparisons shall be performed for the
20 Illinois operations of multijurisdictional utilities. During
21 the mandatory transition period, notwithstanding the
22 provisions of subsection (a), if the 2-year average of an
23 electric utility's earned rate of return on common equity,
24 calculated as its net income applicable to common stock
25 divided by the average of its beginning and ending balances
26 of common equity using data reported in the electric
27 utility's Form 1 report to the Federal Energy Regulatory
28 Commission but adjusted to remove the effect of any refund
29 paid under this subsection (e), and further adjusted to
30 include the annual amortization of any difference between the
31 consideration received by an affiliated interest of the
32 electric utility in the sale of an asset which had been sold
33 or transferred by the electric utility to the affiliated
34 interest subsequent to the effective date of this amendatory

1 Act of 1997 and the consideration for which such asset had
2 been sold or transferred to the affiliated interest, with
3 such difference to be amortized ratably from the date of the
4 sale by the affiliated interest to December 31, 2006, exceeds
5 the 2-year average of the Index for the same 2 years by 1.5
6 or more percentage points, the electric utility shall make
7 refunds to customers beginning the first billing day of April
8 in the following year in the manner described in paragraph
9 (3) of this subsection. For purposes of this subsection (e),
10 the "Index" shall be the sum of (A) the average for the 12
11 months ended September 30 of the monthly average yields of
12 30-year U.S. Treasury bonds published by the Board of
13 Governors of the Federal Reserve System in its weekly H.15
14 Statistical Release or successor publication for each year
15 1998 through 2006 2004, and (B) (i) 4.00 percentage points
16 for each of the 12-month periods ending September 30, 1998
17 through September 30, 1999 or 8.00 percentage points if the
18 electric utility's average residential retail rate is less
19 than or equal to 90% of the average residential retail rate
20 for the "Midwest Utilities", as that term is defined in
21 subsection (b) of this Section, based on data reported on
22 Form 1 to the Federal Energy Regulatory Commission for
23 calendar year 1995, and the electric utility served between
24 150,000 and 250,000 retail customers on January 1, 1995, (ii)
25 7.00 percentage points for each of the 12-month periods
26 ending September 30, 2000 through September 30, 2006 2004 if
27 the electric utility was providing service to at least
28 1,000,000 customers in this State on January 1, 1999, or 9.00
29 percentage points if the electric utility's average
30 residential retail rate is less than or equal to 90% of the
31 average residential retail rate for the "Midwest Utilities",
32 as that term is defined in subsection (b) of this Section,
33 based on data reported on Form 1 to the Federal Energy
34 Regulatory Commission for calendar year 1995 and the electric

1 utility served between 150,000 and 250,000 retail customers
2 in this State on January 1, 1995, (iii) 11.00 percentage
3 points for each of the 12-month periods ending September 30,
4 2000 through September 30, 2006 ~~2004~~, but only if the
5 electric utility's average residential retail rate is less
6 than or equal to 90% of the average residential retail rate
7 for the "Midwest Utilities", as that term is defined in
8 subsection (b) of this Section, based on data reported on
9 Form 1 to the Federal Energy Regulatory Commission for
10 calendar year 1995, the electric utility served between
11 150,000 and 250,000 retail customers in this State on January
12 1, 1995, and the electric utility offers delivery services on
13 or before June 1, 2000 to retail customers whose annual
14 electric energy use comprises 33% of the kilowatt hour sales
15 to that group of retail customers that are classified under
16 Division D, Groups 20 through 39 of the Standard Industrial
17 Classifications set forth in the Standard Industrial
18 Classification Manual published by the United States Office
19 of Management and Budget, excluding the kilowatt hour sales
20 to those customers that are eligible for delivery services
21 pursuant to Section 16-104(a)(1)(i), and offers delivery
22 services to its remaining retail customers classified under
23 Division D, Groups 20 through 39 on or before October 1,
24 2000, and, provided further, that the electric utility
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 (iv) 5.00 percentage
29 points for each of the 12-month periods ending September 30,
30 2000 through September 30, 2006 ~~2004~~ for all other electric
31 utilities or 7.00 percentage points for such utilities for
32 each of the 12-month periods ending September 30, 2000
33 through September 30, 2006 ~~2004~~ for any such utility that
34 commits not to petition pursuant to Section 16-108(f) for

