State of Illinois
Public Acts
90th General Assembly

Public Act 90-0561

HB0362 Enrolled LRB9002496JScc

AN ACT in relation to the competitive provision of utility services, amending named Acts.

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

ARTICLE I

Section 5. The Public Utilities Act is amended by adding Articles XVI, XVII, and XVIII as follows:

(220 ILCS 5/Art. XVI heading new)

ARTICLE XVI. ELECTRIC SERVICE CUSTOMER CHOICE AND RATE RELIEF LAW OF 1997

(220 ILCS 5/16-101 new)

Sec. 16-101. Short title and applicability.

(a) This Article may be cited as the Electric Service Customer Choice and Rate Relief Law of 1997 and shall apply to electric utilities and alternative retail electric suppliers as defined in this Article. Except to the extent modified or supplemented by the provisions of this Article, or where the context clearly renders such provisions inapplicable, the other Articles of the Public Utilities Act pertaining to public utilities, public utility rates and services and the regulation thereof, are fully and equally applicable to the tariffed services electric utilities provide.

(b) The provisions of subsections (a) through (h) of Section 16-111 of this Act shall not be applicable to any electric utility which elects to file biennial rate proceedings before the Commission in the years 1998, 2000 and 2002. An electric utility electing this option shall do so by filing a notice of such election with the Commission within 60 days after the effective date of this amendatory Act of 1997, or its right to make such election shall be irrevocably waived. An electric utility electing the option specified in this paragraph shall file its rate proceeding with the Commission no later than August 1 of the years 1998, 2000, and 2002. The electric utility's filing shall comply with all requirements of 83 Illinois Administrative Code Parts 255 and 285 as though the electric utility were filing for an increase in its rates, without regard to whether such filing would produce an increase, a decrease or no change in the electric utility's rates and the Commission shall review the electric utility's filing and shall issue its order in

accordance with the provisions of Section 9-201 of this Act.

(220 ILCS 5/16-101A new)

Sec. 16-101A. Legislative findings.

(a) The citizens and businesses of the State of Illinois have been well-served by a comprehensive electrical utility system which has provided safe, reliable, and affordable service. The electrical utility system in the State of Illinois has historically been subject to State and federal regulation, aimed at assuring the citizens and businesses of the State of safe, reliable, and affordable service, while at the same time assuring the utility system of a return on its investment.

(b) Competitive forces are affecting the market for electricity as a result of recent federal regulatory and statutory changes and the activities of other states. Competition in the electric services market may create opportunities for new products and services for customers and lower costs for users of electricity. Long-standing regulatory relationships need to be altered to accommodate the competition that could fundamentally alter the structure of the electric services market.

(c) With the advent of increasing competition in this industry, the State has a continued interest in assuring that the safety, reliability, and affordability of electrical power is not sacrificed to competitive pressures, and to that end, intends to implement safeguards to assure that the industry continues to operate the electrical system in a manner that will serve the public's interest. Under the existing regulatory framework, the industry has been encouraged to undertake certain investments in its physical plant and personnel to enhance its efficient operation, the cost of which it has been permitted to pass on to consumers. The State has an interest in providing the existing utilities a reasonable opportunity to obtain a return on certain investments on which they depended in undertaking those commitments in the first instance while, at the same time, not permitting new entrants into the industry to take unreasonable advantage of the investments made by the formerly regulated industry.

(d) A competitive wholesale and retail market must benefit all Illinois citizens. The Illinois Commerce Commission should act to promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers. Consumer protections must be in place to ensure that all customers continue to receive safe, reliable, affordable, and environmentally safe electric service.

(e) All consumers must benefit in an equitable and timely fashion from the lower costs for electricity that result from retail and wholesale competition and receive sufficient information to make informed choices among suppliers and services. The use of renewable resources and energy efficiency resources should be encouraged in competitive markets.

(220 ILCS 5/16-102 new)

Sec. 16-102. Definitions. For the purposes of this

Article the following terms shall be defined as set forth in this Section.

"Alternative retail electric supplier" means every person, cooperative, corporation, municipal corporation, company, association, joint stock company or association, firm, partnership, individual, or other entity, their lessees, trustees, or receivers appointed by any court whatsoever, that offers electric power or energy for sale, lease or in exchange for other value received to one or more retail customers, or that engages in the delivery or furnishing of electric power or energy to such retail customers, and shall include, without limitation, resellers, aggregators and power marketers, but shall not include (i) electric utilities (or any agent of the electric utility to the extent the electric utility provides tariffed services to retail customers through that agent), (ii) any electric cooperative or municipal system as defined in Section 17-100 to the extent that the electric cooperative or municipal system is serving retail customers within any area in which it is or would be entitled to provide service under the law in effect immediately prior to the effective date of this amendatory Act of 1997, (iii) a public utility that is owned and operated by any public institution of higher education of this State, or a public utility that is owned by such public institution of higher education and operated by any of its lessees or operating agents, within any area in which it is or would be entitled to provide service under the law in effect immediately prior to the effective date of this amendatory Act of 1997, (iv) any retail customer to the extent that customer obtains its electric power and energy from its own cogeneration or self-generation facilities, (v) any entity that sells or arranges for the installation of cogeneration or self-generation facilities to be owned by a retail customer described in subparagraph (iv), but only to the extent the entity is engaged in selling or arranging for such installation, or (vi) an industrial or manufacturing customer that owns its own distribution facilities, to the extent that the customer provides service from that distribution system to a third-party contractor located on the customer's premises that is integrally and predominantly engaged in the customer's industrial or manufacturing process; provided, that if the industrial or manufacturing customer has elected delivery services, the customer shall pay transition charges applicable to the electric power and energy consumed by the third-party contractor unless such charges are otherwise paid by the third party contractor, which shall be calculated based on the usage of, and the base rates or the contract rates applicable to, the third-party contractor in accordance with Section 16-102.

"Base rates" means the rates for those tariffed services that the electric utility is required to offer pursuant to subsection (a) of Section 16-103 and that were identified in a rate order for collection of the electric utility's base rate revenue requirement, excluding (i) separate automatic rate adjustment riders then in effect, (ii) special or negotiated contract rates, (iii) delivery services tariffs filed pursuant to Section 16-108, (iv) real-time pricing, or

(v) tariffs that were in effect prior to October 1, 1996 and that based charges for services on an index or average of other utilities' charges, but including (vi) any subsequent redesign of such rates for tariffed services that is authorized by the Commission after notice and hearing.

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

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

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

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

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

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

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

"Retail customer" means a single entity using electric power or energy at a single premises and that (A) either (i) is receiving or is eligible to receive tariffed services from an electric utility, or (ii) that is served by a municipal system or electric cooperative within any area in which the municipal system or electric cooperative is or would be entitled to provide service under the law in effect immediately prior to the effective date of this amendatory

Act of 1997, or (B) an entity which on the effective date of this Act was receiving electric service from a public utility and (i) was engaged in the practice of resale and redistribution of such electricity within a building prior to January 2, 1957, or (ii) was providing lighting services to tenants in a multi-occupancy building, but only to the extent such resale, redistribution or lighting service is authorized by the electric utility's tariffs that were on file with the Commission on the effective date of this Act.

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

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

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

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

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

utility during such year;

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

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

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

(A) for nonresidential retail customers, an amount equal to the greater of (i) 0.5 cents per kilowatt-hour during the period October 1, 1999 through December 31, 2004, 0.6 cents per kilowatt-hour in calendar year 2005, and 0.9 cents per kilowatt-hour in calendar year 2006, multiplied in each year by the usage identified in paragraph (1), or (ii) an amount equal to the following percentages of the amount produced by applying the applicable base rates (adjusted as described in subparagraph (1)(B)) or contract rate to the usage identified in paragraph (1): 8% for the period October 1, 1999 through December 31, 2002, 10% in calendar years 2003 and 2004, 11% in calendar year 2005 and 12% in calendar year 2006; and

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

(5) divided by the usage of such customers identified in paragraph (1),

provided that the transition charge shall never be less than zero.

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

(220 ILCS 5/16-103 new)

Sec. 16-103. Service obligations of electric utilities.

(a) An electric utility shall continue offering to

retail customers each tariffed service that it offered as a distinct and identifiable service on the effective date of this amendatory Act of 1997 until the service is (i) declared competitive pursuant to Section 16-113, or (ii) abandoned pursuant to Section 8-508. Nothing in this subsection shall be construed as limiting an electric utility's right to propose, or the Commission's power to approve, allow or order modifications in the rates, terms and conditions for such services pursuant to Article IX or Section 16-111 of this Act.

(b) An electric utility shall also offer, as tariffed services, delivery services in accordance with this Article, the power purchase options described in Section 16-110 and real-time pricing as provided in Section 16-107.

(c) Notwithstanding any other provision of this Article, each electric utility shall continue offering to all residential customers and to all small commercial retail customers in its service area, as a tariffed service, bundled electric power and energy delivered to the customer's premises consistent with the bundled utility service provided by the electric utility on the effective date of this amendatory Act of 1997. Upon declaration of the provision of electric power and energy as competitive, the electric utility shall continue to offer to such customers, as a tariffed service, bundled service options at rates which reflect recovery of all cost components for providing the service. For those components of the service which have been declared competitive, cost shall be the market based prices. Market based prices as referred to herein shall mean, for electric power and energy, either (i) those prices for electric power and energy determined as provided in Section 16-112, or (ii) the electric utility's cost of obtaining the electric power and energy at wholesale through a competitive bidding or other arms-length acquisition process.

(d) Any residential or small commercial retail customer which elects delivery services is entitled to return to the electric utility's bundled utility tariffed service offering provided in accordance with subsection (c) of this Section upon payment of a reasonable administrative fee which shall be set forth in the tariff, provided, however, that the electric utility shall be entitled to impose the condition that such customer may not elect delivery services for up to 24 months thereafter.

(e) The Commission shall not require an electric utility to offer any tariffed service other than the services required by this Section, and shall not require an electric utility to offer any competitive service.

(220 ILCS 5/16-104 new)

Sec. 16-104. Delivery services transition plan. An electric utility shall provide delivery services to retail customers in accordance with the provisions of this Section.

(a) Each electric utility shall offer delivery services to retail customers located in its service area in accordance with the following provisions:

(1) On or before October 1, 1999, the electric utility shall offer delivery services (i) to any

non-residential retail customer whose average monthly maximum electrical demand on the electric utility's system during the 6 months with the customer's highest monthly maximum demands in the 12 months ending June 30, 1999 equals or exceeds 4 megawatts; (ii) to any non-governmental, non-residential, commercial retail customers under common ownership doing business at 10 or more separate locations within the electric utility's service area, if the aggregate coincident average monthly maximum electrical demand of all such locations during the 6 months with the customer's highest monthly maximum electrical demands during the 12 months ending June 30, 1999 equals or exceeds 9.5 megawatts, provided, however, that an electric utility's obligation to offer delivery services under this clause (ii) shall not exceed 3.5% of the maximum electric demand on the electric utility's system in the 12 months ending June 30, 1999; and (iii) to non-residential retail customers whose annual electric energy use comprises 33% of the kilowatt-hour sales, excluding the kilowatt-hour sales to customers described in clauses (i) and (ii), to each non-residential retail customer class of the electric utility.

(2) On or before October 1, 2000, the electric utility shall offer delivery services to the eligible governmental customers described in subsections (a) and (b) of Section 16-125A if the aggregate coincident average monthly maximum electrical demand of such customers during the 6 months with the customers' highest monthly maximum electrical demands during the 12 months ending June 30, 2000 equals or exceeds 9.5 megawatts.

(3) On or before December 31, 2000, the electric utility shall offer delivery services to all remaining nonresidential retail customers in its service area.

(4) On or before May 1, 2002, the electric utility shall offer delivery services to all residential retail customers in its service area.

The loads and kilowatt-hour sales used for purposes of this subsection shall be those for the 12 months ending June 30, 1999 for nonresidential retail customers. The electric utility shall identify those customers to be offered delivery service pursuant to clause (1)(iii) pursuant to a lottery or other random nondiscriminatory selection process set forth in the electric utility's delivery services implementation plan pursuant to Section 16-105. Provided, that non-residential retail customers under common ownership at separate locations within the electric utility's service area may elect, prior to the date the electric utility conducts the lottery or other random selection process for purposes of clause (1)(iii), to designate themselves as a common ownership group, to be excluded from such lottery and to instead participate in a separate lottery for such common ownership group pursuant to which delivery services will be offered to non-residential retail customers comprising 33% of the total kilowatt-hour sales to the common ownership group on or before October 1, 1999. For purposes of this subsection (a), an electric utility may define "common ownership" to exclude sites which are not part of the same business, provided, that

auxiliary establishments as defined in the Standard Industrial Classification Manual published by the United States Office of Management and Budget shall not be excluded.

(b) The electric utility shall allow the aggregation of loads that are eligible for delivery services so long as such aggregation meets the criteria for delivery of electric power and energy applicable to the electric utility established by the regional reliability council to which the electric utility belongs, by an independent system operating organization to which the electric utility belongs, or by another organization responsible for overseeing the integrity and reliability of the transmission system, as such criteria are in effect from time to time. The Commission may adopt rules and regulations governing the criteria for aggregation of the loads utilizing delivery services, but its failure to do so shall not preclude any eligible customer from electing delivery services. The electric utility shall allow such aggregation for any voluntary grouping of customers, including without limitation those having a common agent with contractual authority to purchase electric power and energy and delivery services on behalf of all customers in the grouping.

(c) An electric utility shall allow a retail customer that generates power for its own use to include the electrical demand obtained from the customer's cogeneration or self-generation facilities that is coincident with the retail customer's maximum monthly electrical demand on the electric utility's system in any determination of the customer's maximum monthly electrical demand for purposes of determining when such retail customer shall be offered delivery services pursuant to clause (i) of subparagraph (1) of subsection (a) of this Section.

(d) The Commission shall establish charges, terms and conditions for delivery services in accordance with Section 16-108.

(e) Subject to the terms and conditions which the electric utility is entitled to impose in accordance with Section 16-108, a retail customer that is eligible to elect delivery services pursuant to subsection (a) may place all or a portion of its electric power and energy requirements on delivery services.

(f) An electric utility may require a retail customer who elects to (i) use an alternative retail electric supplier or another electric utility for some but not all of its electric power or energy requirements, and (ii) use the electric utility for any portion of its remaining electric power and energy requirements, to place the portion of the customer's electric power or energy requirement that is to be served by the electric utility on a tariff containing charges that are set to recover the lowest reasonably available cost to the electric utility of acquiring electric power and energy on the wholesale electric market to serve such remaining portion of the customer's electric power and energy requirement, reasonable compensation for arranging for and providing such electric power or energy, and the electric utility's other costs of providing service to such remaining electric power and energy requirement.

(220 ILCS 5/16-105 new)

Sec. 16-105. Delivery services implementation plan. To ensure the safe and orderly implementation of delivery services, each electric utility shall submit to the Commission no later than March 1, 1999, a delivery services implementation plan for non-residential customers and no later than August 1, 2001, a delivery services implementation plan for residential customers. The delivery services implementation plan shall detail the process and procedures by which each electric utility will offer delivery services to each customer class and shall be designed to insure an orderly transition and the maintenance of reliable service. The Commission shall enter an order approving, or approving as modified, the delivery services implementation plan of each electric utility no later than 60 days prior to the date on which the electric utility must commence offering such services.

(220 ILCS 5/16-106 new)

Sec. 16-106. Billing experiments. During the mandatory transition period, an electric utility may at its discretion conduct one or more experiments for the provision or billing of services on a consolidated or aggregated basis, for the provision of real-time pricing, or other billing or pricing experiments, and may include experimental programs offered to groups of retail customers possessing common attributes as defined by the electric utility, such as the members of an organization that was established to serve a well-defined industry group, companies having multiple sites, or closely located or affiliated buildings, provided that such groups exist for a purpose other than obtaining energy services and have been in existence for at least 10 years. The offering of such a program by an electric utility to retail customers participating in the program, and the participation by those customers in the program, shall not create any right in any other retail customer or group of customers to participate in the same or a similar program. The Commission shall allow such experiments to go into effect upon the filing by the electric utility of a statement describing the program. Nothing contained in this Section shall be deemed to prohibit the electric utility from offering, or the Commission from approving, experimental rates, tariffs and services in addition to those allowed under this Section. The Commission shall review and report annually the progress, participation and effects of such experiments to the General Assembly. Based upon its review, recommendations for modification of such experiments may be made by the Commission to the Illinois General Assembly.

(220 ILCS 5/16-107 new)

Sec. 16-107. Real-time pricing.

(a) Each electric utility shall file, on or before May 1, 1998, a tariff or tariffs which allow nonresidential retail customers in the electric utility's service area to elect real-time pricing beginning October 1, 1998.

(b) Each electric utility shall file, on or before May

1, 2000, a tariff or tariffs which allow residential retail customers in the electric utility's service area to elect real-time pricing beginning October 1, 2000.

(c) The electric utility's tariff or tariffs filed pursuant to this Section shall be subject to Article IX.

(220 ILCS 5/16-108 new)

Sec. 16-108. Recovery of costs associated with the provision of delivery services.

(a) An electric utility shall file a delivery services tariff with the Commission at least 210 days prior to the date that it is required to begin offering such services pursuant to this Act. An electric utility shall provide the components of delivery services that are subject to the jurisdiction of the Federal Energy Regulatory Commission at the same prices, terms and conditions set forth in its applicable tariff as approved or allowed into effect by that Commission. The Commission shall otherwise have the authority pursuant to Article IX to review, approve, and modify the prices, terms and conditions of those components of delivery services not subject to the jurisdiction of the Federal Energy Regulatory Commission, including the authority to determine the extent to which such delivery services should be offered on an unbundled basis. In making any such determination the Commission shall consider, at a minimum, the effect of additional unbundling on (i) the objective of just and reasonable rates, (ii) electric utility employees, and (iii) the development of competitive markets for electric energy services in Illinois.

(b) The Commission shall enter an order approving, or approving as modified, the delivery services tariff no later than 30 days prior to the date on which the electric utility must commence offering such services. The Commission may subsequently modify such tariff pursuant to this Act.

(c) The electric utility's tariffs shall define the classes of its customers for purposes of delivery services charges. Delivery services shall be priced and made available to all retail customers electing delivery services in each such class on a nondiscriminatory basis regardless of whether the retail customer chooses the electric utility, an affiliate of the electric utility, or another entity as its supplier of electric power and energy. Charges for delivery services shall be cost based, and shall allow the electric utility to recover the costs of providing delivery services through its charges to its delivery service customers that use the facilities and services associated with such costs. Such costs shall include the costs of owning, operating and maintaining transmission and distribution facilities. The Commission shall also be authorized to consider whether, and if so to what extent, the following costs are appropriately included in the electric utility's delivery services rates: (i) the costs of that portion of generation facilities used for the production and absorption of reactive power in order that retail customers located in the electric utility's service area can receive electric power and energy from suppliers other than the electric utility, and (ii) the costs associated with the use and redispatch of generation

facilities to mitigate constraints on the transmission or distribution system in order that retail customers located in the electric utility's service area can receive electric power and energy from suppliers other than the electric utility. Nothing in this subsection shall be construed as directing the Commission to allocate any of the costs described in (i) or (ii) that are found to be appropriately included in the electric utility's delivery services rates to any particular customer group or geographic area in setting delivery services rates.

(d) The Commission shall establish charges, terms and conditions for delivery services that are just and reasonable and shall take into account customer impacts when establishing such charges. In establishing charges, terms and conditions for delivery services, the Commission shall take into account voltage level differences. A retail customer shall have the option to request to purchase electric service at any delivery service voltage reasonably and technically feasible from the electric facilities serving that customer's premises provided that there are no significant adverse impacts upon system reliability or system efficiency. A retail customer shall also have the option to request to purchase electric service at any point of delivery that is reasonably and technically feasible provided that there are no significant adverse impacts on system reliability or efficiency. Such requests shall not be unreasonably denied.

(e) Electric utilities shall recover the costs of installing, operating or maintaining facilities for the particular benefit of one or more delivery services customers, including without limitation any costs incurred in complying with a customer's request to be served at a different voltage level, directly from the retail customer or customers for whose benefit the costs were incurred, to the extent such costs are not recovered through the charges referred to in subsections (c) and (d) of this Section.

(f) An electric utility shall be entitled but not required to implement transition charges in conjunction with the offering of delivery services pursuant to Section 16-104. If an electric utility implements transition charges, it shall implement such charges for all delivery services customers and for all customers described in subsection (h). Such charges shall be calculated as provided in Section 16-102, and shall be collected on each kilowatt-hour delivered under a delivery services tariff to a retail customer from the date the customer first takes delivery services until December 31, 2006 except as provided in subsection (h) of this Section. Provided, however, that an electric utility shall be entitled to petition for entry of an order by the Commission authorizing the electric utility to implement transition charges for an additional period ending no later than December 31, 2008. The electric utility shall file its petition with supporting evidence no earlier than 16 months, and no later than 12 months, prior to December 31, 2006. The Commission shall hold a hearing on the electric utility's petition and shall enter its order no later than 8 months after the petition is filed. The Commission shall determine whether and to what extent the

electric utility shall be authorized to implement transition charges for an additional period. The Commission may authorize the electric utility to implement transition charges for some or all of the additional period, and shall determine the mitigation factors to be used in implementing such transition charges; provided, that the Commission shall not authorize mitigation factors less than 110% of those in effect during the 12 months ended December 31, 2006. In making its determination, the Commission shall consider the following factors: the necessity to implement transition charges for an additional period in order to maintain the financial integrity of the electric utility; the prudence of the electric utility's actions in reducing its costs since the effective date of this amendatory Act of 1997; the ability of the electric utility to provide safe, adequate and reliable service to retail customers in its service area; and the impact on competition of allowing the electric utility to implement transition charges for the additional period.

(g) The electric utility shall file tariffs that establish the transition charges to be paid by each class of customers to the electric utility in conjunction with the provision of delivery services. The electric utility's tariffs shall define the classes of its customers for purposes of calculating transition charges. The electric utility's tariffs shall provide for the calculation of transition charges on a customer-specific basis for any retail customer whose average monthly maximum electrical demand on the electric utility's system during the 6 months with the customer's highest monthly maximum electrical demands equals or exceeds 3.0 megawatts for electric utilities having more than 1,000,000 customers, and for other electric utilities for any customer that has an average monthly maximum electrical demand on the electric utility's system of one megawatt or more, and (A) for which there exists data on the customer's usage during the 3 years preceding the date that the customer became eligible to take delivery services, or (B) for which there does not exist data on the customer's usage during the 3 years preceding the date that the customer became eligible to take delivery services, if in the electric utility's reasonable judgment there exists comparable usage information or a sufficient basis to develop such information, and further provided that the electric utility can require customers for which an individual calculation is made to sign contracts that set forth the transition charges to be paid by the customer to the electric utility pursuant to the tariff.

(h) An electric utility shall also be entitled to file tariffs that allow it to collect transition charges from retail customers in the electric utility's service area that do not take delivery services but that take electric power or energy from an alternative retail electric supplier or from an electric utility other than the electric utility in whose service area the customer is located. Such charges shall be calculated, in accordance with the definition of transition charges in Section 16-102, for the period of time that the customer would be obligated to pay transition charges if it were taking delivery services, except that no deduction for

delivery services revenues shall be made in such calculation, and usage data from the customer's class shall be used where historical usage data is not available for the individual customer. The customer shall be obligated to pay such charges on a lump sum basis on or before the date on which the customer commences to take service from the alternative retail electric supplier or other electric utility, provided, that the electric utility in whose service area the customer is located shall offer the customer the option of signing a contract pursuant to which the customer pays such charges ratably over the period in which the charges would otherwise have applied.

(i) An electric utility shall be entitled to add to the bills of delivery services customers charges pursuant to Sections 9-221, 9-222 (except as provided in Section 9-222.1), and Section 16-114 of this Act, Section 5-5 of the Electricity Infrastructure Maintenance Fee Law, Section 6-5 of the Renewable Energy, Energy Efficiency, and Coal Resources Development Law of 1997, and Section 13 of the Energy Assistance Act of 1989.

(j) If a retail customer that obtains electric power and energy from cogeneration or self-generation facilities installed for its own use on or before January 1, 1997, subsequently takes service from an alternative retail electric supplier or an electric utility other than the electric utility in whose service area the customer is located for any portion of the customer's electric power and energy requirements formerly obtained from those facilities (including that amount purchased from the utility in lieu of such generation and not as standby power purchases, under a cogeneration displacement tariff in effect as of the effective date of this amendatory Act of 1997), the transition charges otherwise applicable pursuant to subsections (f), (g), or (h) of this Section shall not be applicable in any year to that portion of the customer's electric power and energy requirements formerly obtained from those facilities, provided, that for purposes of this subsection (j), such portion shall not exceed the average number of kilowatt-hours per year obtained from the cogeneration or self-generation facilities during the 3 years prior to the date on which the customer became eligible for delivery services, except as provided in subsection (f) of Section 16-110.

(220 ILCS 5/16-109 new)

Sec. 16-109. Unbundling of delivery services; Commission review. The General Assembly finds that the offering of delivery services will, and is intended to, facilitate the development of competition for generation services, and that competition may develop for other services currently offered on a tariffed basis by the electric utility. The Commission shall open a proceeding to investigate the need for and desirability of different or additional unbundling of delivery services for some or all electric utilities 3 years from the date that a tariff for delivery services is first approved or allowed into effect pursuant to this Section. The Commission shall open an additional proceeding to again

investigate the need for and desirability of different or additional unbundling of delivery services for some or all electric utilities, 3 years after the entry of its final order in the first investigation proceeding. The Commission shall issue its final order in each investigation proceeding no later than 6 months after the proceeding is initiated. In each such proceeding the Commission shall consider, at a minimum, the effect of additional unbundling on (i) the objective of just and reasonable rates, (ii) electric utility employees, and (iii) the development of competitive markets for electric energy services in Illinois. Specific changes to the delivery services tariffs of individual electric utilities to implement findings and directives stated in an order in an investigation proceeding initiated under this Section shall be addressed through individual electric utility tariff filings. The Commission may also, in accordance with Section 16-108, upon complaint or upon its own initiative without complaint, upon reasonable notice, enter upon a hearing concerning the need and desirability of requiring additional or other unbundling of delivery services offered by electric utilities.

(220 ILCS 5/16-109A new)

Sec. 16-109A. Unbundling of prices for tariffed services; Commission investigation. In addition to the unbundling authorized under Sections 16-108 and 16-109, the Commission shall have the authority to investigate the need for, and to require, the restructuring or unbundling of prices for tariffed services, other than delivery services, offered by an electric utility; provided, however, that the Commission shall not enter an order requiring the restructuring or unbundling of prices for any such tariffed services for a customer class of an electric utility prior to the date that the class first becomes eligible for delivery services pursuant to Section 16-104.

(220 ILCS 5/16-110 new)

Sec. 16-110. Delivery services customer power purchase options.

(a) Each electric utility shall offer a tariffed service or services in accordance with the terms and conditions set forth in this Section pursuant to which its non-residential delivery services customers may purchase from the electric utility an amount of electric power and energy that is equal to or less than the amounts that are delivered by such electric utility.

(b) Except as provided in subsection (o) of Section 16-112, a non-residential delivery services customer that is paying transition charges to the electric utility shall be permitted to purchase electric power and energy from the electric utility at a price or prices equal to the sum of (i) the market values that are determined for the electric utility in accordance with Section 16-112 and used by the electric utility to calculate the customer's transition charges and (ii) a fee that compensates the electric utility for any administrative costs it incurs in arranging to supply such electric power and energy. The electric utility may

require that the customer purchase such electric power and energy for periods of not less than one year and may also require that the customer give up to 30 days notice for a purchase of one year's duration, and 90 days notice for a purchase of more than one year's duration. A non-residential delivery service customer exercising the option described in this subsection may sell or assign its interests in the electric power or energy that the customer has purchased. At least twice per year, each electric utility shall notify its small commercial retail customers, through bill inserts and other similar means, of their option to obtain electric power and energy through purchases at market value pursuant to this subsection.

(c) After the transition charge period applicable to a non-residential delivery services customer, and until the provision of electric power and energy is declared competitive for the customer group to which the customer belongs, a non-residential delivery services customer that paid any transition charges it was legally obligated to pay to an electric utility shall be permitted to purchase electric power and energy from the electric utility for contract periods of one year at a price or prices equal to the sum of (i) the market value determined for that customer's class pursuant to Section 16-112 and (ii) to the extent it is not included in such market value, a fee to compensate the electric utility for the service of arranging the supply or purchase of such electric power and energy. The electric utility may require that a delivery services customer give the following notice for such a purchase: (i) for a small commercial retail customer, not more than 30 days; (ii) for a nonresidential customer which is not a small commercial retail customer but which has maximum electrical demand of less than 500 kilowatts, not more than 6 months; (iii) for a nonresidential customer with maximum electrical demand of 500 kilowatts or more but less than one megawatt, not more than 9 months; and (iv) for a nonresidential customer with maximum electrical demand of one megawatt or more, not more than one year. At least twice per year, each electric utility shall notify its small commercial retail customers, through bill inserts or other similar means, of their option to obtain electric power and energy through purchases at market value pursuant to this subsection.

(d) After the transition charge period applicable to a non-residential delivery services customer, and until the provision of electric power and energy is declared competitive for the customer group to which the customer belongs, a non-residential delivery services customer, other than a small commercial retail customer, that paid any transition charges it was legally obligated to pay to an electric utility shall be permitted to purchase electric power and energy from the electric utility for contract periods of one year at a price or prices equal to (A) the sum of (i) the electric utility's actual cost of procuring such electric power and energy and (ii) a broker's fee to compensate the electric utility for arranging the supply, or, if the utility so elects, (B) the market value of electric power or energy provided by the electric utility determined

as set forth in the electric utility's tariff for that customer's class. The electric utility may require that the delivery services customer give up to 30 days notice for such a purchase.

(e) Each delivery services customer purchasing electric power and energy from the electric utility pursuant to a tariff filed in accordance with this Section shall also pay all of the applicable charges set forth in the electric utility's delivery services tariffs and any other tariffs applicable to the services provided to that customer by the electric utility.

(f) An electric utility can require a retail customer taking delivery services that formerly generated electric power and energy for its own use and that would not otherwise pay transition charges on a portion of its electric power and energy requirements served on delivery services to pay transition charges on that portion of the customer's electric power and energy requirements as a condition of exercising the delivery services customer power purchase options set forth in this Section.

(220 ILCS 5/16-111 new)

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

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

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

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

this Act;

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

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

(b) Notwithstanding the provisions of subsection (a), each Illinois electric utility serving more than 12,500 customers in Illinois shall file tariffs (i) reducing, effective August 1, 1998, each component of its base rates to residential retail customers by 15% from the base rates in effect immediately prior to January 1, 1998 and (ii) if the public utility provides electric service to more than 500,000 customers in this State on the effective date of this amendatory Act of 1997, reducing, effective May 1, 2002, each component of its base rates to residential retail customers by an additional 5% from the base rates in effect immediately prior to January 1, 1998. Provided, however, that if an electric utility's average residential retail rate is less than or equal to the average residential retail rate for a group of Midwest Utilities (consisting of all investor-owned electric utilities with annual system peaks in excess of 1000 megawatts in the States of Illinois, Indiana, Iowa, Kentucky, Michigan, Missouri, Ohio, and Wisconsin), based on data reported on Form 1 to the Federal Energy Regulatory Commission for calendar year 1995, then it shall only be required to file tariffs (i) reducing, effective August 1, 1998, each component of its base rates to residential retail customers by 5% from the base rates in effect immediately prior to January 1, 1998, (ii) reducing, effective October 1, 2000, its base rates to residential retail customers by the lesser of 5% of the base rates in effect immediately prior to January 1, 1998 or the percentage by which the electric utility's average residential retail rate exceeds the average residential retail rate of the Midwest Utilities, based on data reported on Form 1 to the Federal Energy Regulatory Commission for calendar year 1999, and (iii) reducing, effective October 1, 2002, each component of its base rates to residential retail customers by an additional amount equal to the lesser of 5% of the base rates in effect immediately prior to January 1, 1998 or the percentage by which the electric utility's average residential retail rate exceeds the average residential retail rate of the Midwest Utilities, based on data reported on Form 1 to the Federal Energy Regulatory Commission for calendar year 2001. Provided, further, that any electric utility for which a decrease in

base rates has been or is placed into effect between October 1, 1996 and the dates specified in the preceding sentences of this subsection, other than pursuant to the requirements of this subsection, shall be entitled to reduce the amount of any reduction or reductions in its base rates required by this subsection by the amount of such other decrease. The tariffs required under this subsection shall be filed 45 days in advance of the effective date. Notwithstanding anything to the contrary in Section 9-220 of this Act, no restatement of base rates in conjunction with the elimination of a fuel adjustment clause under that Section shall result in a lesser decrease in base rates than customers would otherwise receive under this subsection had the electric utility's fuel adjustment clause not been eliminated.