1 entry of an order by the Commission authorizing the electric
2 utility to implement transition charges for an additional
3 period after December 31, 2006 or 11.00 percentage points for
4 each of the 12-month periods ending September 30, 2005 and
5 September 30, 2006 for each electric utility providing
6 service to fewer than 6,500, or between 75,000 and 150,000,
7 electric retail customers in this State on January 1, 1995 if
8 such utility commits not to petition pursuant to Section
9 16-108(f) for entry of an order by the Commission authorizing
10 the electric utility to implement transition charges for an
11 additional period after December 31, 2006.

12 (1) For purposes of this subsection (e), "excess
13 earnings" means the difference between (A) the 2-year
14 average of the electric utility's earned rate of return
15 on common equity, less (B) the 2-year average of the sum
16 of (i) the Index applicable to each of the 2 years and
17 (ii) 1.5 percentage points; provided, that "excess
18 earnings" shall never be less than zero.

19 (2) On or before March 31 of each year 2000 through
20 2007 2005 each electric utility shall file a report with
21 the Commission showing its earned rate of return on
22 common equity, calculated in accordance with this
23 subsection, for the preceding calendar year and the
24 average for the preceding 2 calendar years.

25 (3) If an electric utility has excess earnings,
26 determined in accordance with paragraphs (1) and (2) of
27 this subsection, the refunds which the electric utility
28 shall pay to its customers beginning the first billing
29 day of April in the following year shall be calculated
30 and applied as follows:

31 (i) The electric utility's excess earnings
32 shall be multiplied by the average of the beginning
33 and ending balances of the electric utility's common
34 equity for the 2-year period in which excess

1 earnings occurred.

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

6 (iii) The result of the calculation in (ii)
7 shall be divided by the sum of the electric
8 utility's projected total kilowatt-hour sales to
9 retail customers plus projected kilowatt-hours to be
10 delivered to delivery services customers over a one
11 year period beginning with the first billing date in
12 April in the succeeding year to determine a cents
13 per kilowatt-hour refund factor.

14 (iv) The cents per kilowatt-hour refund factor
15 calculated in (iii) shall be credited to the
16 electric utility's customers by applying the factor
17 on the customer's monthly bills to each
18 kilowatt-hour sold or delivered until the total
19 amount calculated in (ii) has been paid to
20 customers.

21 (f) During the mandatory transition period, an electric
22 utility may file revised tariffs reducing the price of any
23 tariffed service offered by the electric utility for all
24 customers taking that tariffed service, which shall be
25 effective 7 days after filing.

26 (g) During the mandatory transition period, an electric
27 utility may, without obtaining any approval of the Commission
28 other than that provided for in this subsection and
29 notwithstanding any other provision of this Act or any rule
30 or regulation of the Commission that would require such
31 approval:

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

- 1 (2) retire generating plants from service;
- 2 (3) sell, assign, lease or otherwise transfer
- 3 assets to an affiliated or unaffiliated entity and as
- 4 part of such transaction enter into service agreements,
- 5 power purchase agreements, or other agreements with the
- 6 transferee; provided, however, that the prices, terms and
- 7 conditions of any power purchase agreement must be
- 8 approved or allowed into effect by the Federal Energy
- 9 Regulatory Commission; or
- 10 (4) use any accelerated cost recovery method
- 11 including accelerated depreciation, accelerated
- 12 amortization or other capital recovery methods, or record
- 13 reductions to the original cost of its assets.