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

(d) During the mandatory transition period, but not before January 1, 2000, and notwithstanding the provisions of subsection (a), an electric utility may request an increase in its base rates if the electric utility demonstrates that the 2-year average of its earned rate of return on common equity, calculated as its net income applicable to common stock divided by the average of its beginning and ending balances of common equity using data reported in the electric utility's Form 1 report to the Federal Energy Regulatory Commission but adjusted to remove the effects of accelerated depreciation or amortization or other transition or mitigation measures implemented by the electric utility pursuant to subsection (g) of this Section and the effect of any refund paid pursuant to subsection (e) of this Section, is below the 2-year average for the same 2 years of the monthly average yields of 30-year U.S. Treasury bonds published by the Board of Governors of the Federal Reserve System in its weekly H.15 Statistical Release or successor publication. The Commission shall review the electric utility's request, and may review the justness and reasonableness of all rates for tariffed services, in accordance with the provisions of Article IX of this Act, provided that the Commission shall consider any special or negotiated adjustments to the revenue requirement agreed to between the electric utility and the other parties to the proceeding. In setting rates under this Section, the Commission shall exclude the costs and revenues that are associated with competitive services and any billing or pricing experiments conducted under Section 16-106.

(e) For the purposes of this subsection (e) all calculations and comparisons shall be performed for the Illinois operations of multijurisdictional utilities. During the mandatory transition period, notwithstanding the provisions of subsection (a), if the 2-year average of an electric utility's earned rate of return on common equity, calculated as its net income applicable to common stock divided by the average of its beginning and ending balances of common equity using data reported in the electric utility's Form 1 report to the Federal Energy Regulatory Commission but adjusted to remove the effect of any refund paid under this subsection (e), and further adjusted to include the annual amortization of any difference between the consideration received by an affiliated interest of the electric utility in the sale of an asset which had been sold or transferred by the electric utility to the affiliated interest subsequent to the effective date of this amendatory Act of 1997 and the consideration for which such asset had been sold or transferred to the affiliated interest, with such difference to be amortized ratably from the date of the sale by the affiliated interest to December 31, 2006, exceeds the 2-year average of the Index for the same 2 years by 1.5 or more percentage points, the electric utility shall make refunds to customers beginning the first billing day of April in the following year in the manner described in paragraph (3) of this subsection. For purposes of this subsection (e), the "Index" shall be the sum of (A) the average for the 12 months ended September 30 of the monthly average yields of 30-year U.S. Treasury bonds published by the Board of Governors of the Federal Reserve System in its weekly H.15 Statistical Release or successor publication for each year 1998 through 2004, and (B) (i) 4.00 percentage points for each of the 12-month periods ending September 30, 1998 through September 30, 1999 or (ii) 5.00 percentage points for each of the 12-month periods ending September 30, 2000 through September 30, 2004.

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

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

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

(i) The electric utility's excess earnings shall be multiplied by the average of the beginning

and ending balances of the electric utility's common equity for the 2-year period in which excess earnings occurred.

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

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

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

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

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

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

(2) retire generating plants from service;

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

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

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

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

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

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

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

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

such generating plant included in the electric utility's fuel adjustment clause during the full calendar year preceding the transfer, with such limit to be adjusted each year thereafter by the Gross Domestic Product Implicit Price Deflator.

(vi) In addition, if the electric utility proposes to sell, assign, or lease, (A) either (1) an amount of generating plant that brings the amount of net dependable generating capacity transferred pursuant to this subsection to an amount equal to or greater than 15% of its net dependable capacity on the effective date of this amendatory Act of 1997, or (2) one or more generating plants with a total net dependable capacity of 1100 megawatts, or (B) transmission and distribution facilities that either (1) bring the amount of transmission and distribution facilities transferred pursuant to this subsection to an amount equal to or greater than 15% of the electric utility's total depreciated original cost investment in such facilities, or (2) represent an investment of $25,000,000 in terms of total depreciated original cost, the electric utility shall provide, in addition to the information listed in subparagraphs (i) through (v), the following information: a description of how the electric utility will meet its service obligations under this Act in a safe and reliable manner. If the Commission has not issued an order initiating a hearing on the proposed transaction within 30 days after the date the electric utility's notice is filed, the transaction shall be deemed approved. The Commission may, after notice and hearing, prohibit the proposed transaction if it makes either or both of the following findings: (1) that the proposed transaction will render the electric utility unable to provide its tariffed services in a safe and reliable manner, or (2) that there is a strong likelihood that consummation of the proposed transaction will result in the electric utility being entitled to request an increase in its base rates during the mandatory transition period pursuant to subsection (d) of this Section. Any hearing initiated by the Commission into the proposed transaction shall be completed, and the Commission's final order approving or prohibiting the proposed transaction shall be entered, within 90 days after the date the electric utility's notice was filed. Provided, however, that a sale, assignment, or lease of transmission facilities to an independent system operator that meets the requirements of Section 16-126 shall not be subject to Commission approval under this Section.

In any proceeding conducted by the Commission pursuant to this subparagraph (vi), intervention shall be limited to parties with a direct interest in the transaction which is the subject of the hearing and any statutory consumer protection agency

as defined in subsection (d) of Section 9-102.1. Notwithstanding the provisions of Section 10-113 of this Act, any application seeking rehearing of an order issued under this subparagraph (vi), whether filed by the electric utility or by an intervening party, shall be filed within 10 days after service of the order.

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

(h) During the mandatory transition period, the Commission shall not establish or use any rates of depreciation, which for purposes of this subsection shall include amortization, for any electric utility other than those established pursuant to subsection (c) of Section 5-104 of this Act or utilized pursuant to subsection (g) of this Section. Provided, however, that in any proceeding to review an electric utility's rates for tariffed services pursuant to Section 9-201, 9-202, 9-250 or 16-111(d) of this Act, the Commission may establish new rates of depreciation for the electric utility in the same manner provided in subsection (d) of Section 5-104 of this Act. An electric utility implementing an accelerated cost recovery method including accelerated depreciation, accelerated amortization or other capital recovery methods, or recording reductions to the original cost of its assets, pursuant to subsection (g) of this Section, shall file a statement with the Commission describing the accelerated cost recovery method to be implemented or the reduction in the original cost of its assets to be recorded. Upon the filing of such statement, the accelerated cost recovery method or the reduction in the original cost of assets shall be deemed to be approved by the Commission as though an order had been entered by the Commission.

(i) Subsequent to the mandatory transition period, the Commission, in any proceeding to establish rates and charges for tariffed services offered by an electric utility, shall consider only (1) the then current or projected revenues, costs, investments and cost of capital directly or indirectly

associated with the provision of such tariffed services; (2) collection of transition charges in accordance with Sections 16-102 and 16-108 of this Act; (3) recovery of any employee transition costs as described in Section 16-128 which the electric utility is continuing to incur, including recovery of any unamortized portion of such costs previously incurred or committed, with such costs to be equitably allocated among bundled services, delivery services, and contracts with alternative retail electric suppliers; and (4) recovery of the costs associated with the electric utility's compliance with decommissioning funding requirements; and shall not consider any other revenues, costs, investments or cost of capital of either the electric utility or of any affiliate of the electric utility that are not associated with the provision of tariffed services. In setting rates for tariffed services, the Commission shall equitably allocate joint and common costs and investments between the electric utility's competitive and tariffed services. In determining the justness and reasonableness of the electric power and energy component of an electric utility's rates for tariffed services subsequent to the mandatory transition period and prior to the time that the provision of such electric power and energy is declared competitive, the Commission shall consider the extent to which the electric utility's tariffed rates for such component for each customer class exceed the market value determined pursuant to Section 16-112, and, if the electric power and energy component of such tariffed rate exceeds the market value by more than 10% for any customer class, may establish such electric power and energy component at a rate equal to the market value plus 10%. In any such case, the Commission may also elect to extend the provisions of Section 16-111(e) for any period in which the electric utility is collecting transition charges, using information applicable to such period.

(j) During the mandatory transition period, an electric utility may elect to transfer to a non-operating income account under the Commission's Uniform System of Accounts either or both of (i) an amount of unamortized investment tax credit that is in addition to the ratable amount which is credited to the electric utility's operating income account for the year in accordance with Section 46(f)(2) of the federal Internal Revenue Code of 1986, as in effect prior to P.L. 101-508, or (ii) "excess tax reserves", as that term is defined in Section 203(e)(2)(A) of the federal Tax Reform Act of 1986, provided that (A) the amount transferred may not exceed the amount of the electric utility's assets that were created pursuant to Statement of Financial Accounting Standards No. 71 which the electric utility has written off during the mandatory transition period, and (B) the transfer shall not be effective until approved by the Internal Revenue Service. An electric utility electing to make such a transfer shall file a statement with the Commission stating the amount and timing of the transfer for which it intends to request approval of the Internal Revenue Service, along with a copy of its proposed request to the Internal Revenue Service for a ruling. The Commission shall issue an order within 14 days after the electric utility's filing approving,

subject to receipt of approval from the Internal Revenue Service, the proposed transfer.

(220 ILCS 5/16-112 new)

Sec. 16-112. Determination of market value.

(a) The market value to be used in the calculation of transition charges as defined in Section 16-102 shall be determined in accordance with either (i) a tariff that has been filed by the electric utility with the Commission pursuant to Article IX of this Act and that provides for a determination of the market value for electric power and energy as a function of an exchange traded or other market traded index, options or futures contract or contracts applicable to the market in which the utility sells, and the customers in its service area buy, electric power and energy, or (ii) in the event no such tariff has been placed into effect for the electric utility, or in the event such tariff does not establish market values for each of the years specified in the neutral fact-finder process described in subsections (b) through (h) of this Section, a tariff incorporating the market values resulting from the neutral fact-finder process set forth in subsections (b) through (h) of this Section.

(b) Except as provided in subsection (m) of this Section, on or before April 30, 1998, on or before February 28, 1999, and on or before each April 30 from 2000 until 2007, the Commission shall appoint a neutral fact-finder to make the calculations described in subsection (c) of this Section. The neutral fact-finder shall be a member of a national public accounting firm, shall not have served as the neutral fact-finder in the previous year, and shall be selected from a list of candidates provided by a nationally recognized provider of neutral fact-finders that has established rules for maintaining confidentiality. An amount sufficient to pay the fees of the neutral fact-finder shall be appropriated annually from the Public Utility Fund in the State treasury.

(c) On or before June 1, 1998, on or before April 1, 1999, and on or before each June 1 from 2000 until 2007, or until discontinued in accordance with subsection (m) of this Section, each electric utility and each alternative retail electric supplier shall submit to the neutral fact-finder a summary of (A) all contracts entered into after June 1, 1997 that are for the sale of electric power and energy from a generating facility or facilities located in this State or located in a contiguous State and owned by an electric utility as part of its interconnected operating system and delivery during one or more of the 5 years succeeding the date of submission, and (B) all contracts entered into after June 1, 1997 for purchase and delivery of electric power and energy in or into this State during one or more of the 5 years succeeding the date of submission; provided, however, that such contracts shall not include (i) contracts between the electric utility and an affiliate; (ii) sales, purchases, or deliveries made under rates and tariffs filed with the Commission, except for tariffs filed pursuant to subsection (d) of Section 16-110 and except for special or negotiated

rate contracts between an electric utility and a retail customer to the extent that such contracts are for the provision of electric power and energy after the date that the customer becomes eligible for delivery services; and (iii) extensions or amendments to full requirements wholesale contracts existing as of the effective date of this amendatory Act of 1997, provided that such contracts, extensions, or amendments are cost of service regulated by the Federal Energy Regulatory Commission. The summaries shall, at a minimum, identify the date of the contract; the year in which the electric power or energy is to be sold or delivered; the point of delivery; defining characteristics such as the nature of the power transaction (for example, reserve responsibility (firm, non-firm)), length of contract and temporal differences (for example, season, on-peak or off-peak); and the applicable prices stated at the point at which the electric power and energy leaves the electric utility's or alternative retail electric supplier's transmission system, as the case may be, in the case of contracts described in item (A) and at the point at which the electric power and energy enters the electric utility's transmission system in the case of contracts in item (B), provided, that the applicable price shall be stated at the point at which the electric power and energy enters the electric utility's transmission system in the case of electric power and energy generated for delivery within the electric utility's service area. In reporting to the neutral fact-finder the price of power and energy sold under bundled service contracts, electric utilities and alternative retail electric suppliers shall deduct from the contract price the charges for delivery services, including transition charges, applicable to delivery services customers in a utility's service area, and charges for services, if any, other than the provision of power and energy or delivery services. The Commission may adopt orders setting forth requirements governing the form and content of such summaries.

(d) The neutral fact-finder shall calculate market values for electric power and energy for each electric utility, taking into account the defining characteristics set forth in subsection (c) of this Section; provided, however, that the neutral fact-finder may determine that a particular value is appropriate for more than one electric utility, or for all electric utilities in this State. The neutral fact-finder shall calculate the market values for the next year and, to the extent the summaries include a sufficient number of actual contracts to represent a viable market for the sale and delivery of electric power and energy in subsequent years, for each of the 4 succeeding years.

(e) In calculating market values for electric power, the neutral fact-finder shall weight contract prices (including any contract price indices) by both the amount of capacity covered by the contract and the number of hours in which capacity is to be provided under the contract in each period of the year, shall take into account all of the defining characteristics set forth in subsection (c) of this Section and shall develop such values as required to represent the different types of market values of electric power.

(f) The neutral fact-finder shall base calculations of the market values for electric energy on the energy prices stated in the contracts, and where no explicit energy prices or index price basis are stated, on the actual energy costs of the supplier in the corresponding period of the preceding year that would have been applicable to the electric energy provided under the contract. The neutral fact-finder shall develop market values for electric energy and shall take into account the defining characteristics set forth in subsection (c) of this Section, as required to represent the market values of such electric energy.

(g) If the contracts used by the neutral fact-finder base prices for future years on one or more indices, the neutral fact-finder shall identify such indices in his or her final report, develop a weighting for each index, and calculate a weighted average index. The market values shall be calculated using the weighted average index when the actual values of the component indices are known.

(h) The neutral fact-finder shall publish a final report on or before July 30 of each year, except that in 1999 the neutral fact finder shall publish the report on or before May 30, setting forth the calculated market values and stating the basis for such calculations. The final report shall not, however, disclose any proprietary or confidential data.

(i) The market values calculated by the neutral fact-finder shall not be admissible in any proceeding for any purpose other than the calculation of transition charges or calculation of the price for the power purchase options provided pursuant to subsection (b) and (c) of Section 16-110.

(j) The Commission shall have access to all contracts described in subsection (c) of this Section and shall perform such audits as it and the neutral fact-finder deem necessary to insure the accuracy of the summaries submitted to the neutral fact-finder. The summaries described in subsection (c) of this Section and each contract shall be accorded confidential and proprietary treatment and their review shall be subject to the provisions of Sections 4-404 and 5-108 of this Act, and the contract between the Commission and the neutral fact-finder shall contain provisions obligating the neutral fact-finder to comply with such Sections. The summaries shall not be discoverable by any party in any proceeding absent a compelling demonstration of need.

(k) In determining the market values to be used for the various customer classes in calculating transition charges as defined in Section 16-102 or for the power purchase options set forth in Section 16-110, an electric utility shall apply the market values that are determined as set forth in subsection (a) to the electric power and energy that would have been used to serve the delivery services customers' electric power and energy requirements, based on the usage specified in Section 16-102 and taking into account the daily, monthly, annual and other relevant characteristics of the customers' demands on the electric utility's system.

(l) In calculating a lump sum transition charge payment for the purposes of subsection (h) of Section 16-108, the electric utility shall use the market values that were

determined as provided in its tariff, or if such market values have not been determined for the full period of time covered by such lump sum calculation, such other basis as is stated in the electric utility's tariff filed pursuant to Section 16-108.

(m) The Commission may approve or reject, or propose modifications to, any tariff providing for the determination of market value that has been proposed by an electric utility pursuant to subsection (a) of this Section, but shall not have the power to otherwise order the electric utility to implement a modified tariff or to place into effect any tariff for the determination of market value other than one incorporating the neutral fact-finder procedure set forth in this Section. Provided, however, that if each electric utility serving at least 300,000 customers has placed into effect a tariff that provides for a determination of market value as a function of an exchange traded or other market traded index, options or futures contract or contracts, then the Commission can require any other electric utilities to file such a tariff, and can terminate the neutral fact-finder procedure for the periods covered by such tariffs.

(n) To the extent that the summaries list a sufficient number of actual contracts to represent a viable market and market values can be determined for more than one year, the electric utility shall offer customers that are obligated to pay transition charges contracts that establish for one or more years, up to a maximum of the lesser of 5 years or the remaining number of years until December 31, 2008, the market value or values to be used in calculating the customer's transition charges in such years and for which market value determinations have been made. The electric utility may require any customer to give up to one year notice prior to entering into a one or 2 year contract pursuant to this subsection, up to 2 years notice for a 3 year contract, and up to 3 years notice for a 4 or 5 year contract. Contracts of one or 2 years duration shall incorporate the market values that were determined as provided in this Section in the year in which the notice is required to be given. Contracts of more than 2 years duration shall incorporate the market values that are determined in the year prior to the first year in which the electric utility will collect transition charges from the customer under the contract. The electric utility shall also allow customers to select, at the time that a customer gives its notice, an option to revoke the notice within 30 days following the determination of the market values that will apply under the contract requested by the customer, and may charge customers a fee for such option that is set forth in a tariff filed pursuant to Article IX and that is adequate to allow the electric utility to recover its transactional costs and compensate it based on the cost that would be incurred to purchase an option to cover the risk associated with the customer's option to revoke. The electric utility shall not be required to offer customers a contract under this paragraph for any year for which no determination of market value has been made either by the neutral fact-finder or pursuant to a tariff filed by the electric utility.

(o) An electric utility shall have no obligation to provide electric power or energy as a tariffed service for the electric power and energy requirements placed on delivery service by any customer that has entered into a contract pursuant to subsection (n) of this Section and has not purchased and exercised an option to revoke, during the term of the contract. A customer that has purchased and exercised an option to revoke under this subsection shall remain eligible to receive any tariffed service for which it would otherwise be eligible.

(220 ILCS 5/16-113 new)

Sec. 16-113. Declaration of service as a competitive service.

(a) An electric utility may, by petition, request the Commission to declare a tariffed service provided by the electric utility to be a competitive service. The electric utility shall give notice of its petition to the public in the same manner that public notice is provided for proposed general increases in rates for tariffed services, in accordance with rules and regulations prescribed by the Commission. The Commission shall hold a hearing on the petition if a hearing is deemed necessary by the Commission. The Commission shall declare the service to be a competitive service for some identifiable customer segment or group of customers, or some clearly defined geographical area within the electric utility's service area, if the service or a reasonably equivalent substitute service is reasonably available to the customer segment or group or in the defined geographical area at a comparable price from one or more providers other than the electric utility or an affiliate of the electric utility, and the electric utility has lost or there is a reasonable likelihood that the electric utility will lose business for the service to the other provider or providers; provided, that the Commission may not declare the provision of electric power and energy to be competitive pursuant to this subsection with respect to (i) any retail customer or group of retail customers that is not eligible pursuant to Section 16-104 to take delivery services provided by the electric utility and (ii) any residential and small commercial retail customers prior to the last date on which such customers are required to pay transition charges. In determining whether to grant or deny a petition to declare the provision of electric power and energy competitive, the Commission shall consider, in applying the above criteria, whether there is adequate transmission capacity into the service area of the petitioning electric utility to make electric power and energy reasonably available to the customer segment or group or in the defined geographical area from one or more providers other than the electric utility or an affiliate of the electric utility, in accordance with this subsection. The Commission shall make its determination and issue its final order declaring or refusing to declare the service to be a competitive service within 120 days following the date that the petition is filed, or otherwise the petition shall be deemed to be granted; provided, that if the petition is deemed to be granted by operation of law, the

Commission shall not thereby be precluded from finding and ordering, in a subsequent proceeding initiated by the Commission, and after notice and hearing, that the service is not competitive based on the criteria set forth in this subsection.

(b) Any customer except a customer identified in subsection (c) of Section 16-103 who is taking a tariffed service that is declared to be a competitive service pursuant to subsection (a) of this Section shall be entitled to continue to take the service from the electric utility on a tariffed basis for a period of 3 years following the date that the service is declared competitive, or such other period as is stated in the electric utility's tariff pursuant to Section 16-110. This subsection shall not require the electric utility to offer or provide on a tariffed basis any service to any customer (except those customers identified in subsection (c) of Section 16-103) that was not taking such service on a tariffed basis on the date the service was declared to be competitive.

(c) If the Commission denies a petition to declare a service to be a competitive service, or determines in a separate proceeding that a service is not competitive based on the criteria set forth in subsection (a), the electric utility may file a new petition no earlier than 6 months following the date of the Commission's order, requesting, on the basis of additional or different facts and circumstances, that the service be declared to be a competitive service.

(d) The Commission shall not deny a petition to declare a service to be a competitive service, and shall not find that a service is not a competitive service, on the grounds that it has previously denied the petition of another electric utility to declare the same or a similar service to be a competitive service or has previously determined that the same or a similar service provided by another electric utility is not a competitive service.

(e) An electric utility may declare a service, other than delivery services or the provision of electric power or energy, to be competitive by filing with the Commission at least 14 days prior to the date on which the service is to become competitive a notice describing the service that is being declared competitive and the date on which it will become competitive; provided, that any customer who is taking a tariffed service that is declared to be a competitive service pursuant to this subsection (e) shall be entitled to continue to take the service from the electric utility on a tariffed basis until the electric utility files, and the Commission grants, a petition to declare the service competitive in accordance with subsection (a) of this Section. The Commission shall be authorized to find and order, after notice and hearing in a subsequent proceeding initiated by the Commission, that any service declared to be competitive pursuant to this subsection (e) is not competitive in accordance with the criteria set forth in subsection (a) of this Section.

(220 ILCS 5/16-114 new)

Sec. 16-114. Recovery of decommissioning charges. On or

before April 1, 1999, each electric utility owning an interest in, or having responsibility as a matter of contract or statute for decommissioning costs as defined in Section 8-508.1 of, one or more nuclear power plants shall file with the Commission a tariff or tariffs conforming to the provisions of Section 9-201.5 of this Act, to be applicable to each and every kilowatt-hour of electricity delivered or sold at retail in the electric utility's service area, including, but not limited to, sales by the electric utility to tariffed services retail customers, sales by the electric utility to retail customers pursuant to special contracts or other negotiated arrangements, sales by alternative retail electric suppliers, and sales by an electric utility other than the electric utility in whose service area the retail customer is located; provided, however, that for a user that obtained electric power and energy from its own cogeneration or self-generation facilities on or before January 1, 1997, and subsequently takes services from an alternative retail electric supplier or an electric utility other than the electric utility in whose service area the user is located for any portion of its electric power and energy requirements formerly obtained from those facilities, the tariff required by this Section shall not be applicable in any year to that portion of the user's electric power and energy requirements formerly obtained from those facilities, provided that for the purposes of this Section, such portion shall not exceed the average number of kilowatt-hours per year obtained from the cogeneration or self-generation facilities during the 3 years prior to the date on which the user became eligible for delivery services.

The Commission shall determine whether the tariff meets the requirements of Sections 9-201 and 9-201.5 and of this Section, and shall permit the electric utility's tariff together with any modifications made after hearing to become effective no later than October 1, 1999. In making its determination, the Commission shall retain the authority it possessed prior to the effective date of this amendatory Act of 1997 to make jurisdictional allocations of decommissioning expense recovery. The tariff filed pursuant to this Section shall be applicable to any user taking some or all of its electric power and energy requirements from an alternative retail electric supplier or from an electric utility other than the electric utility in whose service area the user is located on and after the date that the user becomes eligible for delivery services in accordance with Section 16-104. If the electric utility has in effect as of the effective date of this amendatory Act of 1997 a decommissioning rate as defined in Section 9-201.5 conforming to the requirements of that Section, the tariff or tariffs required by this Section shall if the electric utility requests be consistent with its decommissioning rate that is already in effect; provided, that the tariff or tariffs filed pursuant to this Section shall provide for the removal from base rates of any decommissioning costs that are included in the electric utility's base rates and their inclusion in the tariff or tariffs required by this Section. The tariff required by this Section shall be included by the Commission in the reviews

required by subsection (d) of Section 9-201.5.

(220 ILCS 5/16-115 new)

Sec. 16-115. Certification of alternative retail electric suppliers.

(a) Any alternative retail electric supplier must obtain a certificate of service authority from the Commission in accordance with this Section before serving any retail customer or other user located in this State. An alternative retail electric supplier may request, and the Commission may grant, a certificate of service authority for the entire State or for a specified geographic area of the State.

(b) An alternative retail electric supplier seeking a certificate of service authority shall file with the Commission a verified application containing information showing that the applicant meets the requirements of this Section. The alternative retail electric supplier shall publish notice of its application in the official State newspaper within 10 days following the date of its filing. No later than 45 days after the application is properly filed with the Commission, and such notice is published, the Commission shall issue its order granting or denying the application.

(c) An application for a certificate of service authority shall identify the area or areas in which the applicant intends to offer service and the types of services it intends to offer. Applicants that seek to serve residential or small commercial retail customers within a geographic area that is smaller than an electric utility's service area shall submit evidence demonstrating that the designation of this smaller area does not violate Section 16-115A. An applicant that seeks to serve residential or small commercial retail customers may state in its application for certification any limitations that will be imposed on the number of customers or maximum load to be served.

(d) The Commission shall grant the application for a certificate of service authority if it makes the findings set forth in this subsection based on the verified application and such other information as the applicant may submit:

(1) That the applicant possesses sufficient technical, financial and managerial resources and abilities to provide the service for which it seeks a certificate of service authority. In determining the level of technical, financial and managerial resources and abilities which the applicant must demonstrate, the Commission shall consider (i) the characteristics, including the size and financial sophistication, of the customers that the applicant seeks to serve, and (ii) whether the applicant seeks to provide electric power and energy using property, plant and equipment which it owns, controls or operates;

(2) That the applicant will comply with all applicable federal, State, regional and industry rules, policies, practices and procedures for the use, operation, and maintenance of the safety, integrity and reliability, of the interconnected electric transmission

system;

(3) That the applicant will only provide service to retail customers in an electric utility's service area that are eligible to take delivery services under this Act;

(4) That the applicant will comply with such informational or reporting requirements as the Commission may by rule establish and provide the information required by Section 16-112. Any data related to contracts for the purchase and sale of electric power and energy shall be made available for review by the Staff of the Commission on a confidential and proprietary basis and only to the extent and for the purposes which the Commission determines are reasonably necessary in order to carry out the purposes of this Act;

(5) That if the applicant, its corporate affiliates or the applicant's principal source of electricity (to the extent such source is known at the time of the application) owns or controls facilities, for public use, for the transmission or distribution of electricity to end-users within a defined geographic area to which electric power and energy can be physically and economically delivered by the electric utility or utilities in whose service area or areas the proposed service will be offered, the applicant, its corporate affiliates or principal source of electricity, as the case may be, provides delivery services to the electric utility or utilities in whose service area or areas the proposed service will be offered that are reasonably comparable to those offered by the electric utility, and provided further, that the applicant agrees to certify annually to the Commission that it is continuing to provide such delivery services and that it has not knowingly assisted any person or entity to avoid the requirements of this Section. For purposes of this subparagraph, "principal source of electricity" shall mean a single source that supplies at least 65% of the applicant's electric power and energy, and the purchase of transmission and distribution services pursuant to a filed tariff under the jurisdiction of the Federal Energy Regulatory Commission or a state public utility commission shall not constitute control of access to the provider's transmission and distribution facilities;

(6) With respect to an applicant that seeks to serve residential or small commercial retail customers, that the area to be served by the applicant and any limitations it proposes on the number of customers or maximum amount of load to be served meet the provisions of Section 16-115A, provided, that the Commission can extend the time for considering such a certificate request by up to 90 days, and can schedule hearings on such a request;

(7) That the applicant meets the requirements of subsection (a) of Section 16-128; and

(8) That the applicant will comply with all other applicable laws and regulations.

(e) A retail customer that owns a cogeneration or

self-generation facility and that seeks certification only to provide electric power and energy from such facility to retail customers at separate locations which customers are both (i) owned by, or a subsidiary or other corporate affiliate of, such applicant and (ii) eligible for delivery services, shall be granted a certificate of service authority upon filing an application and notifying the Commission that it has entered into an agreement with the relevant electric utilities pursuant to Section 16-118.

(f) The Commission shall have the authority to promulgate rules and regulations to carry out the provisions of this Section. On or before May 1, 1999, the Commission shall adopt a rule or rules applicable to the certification of those alternative retail electric suppliers that seek to serve only nonresidential retail customers with maximum electrical demands of one megawatt or more which shall provide for (i) expedited and streamlined procedures for certification of such alternative retail electric suppliers and (ii) specific criteria which, if met by any such alternative retail electric supplier, shall constitute the demonstration of technical, financial and managerial resources and abilities to provide service required by subsection (d) (1) of this Section, such as a requirement to post a bond or letter of credit, from a responsible surety or financial institution, of sufficient size for the nature and scope of the services to be provided; demonstration of adequate insurance for the scope and nature of the services to be provided; and experience in providing similar services in other jurisdictions.

(220 ILCS 5/16-115A new)

Sec. 16-115A. Obligations of alternative retail electric suppliers.

(a) An alternative retail electric supplier shall:

(i) comply with the requirements imposed on public utilities by Sections 8-201 through 8-207, 8-301, 8-505 and 8-507 of this Act, to the extent that these Sections have application to the services being offered by the alternative retail electric supplier; and

(ii) continue to comply with the requirements for certification stated in subsection (d) of Section 16-115.

(b) An alternative retail electric supplier shall obtain verifiable authorization from a customer, in a form or manner approved by the Commission consistent with Section 2EE of the Consumer Fraud and Deceptive Business Practices Act, before the customer is switched from another supplier.

(c) No alternative retail electric supplier, or electric utility other than the electric utility in whose service area a customer is located, shall (i) enter into or employ any arrangements which have the effect of preventing a retail customer with a maximum electrical demand of less than one megawatt from having access to the services of the electric utility in whose service area the customer is located or (ii) charge retail customers for such access. This subsection shall not be construed to prevent an arms-length agreement between a supplier and a retail customer that sets a term of service, notice period for terminating service and provisions

governing early termination through a tariff or contract as allowed by Section 16-119.

(d) An alternative retail electric supplier that is certified to serve residential or small commercial retail customers shall not:

(1) deny service to a customer or group of customers nor establish any differences as to prices, terms, conditions, services, products, facilities, or in any other respect, whereby such denial or differences are based upon race, gender or income.

(2) deny service to a customer or group of customers based on locality nor establish any unreasonable difference as to prices, terms, conditions, services, products, or facilities as between localities.

(e) An alternative retail electric supplier shall comply with the following requirements with respect to the marketing, offering and provision of products or services to residential and small commercial retail customers:

(i) Any marketing materials which make statements concerning prices, terms and conditions of service shall contain information that adequately discloses the prices, terms and conditions of the products or services that the alternative retail electric supplier is offering or selling to the customer.

(ii) Before any customer is switched from another supplier, the alternative retail electric supplier shall give the customer written information that adequately discloses, in plain language, the prices, terms and conditions of the products and services being offered and sold to the customer.

(iii) An alternative retail electric supplier shall provide documentation to the Commission and to customers that substantiates any claims made by the alternative retail electric supplier regarding the technologies and fuel types used to generate the electricity offered or sold to customers.

(iv) The alternative retail electric supplier shall provide to the customer (1) itemized billing statements that describe the products and services provided to the customer and their prices, and (2) an additional statement, at least annually, that adequately discloses the average monthly prices, and the terms and conditions, of the products and services sold to the customer.

(f) An alternative retail electric supplier may limit the overall size or availability of a service offering by specifying one or more of the following: a maximum number of customers, maximum amount of electric load to be served, time period during which the offering will be available, or other comparable limitation, but not including the geographic locations of customers within the area which the alternative retail electric supplier is certificated to serve. The alternative retail electric supplier shall file the terms and conditions of such service offering including the applicable limitations with the Commission prior to making the service offering available to customers.

(g) Nothing in this Section shall be construed as preventing an alternative retail electric supplier, which is an affiliate of, or which contracts with, (i) an industry or trade organization or association, (ii) a membership organization or association that exists for a purpose other than the purchase of electricity, or (iii) another organization that meets criteria established in a rule adopted by the Commission, from offering through the organization or association services at prices, terms and conditions that are available solely to the members of the organization or association.

(220 ILCS 5/16-115B new)

Sec. 16-115B. Commission oversight of services provided by alternative retail electric suppliers.

(a) The Commission shall have jurisdiction in accordance with the provisions of Article X of this Act to entertain and dispose of any complaint against any alternative retail electric supplier alleging (i) that the alternative retail electric supplier has violated or is in nonconformance with any applicable provisions of Section 16-115 through Section 16-115A; (ii) that an alternative retail electric supplier serving retail customers having maximum demands of less than one megawatt has failed to provide service in accordance with the terms of its contract or contracts with such customer or customers; (iii) that the alternative retail electric supplier has violated or is in non-conformance with the delivery services tariff of, or any of its agreements relating to delivery services with, the electric utility, municipal system, or electric cooperative providing delivery services; or (iv) that the alternative retail electric supplier has violated or failed to comply with the requirements of Sections 8-201 through 8-207, 8-301, 8-505, or 8-507 of this Act as made applicable to alternative retail electric suppliers.

(b) The Commission shall have authority, after notice and hearing held on complaint or on the Commission's own motion:

(1) To order an alternative retail electric supplier to cease and desist, or correct, any violation of or non-conformance with the provisions of Section 16-115 or 16-115A;

(2) To impose financial penalties for violations of or non-conformances with the provisions of Section 16-115 or 16-115A, not to exceed (i) $10,000 per occurrence or (ii) $30,000 per day for those violations or non-conformances which continue after the Commission issues a cease and desist order; and

(3) To alter, modify, revoke or suspend the certificate of service authority of an alternative retail electric supplier for substantial or repeated violations of or non-conformances with the provisions of Section 16-115 or 16-115A.