14 In order to implement a reorganization, retire generating
15 plants from service, or sell, assign, lease or otherwise
16 transfer assets pursuant to this Section, the electric
17 utility shall comply with subsections (c) and (d) of Section
18 16-128, if applicable, and subsection (k) of this Section, if
19 applicable, and provide the Commission with at least 30 days
20 notice of the proposed reorganization or transaction, which
21 notice shall include the following information:

- 22 (i) a complete statement of the entries that
- 23 the electric utility will make on its books and
- 24 records of account to implement the proposed
- 25 reorganization or transaction together with a
- 26 certification from an independent certified public
- 27 accountant that such entries are in accord with
- 28 generally accepted accounting principles and, if the
- 29 Commission has previously approved guidelines for
- 30 cost allocations between the utility and its
- 31 affiliates, a certification from the chief
- 32 accounting officer of the utility that such entries
- 33 are in accord with those cost allocation guidelines;
- 34 (ii) a description of how the electric utility

1 will use proceeds of any sale, assignment, lease or
2 transfer to retire debt or otherwise reduce or
3 recover the costs of services provided by such
4 electric utility;

5 (iii) a list of all federal approvals or
6 approvals required from departments and agencies of
7 this State, other than the Commission, that the
8 electric utility has or will obtain before
9 implementing the reorganization or transaction;

10 (iv) an irrevocable commitment by the electric
11 utility that it will not, as a result of the
12 transaction, impose any stranded cost charges that
13 it might otherwise be allowed to charge retail
14 customers under federal law or increase the
15 transition charges that it is otherwise entitled to
16 collect under this Article XVI; and

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

1 related power purchase agreement does not result in
2 the elimination of the fuel adjustment clause under
3 this subsection, and the fuel adjustment clause has
4 not already been eliminated, the electric utility
5 shall agree that the costs associated with the
6 transferred plant that are included in the
7 calculation of the rate per kilowatt-hour to be
8 applied pursuant to the electric utility's fuel
9 adjustment clause during such period shall not
10 exceed the per kilowatt-hour cost associated with
11 such generating plant included in the electric
12 utility's fuel adjustment clause during the full
13 calendar year preceding the transfer, with such
14 limit to be adjusted each year thereafter by the
15 Gross Domestic Product Implicit Price Deflator.

16 (vi) In addition, if the electric utility
17 proposes to sell, assign, or lease, (A) either (1)
18 an amount of generating plant that brings the amount
19 of net dependable generating capacity transferred
20 pursuant to this subsection to an amount equal to or
21 greater than 15% of its net dependable capacity on
22 the effective date of this amendatory Act of 1997,
23 or (2) one or more generating plants with a total
24 net dependable capacity of 1100 megawatts, or (B)
25 transmission and distribution facilities that either
26 (1) bring the amount of transmission and
27 distribution facilities transferred pursuant to this
28 subsection to an amount equal to or greater than 15%
29 of the electric utility's total depreciated original
30 cost investment in such facilities, or (2) represent
31 an investment of \$25,000,000 in terms of total
32 depreciated original cost, the electric utility
33 shall provide, in addition to the information listed
34 in subparagraphs (i) through (v), the following

1 information: (A) a description of how the electric
2 utility will meet its service obligations under this
3 Act in a safe and reliable manner and (B) the
4 electric utility's projected earned rate of return
5 on common equity, calculated in accordance with
6 subsection (d) of this Section, for each year from
7 the date of the notice through December 31, 2006
8 2004 both with and without the proposed transaction.
9 If the Commission has not issued an order initiating
10 a hearing on the proposed transaction within 30 days
11 after the date the electric utility's notice is
12 filed, the transaction shall be deemed approved.
13 The Commission may, after notice and hearing,
14 prohibit the proposed transaction if it makes either
15 or both of the following findings: (1) that the
16 proposed transaction will render the electric
17 utility unable to provide its tariffed services in a
18 safe and reliable manner, or (2) that there is a
19 strong likelihood that consummation of the proposed
20 transaction will result in the electric utility
21 being entitled to request an increase in its base
22 rates during the mandatory transition period
23 pursuant to subsection (d) of this Section. Any
24 hearing initiated by the Commission into the
25 proposed transaction shall be completed, and the
26 Commission's final order approving or prohibiting
27 the proposed transaction shall be entered, within 90
28 days after the date the electric utility's notice
29 was filed. Provided, however, that a sale,
30 assignment, or lease of transmission facilities to
31 an independent system operator that meets the
32 requirements of Section 16-126 shall not be subject
33 to Commission approval under this Section.