(220 ILCS 5/16-116 new)

Sec. 16-116. Commission oversight of electric utilities serving retail customers outside their service areas or

providing competitive, non-tariffed services.

(a) An electric utility that has a tariff on file for delivery services may, without regard to any otherwise applicable tariffs on file, provide electric power and energy to one or more retail customers located outside its service area, but only to the extent (i) such retail customer (A) is eligible for delivery services under any delivery services tariff filed with the Commission by the electric utility in whose service area the retail customer is located and (B) has either elected to take such delivery services or has paid or contracted to pay the charges specified in Sections 16-108 and 16-114, or (ii) if such retail customer is served by a municipal system or electric cooperative, the customer is eligible for delivery services under the terms and conditions for such service established by the municipal system or electric cooperative serving that customer.

(b) An electric utility may offer any competitive service to any customer or group of customers without filing contracts with or seeking approval of the Commission, notwithstanding any rule or regulation that would require such approval. The Commission shall not increase or decrease the prices, and may not alter or add to the terms and conditions for the utility's competitive services, from those agreed to by the electric utility and the customer or customers. Non-tariffed, competitive services shall not be subject to the provisions of the Electric Supplier Act or to Articles V, VII, VIII or IX of the Act, except to the extent that any provisions of such Articles are made applicable to alternative retail electric suppliers pursuant to Sections 16-115 and 16-115A, but shall be subject to the provisions of subsections (b) through (g) of Section 16-115A, and Section 16-115B to the same extent such provisions are applicable to the services provided by alternative retail electric suppliers.

(220 ILCS 5/16-117 new)

Sec. 16-117. Commission consumer education program.

(a) The restructuring of the electricity industry will create a new electricity market with new marketers and sellers offering new goods and services, many of which the average consumer will not be able to readily evaluate. It is the intent of the General Assembly that (i) electricity consumers be provided with sufficient and reliable information so that they are able to compare and make informed selections of products and services provided in the electricity market; and (ii) mechanisms be provided to enable consumers to protect themselves from marketing practices that are unfair or abusive.

(b) The Commission shall implement and maintain a consumer education program to provide residential and small commercial retail customers with information to help them understand their service options in a competitive electric services market, and their rights and responsibilities.

(c) The Commission shall form a working group following the enactment of this amendatory Act of 1997. This group shall consist of 5 representatives of the investor-owned electric utilities in this State, 2 of which shall be

appointed by electric utilities serving over 1,000,000 retail customers in this State; 2 representatives of alternative retail electric suppliers; 3 representatives of organizations representing the interests of residential and small commercial retail customers; and the Commission.

(d) By March 1, 1999, with respect to educational materials for small commercial customers and by November 1, 2001 with respect to educational materials for residential customers, the working group appointed pursuant to this Section shall develop a package of printed educational materials which meet the requirements of subsection (e) and shall submit such package to the Commission for approval, along with recommendations for implementing this consumer education program. Such materials shall consider the needs of different types of consumers in this State, such as elderly, low-income, multilingual, minority, rural and disabled customers. The working group shall issue recommendations to the Commission on how such education program can be implemented through a variety of communication methods, including specifically mass media, distribution of printed material, public service announcements, and posting on the Internet.

(e) At a minimum, the materials constituting the consumer education program submitted to the Commission by the working group shall include concise explanations or descriptions of the following:

(1) the structure of the electric utility industry following this amendatory Act of 1997 and a glossary of basic terms;

(2) the choices available to consumers to take electric service from an alternative retail electric supplier or remain as a retail customer of an electric utility;

(3) a customer's rights, risks and responsibilities in receiving service from an alternative retail electric supplier or remaining as a retail customer of an electric utility;

(4) the legal obligations of alternative retail electric suppliers;

(5) those services that may be offered on a competitive basis in a deregulated electric services market, including services that could be packaged with the delivery of electric power and energy;

(6) services that an electric utility is required to provide pursuant to tariffed rates;

(7) the components of a bill that could be received by a customer taking delivery services;

(8) the complaint procedures set forth in Section 10-108 of this Act by which consumers may seek a redress of grievances against an electric utility or an alternative retail electric supplier and a list of phone numbers of the Commission, the Attorney General or other entities that can provide information and assistance to customers; and

(9) additional information available from the Commission upon request.

(f) Within 45 days following the submission required of

the working group by subsection (d) of this Section, the Commission shall approve or disapprove the educational materials and recommendations for program implementation. The Commission shall be deemed to have approved the educational program materials and recommendations unless the Commission disapproves of any such material or recommendation within 45 days following the date of receipt.

(g) Once approved by the Commission, materials comprising the consumer education program contemplated by this Section shall be distributed as follows:

(1) Electric utilities shall mail printed educational materials specified by the working group and approved by the Commission (a) to all residential and small commercial retail customers within a reasonable period prior to the date that such customers become eligible to purchase power from alternative retail electric suppliers, such "reasonable period" to be determined by the Commission; and (b) once the applicable customer class becomes eligible to receive delivery services, to all new residential and small commercial retail customers at the time that such customers begin taking services from the electric utility.

(2) Alternative retail electric suppliers shall include such materials with all initial mailings to potential residential and small commercial retail customers but in all circumstances prior to the time by which an alternative retail electric supplier executes any agreements or contracts with such customers for the supply of electric services.

(3) Both electric utilities and alternative retail electric suppliers shall provide such materials at no charge to residential and small commercial retail customers upon request.

(4) The Commission shall make available upon request and at no charge, and shall make available to the public on the Internet through the State of Illinois World Wide Web Site:

(A) all printed educational materials developed by the working group and approved by the Commission;

(B) a list of all certified alternative retail electric suppliers serving residential and small commercial retail customers within the service territory of each electric utility;

(C) a list of alternative retail electric suppliers serving residential or small commercial retail customers which have been found in the last 3 years by the Commission pursuant to Section 10-108 to have failed to provide service in accordance with the terms of their contracts with such retail customers; and

(D) guidelines to assist customers in determining which energy supplier is most appropriate for each customer.

(h) The Commission may also adopt a uniform disclosure form which alternative retail electric suppliers would be required to complete enabling consumers to compare prices,

terms and conditions offered by such suppliers.

(i) The Commission shall make available to the public staff with the ability and knowledge to respond to consumer inquiries.

(j) The costs of printing educational materials approved by the Commission pursuant to this Section shall be payable solely from funding as provided in this subsection.

Each year the General Assembly shall appropriate money to the Commission from the General Revenue Fund for the expenses of the Commission associated with this Section. The cost of the consumer education program contemplated by this Section shall not exceed the amount of such appropriation. In no event shall any electric utility, alternative retail electric supplier or customer be liable for the costs of printing consumer education program material in accordance with this Section. The obligations associated with this consumer education program shall not exceed the amounts appropriated for this program pursuant to this Section.

(k) The Commission shall study the effectiveness of the consumer education program. Such study shall include a notice and an opportunity for participation and comment by all interested and potentially affected parties. Such study shall be completed by January 31st of each year during the mandatory transition period and a summary thereof, together with any legislative recommendations, shall be included in the Commission's Annual Report due in accordance with Section 4-304 of this Act.

(220 ILCS 5/16-118 new)

Sec. 16-118. Services provided by electric utilities to alternative retail electric suppliers.

(a) It is in the best interest of Illinois energy consumers to promote fair and open competition in the provision of electric power and energy and to prevent anticompetitive practices in the provision of electric power and energy. Therefore, to the extent an electric utility provides electric power and energy or delivery services to alternative retail electric suppliers and such services are not subject to the jurisdiction of the Federal Energy Regulatory Commission, and are not competitive services, they shall be provided through tariffs that are filed with the Commission, pursuant to Article IX of this Act. Each electric utility shall permit alternative retail electric suppliers to interconnect facilities to those owned by the utility provided they meet established standards for such interconnection, and may provide standby or other services to alternative retail electric suppliers. The alternative retail electric supplier shall sign a contract setting forth the prices, terms and conditions for interconnection with the electric utility and the prices, terms and conditions for services provided by the electric utility to the alternative retail electric supplier in connection with the delivery by the electric utility of electric power and energy supplied by the alternative retail electric supplier.

(b) An electric utility shall file a tariff pursuant to Article IX of the Act that would allow alternative retail electric suppliers or electric utilities other than the

electric utility in whose service area retail customers are located to issue single bills to the retail customers for both the services provided by such alternative retail electric supplier or other electric utility and the delivery services provided by the electric utility to such customers. The tariff filed pursuant to this subsection shall (i) require partial payments made by retail customers to be credited first to the electric utility's tariffed services, (ii) impose commercially reasonable terms with respect to credit and collection, including requests for deposits, (iii) retain the electric utility's right to disconnect the retail customers, if it does not receive payment for its tariffed services, in the same manner that it would be permitted to if it had billed for the services itself, and (iv) require the alternative retail electric supplier or other electric utility that elects the billing option provided by this tariff to include on each bill to retail customers an identification of the electric utility providing the delivery services and a listing of the charges applicable to such services. The tariff filed pursuant to this subsection may also include other just and reasonable terms and conditions. In addition, an electric utility, an alternative retail electric supplier or electric utility other than the electric utility in whose service area the customer is located, and a customer served by such alternative retail electric supplier or other electric utility, may enter into an agreement pursuant to which the alternative retail electric supplier or other electric utility pays the charges specified in Section 16-108, or other customer-related charges, including taxes and fees, in lieu of such charges being recovered by the electric utility directly from the customer.

(220 ILCS 5/16-119 new)

Sec. 16-119. Switching suppliers. An electric utility or an alternative retail electric supplier may establish a term of service, notice period for terminating service and provisions governing early termination through a tariff or contract. A customer may change its supplier subject to tariff or contract terms and conditions. Any notice provisions; or provision for a fee, charge or penalty with early termination of a contract; shall be conspicuously disclosed in any tariff or contract. A customer shall remain responsible for any unpaid charges owed to an electric utility or alternative retail electric supplier at the time it switches to another provider.

(220 ILCS 5/16-119A new)

Sec. 16-119A. Functional separation.

(a) Within 90 days after the effective date of this amendatory Act of 1997, the Commission shall open a rulemaking proceeding to establish standards of conduct for every electric utility described in subsection (b). To create efficient competition between suppliers of generating services and sellers of such services at retail and wholesale, the rules shall allow all customers of a public utility that distributes electric power and energy to purchase electric power and energy from the supplier of their

choice in accordance with the provisions of Section 16-104. In addition, the rules shall address relations between providers of any 2 services described in subsection (b) to prevent undue discrimination and promote efficient competition. Provided, however, that a proposed rule shall not be published prior to May 15, 1999.

(b) The Commission shall also have the authority to investigate the need for, and adopt rules requiring, functional separation between the generation services and the delivery services of those electric utilities whose principal service area is in Illinois as necessary to meet the objective of creating efficient competition between suppliers of generating services and sellers of such services at retail and wholesale. After January 1, 2003, the Commission shall also have the authority to investigate the need for, and adopt rules requiring, functional separation between an electric utility's competitive and non-competitive services.

(c) In establishing or considering the need for rules under subsections (a) and (b), the Commission shall take into account the effects on the cost and reliability of service and the obligation of the utility to provide bundled service under this Act. The Commission shall adopt rules that are a cost effective means to ensure compliance with this Section.

(d) Nothing in this Section shall be construed as imposing any requirements or obligations that are in conflict with federal law.

(220 ILCS 5/16-120 new)

Sec. 16-120. Development of competitive market; Commission study and reports; investigation.

(a) On or before December 31, 1999 and once every 3 years thereafter, the Commission shall monitor and analyze patterns of entry and exit, applications for entry and exit, and any barriers to entry or participation that may exist, for services provided under this Article; shall analyze any impediments to the establishment of a fully competitive energy and power market in Illinois; and shall include its findings together with appropriate recommendations for legislative action in a report to the General Assembly.

(b) Beginning in 2001, and ending in 2006, the Commission shall prepare an annual report regarding the development of electricity markets in Illinois which shall be filed by April 1 of each year with the Joint Committee on Legislative Support Services of the General Assembly and the Governor and which shall be publicly available. Such report shall include, at a minimum, the following information:

(1) the aggregate annual peak demand of retail customers in the State of Illinois in the preceding calendar year;

(2) the total annual kilowatt-hours delivered and sold to retail customers in the State of Illinois by each electric utility within its own service territory, each electric utility outside its service territory, and alternative retail electric suppliers in the preceding calendar year;

(3) the percentage of the total kilowatt-hours delivered and sold to retail customers in the State of

Illinois in the preceding calendar year by each electric utility within its service territory, each electric utility outside its service territory, and each alternative retail electric supplier; and

(4) any other information the Commission considers significant in assessing the development of Illinois electricity markets, which may include, to the extent available, information similar to that described in items 1, 2 and 3 with respect to cogeneration, self-generation and other sources of electric power and energy provided to customers that do not take delivery services or bundled electric utility services.

The Commission may also include such other information as it deems to be necessary or beneficial in describing or explaining the results of its Report. The Report required by this Section shall be adopted by a vote of the full Commission prior to filing. Proprietary or confidential information shall not be disclosed publicly. Nothing contained in this Section shall prohibit the Commission from taking actions that would otherwise be allowed under this Act.

(220 ILCS 5/16-121 new)

Sec. 16-121. Non-discrimination; adoption of rules and regulations. The Commission shall adopt rules and regulations no later than 180 days after the effective date of this amendatory Act of 1997 governing the relationship between the electric utility and its affiliates, and ensuring nondiscrimination in services provided to the utility's affiliate and any alternative retail electric supplier, including without limitation, cost allocation, cross-subsidization and information sharing.

(220 ILCS 5/16-122 new)

Sec. 16-122. Customer information.

(a) Upon the request of a retail customer, or a person who presents verifiable authorization and is acting as the customer's agent, and payment of a reasonable fee, electric utilities shall provide to the customer or its authorized agent the customer's billing and usage data.

(b) Upon request from any alternative retail electric supplier and payment of a reasonable fee, an electric utility serving retail customers in its service area shall make available generic information concerning the usage, load shape curve or other general characteristics of customers by rate classification. Provided however, no customer specific billing, usage or load shape data shall be provided under this subsection unless authorization to provide such information is provided by the customer pursuant to subsection (a) of this Section.

(c) All such customer information shall be made available in a timely fashion in an electronic format, if available.

(220 ILCS 5/16-123 new)

Sec. 16-123. Establishment of customer information centers for electric utilities and alternative retail

electric suppliers. All electric utilities and alternative retail electric suppliers shall be required to maintain a customer call center where customers can reach a representative and receive current information. Customers shall periodically be notified on how to reach the call center. The Commission shall have the authority to establish reporting requirements for such centers.

(220 ILCS 5/16-124 new)

Sec. 16-124. Metering for residential and small commercial retail customers. An electric utility shall not require a residential or small commercial retail customer to take additional metering or metering capability as a condition of taking delivery services unless the Commission finds, after notice and hearing, that additional metering or metering capability is required to meet reliability requirements. Alternative retail electric suppliers serving such customers may provide such additional metering or metering capability at their own expense or take such additional metering or metering capability from the utility as a tariffed service. Any additional metering requirements shall be imposed in a nondiscriminatory manner. Nothing in this subsection shall be construed to prevent the normal maintenance, replacement or upgrade of meters as required to comply with Commission rules.

(220 ILCS 5/16-125 new)

Sec. 16-125. Transmission and distribution reliability requirements.

(a) To assure the reliable delivery of electricity to all customers in this State and the effective implementation of the provisions of this Article, the Commission shall, within 180 days of the effective date of this Article, adopt rules and regulations for assessing and assuring the reliability of the transmission and distribution systems and facilities that are under the Commission's jurisdiction.

(b) These rules and regulations shall require each electric utility or alternative retail electric supplier owning, controlling, or operating transmission and distribution facilities and equipment subject to the Commission's jurisdiction, referred to in this Section as "jurisdictional entities", to adopt and implement procedures for restoring transmission and distribution services to customers after transmission or distribution outages on a nondiscriminatory basis without regard to whether a customer has chosen the electric utility, an affiliate of the electric utility, or another entity as its provider of electric power and energy. These rules and regulations shall also, at a minimum, specifically require each jurisdictional entity to submit annually to the Commission.

(1) the number and duration of planned and unplanned outages during the prior year and their impacts on customers;

(2) outages that were controllable and outages that were exacerbated in scope or duration by the condition of facilities, equipment or premises or by the actions or inactions of operating personnel or agents;

(3) customer service interruptions that were due solely to the actions or inactions of an alternative retail electric supplier or a public utility in supplying power or energy;

(4) a detailed report of the age, current condition, reliability and performance of the jurisdictional entity's existing transmission and distribution facilities, which shall include, without limitation, the following data:

(i) a summary of the jurisdictional entity's outages and voltage variances reportable under the Commission's rules;

(ii) the jurisdictional entity's expenditures for transmission construction and maintenance, the ratio of those expenditures to the jurisdictional entity's transmission investment, and the average remaining depreciation lives of the entity's transmission facilities, expressed as a percentage of total depreciation lives;

(iii) the jurisdictional entity's expenditures for distribution construction and maintenance, the ratio of those expenditures to the jurisdictional entity's distribution investment, and the average remaining depreciation lives of the entity's distribution facilities, expressed as a percentage of total depreciation lives;

(iv) a customer satisfaction survey covering, among other areas identified in Commission rules, reliability, customer service, and understandability of the jurisdictional entity's services and prices; and

(v) the corresponding information, in the same format, for the previous 3 years, if available;

(5) a plan for future investment and reliability improvements for the jurisdictional entity's transmission and distribution facilities that will ensure continued reliable delivery of energy to customers and provide the delivery reliability needed for fair and open competition; and

(6) a report of the jurisdictional entity's implementation of its plan filed pursuant to subparagraph (5) for the previous reporting period.

(c) The Commission rules shall set forth the criteria that will be used to assess each jurisdictional entity's annual report and evaluate its reliability performance. Such criteria must take into account, at a minimum: the items required to be reported in subsection (b); the relevant characteristics of the area served; the age and condition of the system's equipment and facilities; good engineering practices; the costs of potential actions; and the benefits of avoiding the risks of service disruption.

(d) At least every 3 years, beginning in the year the Commission issues the rules required by subsection (a) or the following year if the rules are issued after June 1, the Commission shall assess the annual report of each jurisdictional entity and evaluate its reliability performance. The Commission's evaluation shall include

specific identification of, and recommendations concerning, any potential reliability problems that it has identified as a result of its evaluation.

(e) In the event that more than 30,000 customers of an electric utility are subjected to a continuous power interruption of 4 hours or more that results in the transmission of power at less than 50% of the standard voltage, or that results in the total loss of power transmission, the utility shall be responsible for compensating customers affected by that interruption for 4 hours or more for all actual damages, which shall not include consequential damages, suffered as a result of the power interruption. The utility shall also reimburse the affected municipality, county, or other unit of local government in which the power interruption has taken place for all emergency and contingency expenses incurred by the unit of local government as a result of the interruption. A waiver of the requirements of this subsection may be granted by the Commission in instances in which the utility can show that the power interruption was a result of any one or more of the following causes:

(1) Unpreventable damage due to weather events or conditions.

(2) Customer tampering.

(3) Unpreventable damage due to civil or international unrest or animals.

(4) Damage to utility equipment or other actions by a party other than the utility, its employees, agents, or contractors.

Loss of revenue and expenses incurred in complying with this subsection may not be recovered from ratepayers.

(f) In the event of a power surge or other fluctuation that causes damage and affects more than 30,000 customers, the electric utility shall pay to affected customers the replacement value of all goods damaged as a result of the power surge or other fluctuation unless the utility can show that the power surge or other fluctuation was due to one or more of the following causes:

(1) Unpreventable damage due to weather events or conditions.

(2) Customer tampering.

(3) Unpreventable damage due to civil or international unrest or animals.

(4) Damage to utility equipment or other actions by a party other than the utility, its employees, agents, or contractors.

Loss of revenue and expenses incurred in complying with this subsection may not be recovered from ratepayers. Customers with respect to whom a waiver has been granted by the Commission pursuant to subparagraphs (1)-(4) of subsections (e) and (f) shall not count toward the 30,000 customers required therein.

(g) Whenever an electric utility must perform planned or routine maintenance or repairs on its equipment that will result in transmission of power at less than 50% of the standard voltage, loss of power, or power fluctuation (as defined in subsection (f)), the utility shall make

reasonable efforts to notify potentially affected customers no less than 24 hours in advance of performance of the repairs or maintenance.

(h) Remedies provided for under this Section may be sought exclusively through the Illinois Commerce Commission as provided under Section 10-109 of this Act. Damages awarded under this Section for a power interruption shall be limited to actual damages, which shall not include consequential damages, and litigation costs. Damage awards may not be paid out of utility rate funds.

(i) The provisions of this Section shall not in any way diminish or replace other civil or administrative remedies available to a customer or a class of customers.

(j) The Commission shall by rule require an electric utility to maintain service records detailing information on each instance of transmission of power at less than 50% of the standard voltage, loss of power, or power fluctuation (as defined in subsection (f)), that affects 10 or more customers. Occurrences that are momentary shall not be required to be recorded or reported. The service record shall include, for each occurrence, the following information:

(1) The date.

(2) The time of occurrence.

(3) The duration of the incident.

(4) The number of customers affected.

(5) A description of the cause.

(6) The geographic area affected.

(7) The specific equipment involved in the fluctuation or interruption.

(8) A description of measures taken to restore service.

(9) A description of measures taken to remedy the cause of the power interruption or fluctuation.

(10) A description of measures taken to prevent future occurrence.

(11) The amount of remuneration, if any, paid to affected customers.

(12) A statement of whether the fixed charge was waived for affected customers.

Copies of the records containing this information shall be available for public inspection at the utility's offices, and copies thereof may be obtained upon payment of a fee not exceeding the reasonable cost of reproduction. A copy of each record shall be filed with the Commission and shall be available for public inspection. Copies of the records may be obtained upon payment of a fee not exceeding the reasonable cost of reproduction.

(k) The requirements of subsections (e) through (j) of this Section shall apply only to an electric public utility having 1,000,000 or more customers.

(220 ILCS 5/16-125A new)

Sec. 16-125A. Consolidated billing provision for established intergovernmental agreement participants.

(a) The tariffs of each electric utility serving at least 1,000,000 customers shall permit governmental customers acting through an intergovernmental agreement that

was in effect 30 days prior to the date specified in subsection (b) and which provides for these governmental customers to work cooperatively in the purchase of electric energy to aggregate their monthly kilowatt-hour energy usage and monthly kilowatt billing demand.

(b) In implementing the provisions of this Section, the rates and charges applicable under the combined billing tariff of the serving utility in effect on May 1, 1997 shall apply to all load of eligible government customers selected by the governmental customers including, but not limited to, load served under contract.

(c) For purposes of this Section, "governmental customers" shall mean any customer that is a municipality, municipal corporation, unit of local government, park district, school district, community college district, forest preserve district, special district, public corporation, body politic and corporate, sanitary or water reclamation district, or other local government agencies, including any entity created by intergovernmental agreement among any of the foregoing entities to implement the arrangements permitted by subsections (a) and (b) of this Section.

(d) Electric utilities shall file tariffs that comply with the requirements of this Section within 60 days after the effective date of this amendatory Act of 1997.

(220 ILCS 5/16-126 new)

Sec. 16-126. Membership in an independent system operator.

(a) The General Assembly finds that the establishment of one or more independent system operators or their functional equivalents is required to facilitate the development of an open and efficient marketplace for electric power and energy to the benefit of Illinois consumers. Therefore, each Illinois electric utility owning or controlling transmission facilities or providing transmission services in Illinois and that is a member of the Mid-American Interconnected Network as of the effective date of this amendatory Act of 1997 shall submit for approval to the Federal Energy Regulatory Commission an application for establishing or joining an independent system operator that shall:

(1) independently manage and control transmission facilities of any electric utility;

(2) provide for nondiscriminatory access to and use of the transmission system for buyers and sellers of electricity;

(3) direct the transmission activities of the control area operators;

(4) coordinate, plan, and order the installation of new transmission facilities;

(5) adopt inspection, maintenance, repair, and replacement standards for the transmission facilities under its control and direct maintenance, repair, and replacement of all facilities under its control; and

(6) implement procedures and act to assure the provision of adequate and reliable service.

These standards shall be consistent with reliability

criteria no less stringent than those established by the Mid-American Interconnected Network and the North American Electric Reliability Council or their successors.

(b) The requirements of this Section may be met by joining or establishing a regional independent system operator that meets the criteria enumerated in subsections (a), (c), and (d) of this Section, as determined by the Commission. To achieve the objectives set forth in subsection (a), the State of Illinois, through the appropriate officers, departments, and agencies, shall work cooperatively with the appropriate officials and agencies of those States contiguous to this State and the Federal Energy Regulatory Commission towards the formation of one or more regional independent system operators.

(c) The independent system operator's governance structure must be fair and nondiscriminatory, and the independent system operator must be independent of any one market participant or class of participants. The independent system operator's rules of governance must prevent control, or the appearance of control, of decision-making by any class of participants.

(d) Participants in the independent system operator shall make available to the independent system operator all information required by the independent system operator in performance of its functions described herein. The independent system operator and the electric utilities participating in the independent system operator shall make all filings required by the Federal Energy Regulatory Commission. The independent system operator shall ensure that additional filings at the Federal Energy Regulatory Commission request confirmation of the relevant provisions of this amendatory Act of 1997.

(e) If a spot market, exchange market, or other market-based mechanism providing transparent real-time market prices for electric power has not been developed, the independent system operator or a closely cooperating agent of the independent system operator may provide an efficient competitive power exchange auction for electric power and energy, open on a nondiscriminatory basis to all suppliers, which meets the loads of all auction customers at efficient prices.

(f) For those electric utilities referred to in subsection (a) which have not filed with the Federal Energy Regulatory Commission by June 30, 1998 an application for establishment or participation in an independent system operator or if such application has not been approved by the Federal Energy Regulatory Commission by March 31, 1999, a 5 member Oversight Board shall be formed. The Oversight Board shall (1) oversee the creation of an Illinois independent system operator and (2) determine the composition and initial terms of service of, and appoint the initial members of, the Illinois independent system operator board of directors. The Oversight Board shall consist of the following: (1) 3 persons appointed by the Governor; (2) one person appointed by the Speaker of the House of Representatives; and (3) one person appointed by the President of the Senate. The Oversight Board shall take the steps that are necessary to ensure the

earliest possible incorporation of an Illinois independent system operator under the Business Corporation Act of 1983, and shall serve until the Illinois independent system operator is incorporated.

(g) After notice and hearing, the Commission shall require each electric utility referred to in subsection (a), that is not participating in an independent system operator meeting the requirements of subsections (a) and (c), to seek authority from the Federal Energy Regulatory Commission to transfer functional control of transmission facilities to the Illinois independent system operator for control by the Illinois independent system operator consistent with the requirements of subsection (a). Upon approval by the Federal Energy Regulatory Commission, electric utilities may also elect to transfer ownership of transmission facilities to the Illinois independent system operator. Nothing in this Act shall be deemed to preclude the Illinois independent system operator from (1) seeking authority, as necessary, to merge with or otherwise combine its operations with those of one or more other entities authorized to provide transmission services, (2) purchasing or leasing transmission assets from transmission-owning entities not required by this Section to lease transmission facilities to the Illinois independent system operator, or (3) operating as a transmission public utility under the Federal Power Act.

(h) Any other owner of transmission facilities in Illinois not required by this Section to participate in an independent system operator shall be permitted, but not required, to become a member of the Illinois independent system operator.

(i) The Illinois independent system operator created under this Section, and any other independent system operator authorized by the Federal Energy Regulatory Commission to provide transmission services as a public utility under the Federal Power Act within the State of Illinois, shall be deemed to be a public utility for purposes of Section 8-503 and 8-509 of this Act.

(j) Electric utilities referred to in subsection (a) may withdraw from the Illinois independent system operator upon becoming a member of an independent system operator or operators conforming with the criteria in subsections (a) and (c) and whose formation and operation has been approved by the Federal Energy Regulatory Commission. This subsection does not relieve any electric utility of any obligations under Federal law.

(k) Nothing in this Section shall be construed as imposing any requirements or obligations that are in conflict with federal law.

(220 ILCS 5/16-127 new)

Sec. 16-127. Environmental disclosure.

(a) Effective January 1, 1999, every electric utility and alternative retail electric supplier shall provide the following information, to the maximum extent practicable, with its bills to its customers on a quarterly basis:

(i) the known sources of electricity supplied, broken-out by percentages, of biomass power, coal-fired

power, hydro power, natural gas-fired power, nuclear power, oil-fired power, solar power, wind power and other resources, respectively; and

(ii) a pie-chart which graphically depicts the percentages of the sources of the electricity supplied as set forth in subparagraph (i) of this subsection.

(b) In addition, every electric utility and alternative retail electric supplier shall provide, to the maximum extent practicable, with its bills to its customers on a quarterly basis, a standardized chart in a format to be determined by the Commission in a rule following notice and hearings which provides the amounts of carbon dioxide, nitrous oxides and sulfur dioxide emissions and nuclear waste attributable to the known sources of electricity supplied as set forth in subparagraph (i) of subsection (a) of this Section.

(c) The electric utilities and alternative retail electric suppliers may provide their customers with such other information as they believe relevant to the information required in subsections (a) and (b) of this Section.

(d) For the purposes of subsection (a) of this Section, "biomass" means dedicated crops grown for energy production and organic wastes.

(e) All of the information provided in subsections (a) and (b) of this Section shall be presented to the Commission for inclusion in its World Wide Web Site.

(220 ILCS 5/16-128 new)

Sec. 16-128. Provisions related to utility employees during the mandatory transition period.

(a) The General Assembly finds:

(1) The reliability and safety of the electric system has depended on a workforce of skilled and dedicated employees, equipped with technical training and experience.

(2) The integrity and reliability of the system has also depended on the industry's commitment to invest in regular inspection and maintenance, to assure that it can withstand the demands of heavy service requirements and emergency situations.

(3) It is in the State's interest to protect the interests of utility employees who have dedicated themselves to assuring reliable service to the citizens of this State, and who might otherwise be economically displaced in a restructured industry.

The General Assembly further finds that it is necessary to assure that employees operating in the deregulated industry have the requisite skills, knowledge, and competence to provide reliable and safe electrical service and therefore that alternative retail electric suppliers shall be required to demonstrate the competence of their employees to work in the industry.

The knowledge, skill, and competence levels to be demonstrated shall be consistent with those generally required of or by the electric utilities in this State with respect to their employees.

Adequate demonstration of requisite knowledge, skill and competence shall include such factors as completion by the

employee of an accredited or otherwise recognized apprenticeship program for the particular craft, trade or skill, or specified years of employment with an electric utility performing a particular work function.

To implement this requirement, the Commission, in determining that an applicant meets the standards for certification as an alternative retail electric supplier, shall require the applicant to demonstrate (i) that the applicant is licensed to do business, and bonded, in the State of Illinois; and (ii) that the employees of the applicant that will be installing, operating, and maintaining generation, transmission, or distribution facilities within this State, or any entity with which the applicant has contracted to perform those functions within this State, have the requisite knowledge, skills, and competence to perform those functions in a safe and responsible manner in order to provide safe and reliable service, in accordance with the criteria stated above.

(b) The General Assembly finds, based on experience in other industries that have undergone similar transitions, that the introduction of competition into the State's electric utility industry may result in workforce reductions by electric utilities which may adversely affect persons who have been employed by this State's electric utilities in functions important to the public convenience and welfare. The General Assembly further finds that the impacts on employees and their communities of any necessary reductions in the utility workforce directly caused by this restructuring of the electric industry shall be mitigated to the extent practicable through such means as offers of voluntary severance, retraining, early retirement, outplacement and related benefits. Therefore, before any such reduction in the workforce during the transition period, an electric utility shall present to its employees or their representatives a workforce reduction plan outlining the means by which the electric utility intends to mitigate the impact of such workforce reduction on its employees.

(c) In the event of a sale, purchase, or any other transfer of ownership during the mandatory transition period of one or more Illinois divisions or business units, and/or generating stations or generating units, of an electric utility, the electric utility's contract and/or agreements with the acquiring entity or persons shall require that the entity or persons hire a sufficient number of non-supervisory employees to operate and maintain the station, division or unit by initially making offers of employment to the non-supervisory workforce of the electric utility's division, business unit, generating station and/or generating unit at no less than the wage rates, and substantially equivalent fringe benefits and terms and conditions of employment that are in effect at the time of transfer of ownership of said division, business unit, generating station, and/or generating units; and said wage rates and substantially equivalent fringe benefits and terms and conditions of employment shall continue for at least 30 months from the time of said transfer of ownership unless the parties mutually agree to different terms and conditions of

employment within that 30-month period. The utility shall offer a transition plan to those employees who are not offered jobs by the acquiring entity because that entity has a need for fewer workers. If there is litigation concerning the sale, or other transfer of ownership of the electric utility's divisions, business units, generating station, or generating units, the 30-month period will begin on the date the acquiring entity or persons take control or management of the divisions, business units, generating station or generating units of the electric utility.

(d) If a utility transfers ownership during the mandatory transition period of one or more Illinois divisions, business units, generating stations or generating units of an electric utility to a majority-owned subsidiary, that subsidiary shall continue to employ the utility's employees who were employed by the utility at such division, business unit or generating station at the time of the transfer under the same terms and conditions of employment as those employees enjoyed at the time of the transfer. If ownership of the subsidiary is subsequently sold or transferred to a third party during the transition period, the transition provisions outlined in subsection (c) shall apply.