34 In any proceeding conducted by the Commission

1 pursuant to this subparagraph (vi), intervention
2 shall be limited to parties with a direct interest
3 in the transaction which is the subject of the
4 hearing and any statutory consumer protection agency
5 as defined in subsection (d) of Section 9-102.1.
6 Notwithstanding the provisions of Section 10-113 of
7 this Act, any application seeking rehearing of an
8 order issued under this subparagraph (vi), whether
9 filed by the electric utility or by an intervening
10 party, shall be filed within 10 days after service
11 of the order.

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

33 (h) During the mandatory transition period, the
34 Commission shall not establish or use any rates of

1 depreciation, which for purposes of this subsection shall
2 include amortization, for any electric utility other than
3 those established pursuant to subsection (c) of Section 5-104
4 of this Act or utilized pursuant to subsection (g) of this
5 Section. Provided, however, that in any proceeding to review
6 an electric utility's rates for tariffed services pursuant to
7 Section 9-201, 9-202, 9-250 or 16-111(d) of this Act, the
8 Commission may establish new rates of depreciation for the
9 electric utility in the same manner provided in subsection
10 (d) of Section 5-104 of this Act. An electric utility
11 implementing an accelerated cost recovery method including
12 accelerated depreciation, accelerated amortization or other
13 capital recovery methods, or recording reductions to the
14 original cost of its assets, pursuant to subsection (g) of
15 this Section, shall file a statement with the Commission
16 describing the accelerated cost recovery method to be
17 implemented or the reduction in the original cost of its
18 assets to be recorded. Upon the filing of such statement,
19 the accelerated cost recovery method or the reduction in the
20 original cost of assets shall be deemed to be approved by the
21 Commission as though an order had been entered by the
22 Commission.

23 (i) Subsequent to the mandatory transition period, the
24 Commission, in any proceeding to establish rates and charges
25 for tariffed services offered by an electric utility, shall
26 consider only (1) the then current or projected revenues,
27 costs, investments and cost of capital directly or indirectly
28 associated with the provision of such tariffed services; (2)
29 collection of transition charges in accordance with Sections
30 16-102 and 16-108 of this Act; (3) recovery of any employee
31 transition costs as described in Section 16-128 which the
32 electric utility is continuing to incur, including recovery
33 of any unamortized portion of such costs previously incurred
34 or committed, with such costs to be equitably allocated among

1 bundled services, delivery services, and contracts with
2 alternative retail electric suppliers; and (4) recovery of
3 the costs associated with the electric utility's compliance
4 with decommissioning funding requirements; and shall not
5 consider any other revenues, costs, investments or cost of
6 capital of either the electric utility or of any affiliate of
7 the electric utility that are not associated with the
8 provision of tariffed services. In setting rates for
9 tariffed services, the Commission shall equitably allocate
10 joint and common costs and investments between the electric
11 utility's competitive and tariffed services. In determining
12 the justness and reasonableness of the electric power and
13 energy component of an electric utility's rates for tariffed
14 services subsequent to the mandatory transition period and
15 prior to the time that the provision of such electric power
16 and energy is declared competitive, the Commission shall
17 consider the extent to which the electric utility's tariffed
18 rates for such component for each customer class exceed the
19 market value determined pursuant to Section 16-112, and, if
20 the electric power and energy component of such tariffed rate
21 exceeds the market value by more than 10% for any customer
22 class, may establish such electric power and energy component
23 at a rate equal to the market value plus 10%. In any such
24 case, the Commission may also elect to extend the provisions
25 of Section 16-111(e) for any period in which the electric
26 utility is collecting transition charges, using information
27 applicable to such period.