(e) The plant transfer provisions set forth above shall not apply to any generating station which was the subject of a sales agreement entered into before January 1, 1997.

(220 ILCS 5/16-129 new)

Sec. 16-129. Existing contracts not affected. Nothing in this Article XVI shall affect the right of an electric utility to continue to provide, or the right of the customer to continue to receive, service pursuant to a contract for electric service between the electric utility and the customer, in accordance with the prices, terms and conditions provided for in that contract. Either the electric utility or the customer may require compliance with the prices, terms and conditions of such contract.

(220 ILCS 5/16-130 new)

Sec. 16-130. Annual Reports. The General Assembly finds that it is necessary to have reliable and accurate information regarding the transition to a competitive electric industry. In addition to the annual report requirements pursuant to Section 5-109 of this Act, each electric utility shall file with the Commission a report on the following topics in accordance with the schedule set forth in subsection (b) of this Section:

(1) Data on each customer class of the electric utility in which delivery services have been elected including:

(A) number of retail customers in each class that have elected delivery service;

(B) kilowatt hours consumed by the customers described in subparagraph (A);

(C) revenue loss experienced by the utility as a result of customers electing delivery services or market-based prices as compared to continued service

under otherwise applicable tariffed rates;

(D) total amount of funds collected from each customer class pursuant to the transition charges authorized in Section 16-108;

(E) Such other information as the Commission may by rule require.

(2) A description of any steps taken by the electric utility to mitigate and reduce its costs, including both a detailed description of steps taken during the preceding calendar year and a summary of steps taken since the effective date of this amendatory Act of 1997, and including, to the extent practicable, quantification of the costs mitigated or reduced by specific actions taken by the electric utility.

(3) A description of actions taken under Sections 5-104, 7-204, 9-220, and 16-111 of this Act. This information shall include but not be limited to:

(A) a description of the actions taken;

(B) the effective date of the action;

(C) the annual savings or additional charges realized by customers from actions taken, by customer class and total for each year;

(D) the accumulated impact on customers by customer class and total; and

(E) a summary of the method used to quantify the impact on customers.

(4) A summary of the electric utility's use of transitional funding instruments, including a description of the electric utility's use of the proceeds of any transitional funding instruments it has issued in accordance with Article XVIII of this Act.

(5) Kilowatt-hours consumed in the twelve months ending December 31, 1996 (which kilowatt-hours are hereby referred to as "base year sales") by customer class multiplied by the revenue per kilowatt hour, adjusted to remove charges added to customers' bills pursuant to Sections 9-221 and 9-222 of this Act, during the twelve months ending December 31, 1996, adjusted for the reductions required by subsection (b) of Section 16-111 and the mitigation factors contained in Section 16-102. This amount shall be stated for: (i) each calendar year preceding the year in which a report is required to be submitted pursuant to subsection (b); and (ii) as a cumulative total of all calendar years beginning with 1998 and ending with the calendar year preceding the year in which a report is required to be submitted pursuant to subsection (b).

(6) Calculations identical to those required by subparagraph (5) except that base year sales shall be adjusted for growth in the electric utility's service territory, in addition to the other adjustments specified by the first sentence of subparagraph (5).

(7) The electric utility's total revenue and net income for each calendar year beginning with 1997 through the calendar year preceding the year in which a report is required to be submitted pursuant to subsection (b) as reported in the electric utility's Form 1 report to the

Federal Energy Regulatory Commission.

(8) Any consideration in excess of the net book cost as of the effective date of this amendatory Act of 1997 received by the electric utility during the year from a sale made subsequent to the effective date of this amendatory Act of 1997 to a non-affiliated third party of any generating plant that was owned by the electric utility on the effective date of this amendatory Act of 1997.

(9) Any consideration received by the electric utility from sales or transfers during the year to an affiliated interest of generating plant, or other plant that represents an investment of $25,000,000 or more in terms of total depreciated original cost, which generating or other plant were owned by the electric utility prior to the effective date of this amendatory Act of 1997.

(10) Any consideration received by an affiliated interest of an electric utility from sales or transfers during the year to a non-affiliated third party of generating plant, but only if: (i) the electric utility had previously sold or transferred such plant to the affiliated interest subsequent to the effective date of this amendatory Act of 1997; (ii) the affiliated interest sells or transfers such plant to a non-affiliated third party prior to December 31, 2006; and (iii) the affiliated interest receives consideration for the sale or transfer of such plant to the non-affiliated third party in an amount greater than the cost or price at which such plant was sold or transferred to the affiliated interest by the electric utility.

(b) The information required by subsection (a) shall be filed by each electric utility on or before March 1 of each year 1999 through 2007 or through such additional years as the electric utility is collecting transition charges pursuant to subsection (f) of Section 16-108, for the previous calendar year. The information required by subparagraph (6) of subsection (a) for calendar year 1997 shall be submitted by the electric utility on or before March 1, 1999.

(c) On or before May 15 of each year 1999 through 2006 or through such additional years as the electric utility is collecting transition charges pursuant to subsection (f) of Section 16-108, the Commission shall submit a report to the General Assembly which summarizes the information provided by each electric utility under this Section; provided, however, that proprietary or confidential information shall not be publicly disclosed.

(220 ILCS 5/Art. XVII heading new)

ARTICLE XVII. ELECTRIC COOPERATIVES AND MUNICIPAL SYSTEMS

(220 ILCS 5/17-100 new)

Sec. 17-100. Exemption from provisions of this amendatory Act of 1997. Electric cooperatives, as defined in Section 3.4 of the Electric Supplier Act, and public

utilities that are owned and operated by any political subdivision, or municipal corporation of this State, or owned by such an entity and operated by any lessee or any operating agent thereof, hereinafter referred to as municipal systems, shall not be subject to the provisions of this amendatory Act of 1997, except as hereinafter provided in this Article XVII.

(220 ILCS 5/17-200 new)

Sec. 17-200. Election to provide existing or future customers access to alternative retail electric suppliers.

(a) An electric cooperative or municipal system each may, by appropriate action and at the sole discretion of the governing body of each, from time to time make one or more elections to cause one or more of the existing or future customers of each respective system to be eligible to take service from an alternative retail electric supplier for a specified period of time. Provided that, and subject to their authority to serve customers pursuant to the Electric Supplier Act with respect to electric cooperatives and pursuant to the Illinois Municipal Code with respect to municipal systems, each shall continue to provide exclusive distribution facilities for any existing and future customers that the electric cooperative or municipal system are now or in the future otherwise entitled to serve and which customers are now or in the future receiving service provided by an alternative retail electric supplier.

(b) Notification of election to provide existing or future customers access to alternative retail electric suppliers. The election by an electric cooperative or municipal system authorizing access to alternative retail electric suppliers for existing or future customers shall be made by filing notice thereof with the Commission and shall be made effective only by such filing.

(220 ILCS 5/17-300 new)

Sec. 17-300. Election to be an alternative retail electric supplier.

(a) An electric cooperative or municipal system may, by appropriate action, and at the sole discretion of the governing body of each, make an election to become an alternative retail electric supplier.

(b) Commission authority over an electric cooperative or municipal system electing to be an alternative retail electric supplier. An electric cooperative or municipal system electing to be an alternative retail electric supplier shall provide those services in accordance with Sections 16-115A and 16-115B of this Act, to the extent that these Sections have application to the services being offered by the electric cooperative or municipal system as an alternative retail electric supplier. In no case shall these provisions apply to the existing or future customers taking delivery services from an electric cooperative or municipal system pursuant to their respective authority under the Electric Supplier Act or the Illinois Municipal Code.

(c) Notification of election to be an alternative retail electric supplier. Upon filing notice of intent by an electric cooperative or a municipal system to become an

alternative retail electric supplier, the Commission shall issue within 45 days a certificate of service authority for the entire State or for a specified geographic area of the State, as specified in the notice. Issuance of a certificate of service authority shall constitute compliance with Section 16-115 of this Act.

(d) Delivery services provided by electric cooperatives or municipal systems. Municipal systems or electric cooperatives making an election under this Section shall be required to provide delivery services on their respective systems to the electric utility or utilities in whose service area or areas the proposed service will be offered. Such required delivery services to be provided by the electric cooperatives and municipal systems shall be reasonably comparable to the delivery services provided to the electric cooperative's and municipal system's own customers.

(e) Exclusive authority over distribution facilities. Provided that, and subject to their authority to serve customers pursuant to the Electric Supplier Act with respect to electric cooperatives and pursuant to the Illinois Municipal Code with respect to municipal systems, each shall continue to provide the exclusive distribution facilities for any existing and future customers that the electric cooperative or municipal system is now or in the future otherwise entitled to serve, and which customers are now or in the future receiving service provided by an alternative retail electric supplier.

(220 ILCS 5/17-400 new)

Sec. 17-400. Conditions prohibiting municipal system participation. At no time shall a municipal system make an election under Sections 17-200 or 17-300 of this Article if such election places at risk:

(1) Any status held by the municipal system or municipal corporation or political subdivision which provides exemption from State or federal tax statutes; or

(2) Any debt, credit instrument or other contractual financial obligation held by, or on behalf of the municipal system which was entered into under an exemption from State or federal tax statutes.

(220 ILCS 5/17-500 new)

Sec. 17-500. Jurisdiction. Except as provided in the Electric Supplier Act, the Illinois Municipal Code, and this Article XVII, the Commission, or any other agency or subdivision thereof of the State of Illinois or any private entity shall have no jurisdiction over any electric cooperative or municipal system regardless of whether any election or elections as provided for herein have been made, and all control regarding an electric cooperative or municipal system shall be vested in the electric cooperative's board of directors or trustees or the applicable governing body of the municipal system.

(220 ILCS 5/17-600 new)

Sec. 17-600. Rights of electric cooperatives and municipal systems in conflict herewith. Except as expressly

provided for herein, this Article XVII shall not be construed to conflict with the rights of an electric cooperative or a municipal system as declared in the Electric Supplier Act or as set forth in the Illinois Municipal Code or the public policy against duplication of facilities as set forth therein.

(220 ILCS 5/17-700 new)

Sec. 17-700. Right to create municipal utility unaffected. Nothing in this amendatory Act of 1997 shall limit the right of a municipality to form a municipal utility in accordance with Article 11, Division 117 of the Illinois Municipal Code and the provisions of this Article XVII shall apply to any municipal utility formed after the effective date of this amendatory Act of 1997.

(220 ILCS 5/Art. XVIII heading new)

ARTICLE XVIII. ELECTRIC UTILITY TRANSITIONAL FUNDING LAW

(220 ILCS 5/18-101 new)

Sec. 18-101. Short title and applicability. This Article may be cited as the Electric Utility Transitional Funding Law of 1997 and shall apply to electric utilities as defined in this Article.

(220 ILCS 5/18-102 new)

Sec. 18-102. Definitions. For the purposes of this Article the following terms shall be defined as set forth in this Section. Terms defined in Article XVI shall have the same meanings in this Article.

"Assignee" means any party, other than an electric utility or grantee, to which an interest in intangible transition property shall have been assigned, sold or transferred. The term "assignee" includes any corporation, public authority, trust, financing vehicle, partnership, limited liability company or other entity.

"Grantee" means any party, other than an electric utility or an assignee which acquires its interest from an electric utility, to whom or for whose benefit the Commission shall create, establish and grant rights in, to and under intangible transition property. The term "grantee" includes any corporation, public authority, trust, financing vehicle, partnership, limited liability company or other entity.

"Grantee instruments" means (a) any instruments, documents, notes, debentures, bonds or other evidences of indebtedness evidencing any contractual right to receive the payment of money from a grantee or (b) any certificates of participation, certificates of beneficial interest or other instruments evidencing a beneficial or ownership interest in a grantee or in intangible transition property of such grantee which are (i) issued (A) by or on behalf of a grantee pursuant to a transitional funding order and (B) pursuant to an executed indenture, pooling agreement, security agreement or other similar agreement of such grantee creating a security interest, ownership interest or other beneficial interest in intangible transition property and (ii) payable solely from proceeds of intangible transition property,

including amounts received with respect to the related instrument funding charges.

"Holder" means any holder of transitional funding instruments, including a trustee, collateral agent, nominee or other such party acting for the benefit of such a holder.

"Instrument funding charge" means a non-bypassable charge expressed in cents per kilowatt-hour authorized in a transitional funding order to be applied and invoiced to each retail customer, class of retail customers of an electric utility or other person or group of persons obligated to pay any base rates, transition charges or other rates for tariffed services from which such instrument funding charge has been deducted and stated separately pursuant to subsection (j) of Section 18-104.

"Intangible transition property" means the right, title, and interest of an electric utility or grantee or assignee arising pursuant to a transitional funding order to impose and receive instrument funding charges, and all related revenues, collections, claims, payments, money, or proceeds thereof, including all right, title, and interest of an electric utility, grantee or assignee in, to, under and pursuant to such transitional funding order, whether or not such intangible transition property described above is characterized on the books of the electric utility as a regulatory asset or as a cost incurred by the electric utility or otherwise. Intangible transition property shall arise and exist only when, as, and to the extent that instrument funding charges are authorized in a transitional funding order that has become effective in accordance with this Article and shall thereafter continuously exist to the extent provided in the order.

"Issuer" means any party, other than an electric utility, which has issued transitional funding instruments. The term "issuer" includes any corporation, public authority, trust, financing vehicle, partnership, limited liability company or other entity.

"Transitional funding instruments" means any instruments, pass-through certificates, notes, debentures, certificates of participation, bonds, certificates of beneficial interest or other evidences of indebtedness or instruments evidencing a beneficial interest (i) which are issued by or on behalf of an electric utility or issuer pursuant to a transitional funding order, (ii) which are issued pursuant to an executed indenture, pooling agreement, security agreement or other similar agreement of an electric utility or issuer creating a security interest, ownership interest or other beneficial interest in intangible transition property or grantee instruments, if any, and (iii) the proceeds of which are to be used for the purposes set forth in subparagraph (1) of subsection (d) of Section 18-103 of this Article.

"Transitional funding order" means an order of the Commission issued in accordance with the provisions of this Article creating and establishing intangible transition property and the rights of any party therein and approving the sale, pledge, assignment or other transfer of intangible transition property and grantee instruments, if any, the issuance of transitional funding instruments and grantee

instruments, if any, and the imposition and collection of instrument funding charges.

(220 ILCS 5/18-103 new)

Sec. 18-103. Transitional funding orders.

(a) Notwithstanding any other provision of this Act or other law, the Commission is hereby authorized to issue transitional funding orders in accordance with the provisions of this Section, in order to facilitate (i) the issuance of transitional funding instruments by or on behalf of electric utilities or issuers and (ii) the issuance of grantee instruments by or on behalf of grantees.

(b) A transitional funding order may be issued by the Commission only upon the application of an electric utility and shall become effective in accordance with its terms only after such electric utility files with the Commission its written consent to all terms and conditions of such order. After the issuance of a transitional funding order, the electric utility or grantee shall retain sole discretion regarding whether to assign, sell, pledge or otherwise transfer intangible transition property and grantee instruments, if any, or to cause transitional funding instruments and grantee instruments, if any, to be issued, including the right to defer or postpone such assignment, sale, transfer, pledge or issuance or to change the terms thereof as allowed by such order.

(c) After the effective date of this amendatory Act of 1997, an electric utility may file any number of applications for transitional funding orders. Each application for a transitional funding order shall contain detailed information regarding the electric utility's proposal for (i) the assignment, sale, pledge or other transfer of, or the establishment, creation and granting of rights in and to, intangible transition property and grantee instruments, if any, (ii) the issuance of transitional funding instruments and grantee instruments, if any, (iii) the total dollar amount of intangible transition property to be created and the amount to be sold, pledged, assigned or otherwise transferred or granted hereunder (which amount may be in excess of the principal and interest payable on the transitional funding instruments and grantee instruments, if any, in order to provide for servicing costs and the funding or maintenance of debt service and other reserves, costs and fees as security to the holders of the transitional funding instruments and grantee instruments, if any), (iv) the amount of transitional funding instruments and grantee instruments, if any, to be issued, (v) the amount, expressed in cents per kilowatt-hour, of instrument funding charges to be collected from retail customers or other persons, (vi) the time to maturity for the transitional funding instruments and grantee instruments, if any, and (vii) the electric utility's planned use of the proceeds from the issuance of transitional funding instruments including the amounts allocated for the respective uses specified in subparagraph (1) of subsection (d) of Section 18-103 of this Article.