28 (j) During the mandatory transition period, an electric
29 utility may elect to transfer to a non-operating income
30 account under the Commission's Uniform System of Accounts
31 either or both of (i) an amount of unamortized investment tax
32 credit that is in addition to the ratable amount which is
33 credited to the electric utility's operating income account
34 for the year in accordance with Section 46(f)(2) of the

1 federal Internal Revenue Code of 1986, as in effect prior to
2 P.L. 101-508, or (ii) "excess tax reserves", as that term is
3 defined in Section 203(e)(2)(A) of the federal Tax Reform Act
4 of 1986, provided that (A) the amount transferred may not
5 exceed the amount of the electric utility's assets that were
6 created pursuant to Statement of Financial Accounting
7 Standards No. 71 which the electric utility has written off
8 during the mandatory transition period, and (B) the transfer
9 shall not be effective until approved by the Internal Revenue
10 Service. An electric utility electing to make such a
11 transfer shall file a statement with the Commission stating
12 the amount and timing of the transfer for which it intends to
13 request approval of the Internal Revenue Service, along with
14 a copy of its proposed request to the Internal Revenue
15 Service for a ruling. The Commission shall issue an order
16 within 14 days after the electric utility's filing approving,
17 subject to receipt of approval from the Internal Revenue
18 Service, the proposed transfer.

19 (k) If an electric utility is selling or transferring to
20 a single buyer 5 or more generating plants located in this
21 State with a total net dependable capacity of 5000 megawatts
22 or more pursuant to subsection (g) of this Section and has
23 obtained a sale price or consideration that exceeds 200% of
24 the book value of such plants, the electric utility must
25 provide to the Governor, the President of the Illinois
26 Senate, the Minority Leader of the Illinois Senate, the
27 Speaker of the Illinois House of Representatives, and the
28 Minority Leader of the Illinois House of Representatives no
29 later than 15 days after filing its notice under subsection
30 (g) of this Section or 5 days after the date on which this
31 subsection (k) becomes law, whichever is later, a written
32 commitment in which such electric utility agrees to expend \$2
33 billion outside the corporate limits of any municipality with
34 1,000,000 or more inhabitants within such electric utility's

1 service area, over a 6-year period beginning with the
2 calendar year in which the notice is filed, on projects,
3 programs, and improvements within its service area relating
4 to transmission and distribution including, without
5 limitation, infrastructure expansion, repair and replacement,
6 capital investments, operations and maintenance, and
7 vegetation management.

8 (Source: P.A. 90-561, eff. 12-16-97; 90-563, eff. 12-16-97;
9 91-50, eff. 6-30-99.)

10 (220 ILCS 5/16-111.3 new)

11 Sec. 16-111.3. Transition period earnings calculations.
12 At such time as the Board of Governors of the Federal Reserve
13 System ceases to include the monthly average yields of
14 30-year U.S. Treasury bonds in its weekly H.15 Statistical
15 Release or successor publication, the Monthly Treasury
16 Long-Term Average Rates (25 years and above) published by the
17 Board of Governors of the Federal Reserve System in its
18 weekly H.15 Statistical Release or successor publication
19 shall instead be used to establish a rate for the purpose of
20 calculating the Index defined in subsection (e) of Section
21 16-111 of this Act, and at such time, such Monthly Treasury
22 Long-Term Average Rates (25 years and above) shall also be
23 used in place of the monthly average yields of 30-year U.S.
24 Treasury bonds in the rate of return calculation required by
25 subsection (d) of Section 16-111. An electric utility shall
26 also remove the effects, if any, of any impairment due to the
27 application of Statement of Financial Accounting Standards
28 No. 142, which was issued in June 2001, when making the
29 calculations required by this Section or by subsections (d)
30 and (e) of Section 16-111.

31 Section 99. Effective date. This Act takes effect upon
32 becoming law."