(d) The Commission shall, after proper notice, hold a hearing for the sole purpose of determining whether the

application and requested transitional funding order are in compliance with this Article and shall complete its review of the application and issue its final transitional funding order by no later than 90 days after the filing of such application by the electric utility; provided, that, in contested cases where the public interest is in issue pursuant to subparagraph (1)(B) of this subsection (d) or pursuant to subsection (m) of Section 18-104, the Commission may complete its review and issue its final transitional funding order by no later than 120 days after the filing of such application. The order shall create and establish the proposed intangible transition property in the amount requested by the applicant and approve the proposed sale, pledge, assignment or other transfer of, or the establishment, creation and granting of rights in and to, intangible transition property and grantee instruments, if any, the proposed issuance of transitional funding instruments and grantee instruments, if any, and the proposed imposition and collection of the corresponding instrument funding charges, if the Commission finds that each of the following conditions are met:

(1) the electric utility will use the proceeds of the sale and issuance of the transitional funding instruments for one or more of the following purposes:

(A) to refinance debt or equity, or both, in a manner which the electric utility reasonably demonstrates will result in an overall reduction in its cost of capital, taking into account the costs of financing; provided, however, that any proceeds transferred to a parent company through a common stock repurchase transaction shall be used to retire publicly traded common stock of the parent company or to pay commercially reasonable transaction costs associated with such retirement;

(B) if the Commission finds that the sale or issuance of transitional funding instruments for the following purposes is in the public interest, then the following uses of proceeds: (i) to repay or retire fuel contracts or obligations related to nuclear spent fuel previously incurred by the electric utility in providing electric power or energy services prior to the effective date of this amendatory Act of 1997 or (ii) to pay any expenditures required to be undertaken by such electric utility by the provisions of Section 16-128 of this Act including labor severance costs and employee retraining costs;

(C) to fund debt service and other reserves, commercially reasonable costs and fees necessary or desirable in connection with the marketing of the transitional funding instruments and grantee instruments, if any;

(D) to pay for commercially reasonable costs associated with the issuance and collateralization of transitional funding instruments and grantee instruments, if any; and

(E) to pay for the commercially reasonable

costs associated with the issuance of such transitional funding instruments, including the costs incurred since the effective date of this amendatory Act of 1997, or to be incurred, in connection with transactions to recapitalize, refinance or retire stock and/or debt, any associated taxes, and the costs incurred or to be incurred to obtain, collateralize, issue, service and administer transitional funding instruments and grantee instruments, including interest and other related fees, costs and charges;

provided, (i) that the transitional funding order shall require the electric utility to use (1) at least 80% of such proceeds for the purposes specified in subparagraphs (A) and (B) above and (2) no more than 20% of the maximum amount of such proceeds permitted under subparagraph (6)(B) of this subsection for purposes other than those specified in subparagraph (A) above; (ii) that the electric utility's use of such proceeds for the purposes specified in subparagraph (A) above shall not, as of the date of application of such proceeds, result in the common equity component of its capital structure, exclusive of the portion of its capital structure that consists of obligations representing transitional funding instruments or grantee instruments, being reduced below the lesser of (1) 40% and (2) the common equity percentage as of December 31, 1996 adjusted to reflect any write-off of assets or common equity implemented or required to be implemented as a result of this amendatory Act of 1997; and (iii) in no event shall the electric utility use the proceeds of the sale of grantee instruments or transitional funding instruments to repay or retire obligations incurred by any affiliate of the electric utility (other than in connection with any refinancing of grantee instruments or transitional funding instruments issued by such affiliate), without the consent of the Commission;

(2) the expected maturity date for the grantee instruments or the transitional funding instruments, and the final date on which the electric utility, grantee or assignee shall be entitled to charge and collect instrument funding charges, shall each be set to occur no later than December 31, 2008, subject to the provisions of subsections (l) and (m) of Section 18-104;

(3) the instrument funding charges authorized in such order will be deducted and stated separately from base rates and transition charges, and, where applicable, other rates for tariffed services, all as provided in subsection (j) of Section 18-104 and in a manner conforming to the allocation of the instrument funding charges implemented pursuant to subparagraph (4) of this subsection;

(4) the instrument funding charges authorized in such order shall have been allocated among classes of retail customers in accordance with percentage ratios determined by dividing the base rate revenue from each class by the electric utility's total base rate revenue

for the 1996 calendar year;

(5) the issuance of the transitional funding instruments will not cause the rates for tariffed services to increase over the rates then in existence as adjusted for the rate decreases provided in subsection (b) of Section 16-111; and

(6) the aggregate principal amount of grantee instruments or, if such transitional funding order does not provide for the issuance of grantee instruments, transitional funding instruments, to be issued pursuant to such order, together with the aggregate amount of such instruments issued under any prior orders requested by such electric utility, shall not exceed:

(A) during the twelve-month period commencing August 1, 1998, an amount equal to 25% of the applicable electric utility's total capitalization, including both debt and equity, as of December 31, 1996, multiplied by the ratio of the electric utility's revenues from Illinois electric utility retail customers in the 1996 calendar year to its total electric retail revenues for such 1996 year; and

(B) thereafter, an amount equal to 50% of the applicable electric utility's total capitalization, including both debt and equity, as of December 31, 1996 multiplied by the ratio of the electric utility's revenues from Illinois electric utility retail customers in the 1996 calendar year to its total electric retail revenues for such 1996 year.

(220 ILCS 5/18-104 new)

Sec. 18-104. Terms and provisions of transitional funding orders.

(a) Each transitional funding order shall create and establish intangible transition property in an amount not to exceed the sum of (i) the rate base established by the Commission in the electric utility's last rate case prior to the effective date of this amendatory Act of 1997, plus (ii) any expenditures required to be undertaken by such electric utility by the provisions of Section 16-128 of this Act, including labor severance costs and employee retraining costs, plus (iii) amounts necessary to fund debt service and other reserves, commercially reasonable costs and fees necessary in connection with the marketing of the transitional funding instruments and grantee instruments, if any, plus (iv) commercially reasonable costs incurred from and after the effective date of this amendatory Act of 1997 or to be incurred which are associated with the issuance and collateralization of transitional funding instruments and grantee instruments, if any, plus (v) commercially reasonable costs incurred from and after the effective date of this amendatory Act of 1997 or to be incurred which are associated with issuance of such transitional funding instruments, including the costs incurred from and after the effective

date of this amendatory Act of 1997, or to be incurred, in connection with transactions to recapitalize, refinance or retire stock and/or debt, any associated taxes and the costs incurred to obtain, collateralize, issue, service and/or administer transitional funding instruments and grantee instruments, if any, including interest and other related fees, costs and charges (all of the foregoing costs described in clauses (i) through (v) above to include any taxes, where applicable, to the extent the costs thereof would otherwise have been recoverable by an electric utility through rates for tariffed services under the Public Utilities Act as in effect prior to this amendatory Act of 1997), minus (vi) the amount of any intangible transition property previously created and established at the request of and for the benefit of such electric utility in a prior transitional funding order. The transitional funding order shall authorize (A) the sale, pledge, assignment or other transfer of, or the establishment, creation and granting of an electric utility's, assignee's or grantee's rights in and to, a specific dollar amount of intangible transition property (which amount may be in excess of the principal and interest payable on the transitional funding instruments and grantee instruments, if any, in order to provide for servicing costs and the funding or maintenance of debt service and other reserves as security to the holders of the transitional funding instruments), (B) the issuance of a specific dollar amount of grantee instruments or, if the transitional funding order does not provide for the issuance of grantee instruments, a specific dollar amount of transitional funding instruments, by or on behalf of an electric utility, assignee, issuer or grantee, as the case may be, and (C) the imposition and collection of a specific amount of instrument funding charges projected to be sufficient to pay when due the principal of and interest on the corresponding grantee instruments or, if the transitional funding order does not provide for the issuance of grantee instruments, the corresponding transitional funding instruments, in each case, together with premium, servicing fees and other fees, costs and charges related thereto, and to maintain any required reserves. Except as otherwise specifically set forth in the transitional funding order, the transitional funding instruments issued pursuant to such order shall be non-recourse to the credit or to any assets of the electric utility other than any assets comprising intangible transition property or grantee instruments, as applicable. The obligation of retail customers and other persons to pay instrument funding charges shall be contingent upon the receipt by such retail customers and other persons of electric power and energy, the kilowatt hours of which are included in the calculation of the dollar amount of such instrument funding charges, but the transitional funding order shall specifically provide that such instrument funding charges will not be subject to any defense, counterclaim or right of set off arising as a result of failure by the pertinent electric utility, upon whose application the intangible transition property was created, to perform or provide past, present or future services. For purposes of

the foregoing sentence, an electric utility or alternative retail electric supplier obligated to pay transition charges under subsection (b) of Section 16-118 on behalf of certain retail customers shall be deemed to have received the electric power and energy provided to such retail customers. The transitional funding order shall also set forth the time to maturity for the grantee instruments or, if the transitional funding order does not provide for the issuance of grantee instruments, the time to maturity for the transitional funding instruments issued thereunder. Concurrently with the sale, pledge, assignment or other transfer of, or the establishment, creation and granting of an electric utility's, assignee's or grantee's rights in and to, intangible transition property and grantee instruments, if any, and the issuance of transitional funding instruments, an electric utility, grantee, issuer or an assignee shall begin to impose and collect the specified instrument funding charges from retail customers, classes of retail customers, and any other persons or groups of persons as set forth in the pertinent transitional funding order and shall file tariffs in accordance with subsection (j) of Section 18-104 of this Article.

(b) The transitional funding order shall require that the proceeds from the issuance of transitional funding instruments shall be used for the purposes set forth in subparagraph (1) of subsection (d) of Section 18-103 of this Article.

(c) Notwithstanding any other provision of law, neither the transitional funding order nor the intangible transition property created and established thereby nor the instrument funding charges authorized to be imposed and collected thereunder shall be subject to reduction, postponement, impairment or termination by any subsequent action of the Commission; provided, however, that nothing in this paragraph is intended to supersede any right of any party to the Commission's proceeding relating to the transitional funding order to seek judicial review of such transitional funding order.

(d) The Commission shall provide in any transitional funding order for a procedure for periodic adjustments to the instrument funding charges set forth therein in order to ensure the repayment in accordance with the projections set forth in the transitional funding order of all grantee instruments or, if such transitional funding order does not provide for the issuance of grantee instruments, the corresponding transitional funding instruments authorized therein and to reconcile the revenues received from instrument funding charges during the applicable adjustment period with the revenues projected to be received from such charges as set forth in the relevant transitional funding order. Unless the transitional funding order otherwise provides, such adjustments shall be required whenever the instrument funding charges actually collected during the applicable adjustment period by the appropriate party or parties were greater or less than the instrument funding charges projected in the relevant transitional funding order to be collected in such adjustment period; provided that, if

so requested by an electric utility in any application for a transitional funding order, the transitional funding order may (i) specify a dollar or percentage amount of variation from the projected revenues within which no such adjustments will be required and/or (ii) set forth a maximum adjustment amount for the instrument funding charges. The electric utility (or such other party as may be specified in the pertinent transitional funding order) shall determine, within 90 days of the end of each adjustment period (or such shorter period as may be provided in the documents relating to the pertinent transitional funding instruments or grantee instruments, as applicable), whether any adjustments described above in this subsection (d) of Section 18-104 are required. If any such adjustments are so required, such adjustments shall be implemented by the electric utility, grantee, issuer or assignee, as applicable, with written notice to the Commission, within such 90-day period (or such shorter period as may be provided for in the documents relating to the pertinent transitional funding instruments or grantee instruments, as applicable). Any such adjustment shall be calculated to include amounts necessary for recovery of any additional costs incurred by the grantee, electric utility, assignee or issuer as a result of the relevant delay in collections of instrument funding charges. If, as a result of any adjustment, the amount of any instrument funding charge, as so adjusted, will exceed an amount per kilowatt-hour greater than the amount per kilowatt-hour of the instrument funding charge initially authorized by the Commission in its transitional funding order, then the relevant electric utility shall be obligated to file amendatory tariffs in compliance with subsection (k) of Section 18-104.

(e) Except where this Article specifically requires otherwise, the collection of instrument funding charges and the allocation of any such collections as among holders, assignees, issuers, grantees and any other parties entitled to receive portions thereof, may be accomplished according to the provisions set forth in the applicable transitional funding order, or, if the order is silent on any such matters, according to the provisions set forth in the documents relating to the pertinent transitional funding instruments or grantee instruments, as applicable. Notwithstanding the foregoing, the electric utility, grantee, issuer or assignee, as applicable, shall determine no later than 90 days after the stated maturity date of each series of grantee instruments or, if the related transitional funding order does not provide for the issuance of grantee instruments, the stated maturity date of transitional funding instruments, whether the aggregate amount of instrument funding charges collected prior to such stated maturity date exceeds the amount required to provide for the payment of all principal, interest, premium and servicing and other fees, costs and charges owing under such grantee instruments or transitional funding instruments, as the case may be. If it is determined that the aggregate amount of instrument funding charges collected exceeds the amount required to provide for the payment of all principal, interest, premium and servicing

and other fees, costs and charges related to such grantee instruments or transitional funding instruments, as the case may be, such excess, together with any investment earnings thereon, shall be paid to the owner of the pertinent intangible transition property.

(f) Notwithstanding any other provision of law, on such conditions as the Commission may approve in the pertinent transitional funding order, the interest of an electric utility, assignee, issuer or grantee in intangible transition property or grantee instruments, as applicable, may be assigned, sold or otherwise transferred, in whole or in part, and may, in whole or in part, be pledged or assigned as security to or for the benefit of a holder or holders. To the extent that any such interest or portion thereof is assigned, sold or otherwise transferred or is established, created and granted to a grantee or is pledged or assigned as security, the Commission, in the pertinent transitional funding order, shall authorize the electric utility or any affiliate thereof to contract with the grantee, issuer, assignee or holders to collect the applicable instrument funding charges for the benefit and account of the grantee, issuer, assignee or holder, and such electric utility or affiliate will, except as otherwise specified in the transitional funding order, account for and remit the applicable instrument funding charge, without the obligation to remit any investment earnings thereon, to or for the account of the grantee, issuer, assignee or holder. The obligation of such electric utility or affiliate to collect and remit the applicable instrument funding charges hereunder shall continue irrespective of whether such electric utility is providing electric power and/or other services to the retail customers and other persons obligated to pay such instrument funding charges. If the documents creating the transitional funding instruments or grantee instruments, if any, so provide, such obligations shall, in the event of a default by such electric utility or affiliate in performing such obligations, be undertaken and performed by any other entity selected by the assignee or any holder, group of holders or trustee or agent on behalf of such holder or holders, as the case may be, (i) which provides electric power or services to a person that was a retail customer of such electric utility and (ii) from whom such electric utility is entitled to recover transition charges under Section 16-108; provided, however, that any failure by the designated party to perform such obligations shall not affect the existence of the intangible transition property or the instrument funding charges or the validity or enforceability of the instrument funding charges in accordance with their terms.

(g) In its transitional funding order, the Commission shall afford flexibility in establishing the terms and conditions of the transitional funding instruments and the grantee instruments, if any, including repayment schedules, collateral, required debt service and other reserves, interest rates and other financing costs and the ability of the electric utility, at its option, to effect a series of issuances of transitional funding instruments and grantee

instruments and correlated assignments, sales, pledges or other transfers of intangible transition property and grantee instruments, if any, not to exceed the aggregate dollar amounts approved in the transitional funding order.

(h) The electric utility shall file a statement of the final terms of the issuance of any series of transitional funding instruments or grantee instruments, if any, with the Commission within 90 days of the receipt of proceeds from such issuance. In addition, the Commission may require the electric utility to file periodic reports on its use of the proceeds at intervals of not less than one year.

(i) Any adjustment to instrument funding charges that is necessary due to subsequent refinancing of transitional funding instruments or grantee instruments, if any, shall be authorized by the Commission in a supplemental order.

(j) In connection with the issuance of a transitional funding order and as a precondition to the imposition of any instrument funding charges authorized thereby, the relevant electric utility shall file tariffs directing that the amount of such instrument funding charges be deducted, stated, and collected separately from the amounts otherwise billed by such electric utility for base rates and transition charges and, where applicable, other rates for tariffed services as set forth in the transitional funding order. Upon the effectiveness of such tariff, the amounts of instrument funding charges thereby deducted and to be deducted shall have become intangible transition property as specified in the transitional funding order. The Commission shall have no authority to review such tariffs except to confirm that the instrument funding charges authorized in the transitional funding order have been deducted, stated, and collected separately from base rates and transition charges and, where applicable, other rates for tariffed services otherwise in effect at such time, and the filing of any such tariff may not be suspended for any other reason. No such deductions referred to in this subsection shall be construed as a change in or otherwise require a recalculation of the authorized amounts of such base rates, transition charges, and other rates for tariffed services under Section 16-102, 16-107, 16-108, or 16-110, as applicable. Instrument funding charges shall be recoverable with respect to electric power and energy or other services for which the deductions provided in this subsection have become effective and no such deduction shall be effective with respect to any services or power in respect of which instrument funding charges have not been so authorized and imposed.

(k) If any adjustment under subsection (d) of Section 18-104 results in the amount of any instrument funding charge as so adjusted exceeding an amount per kilowatt-hour greater than the amount per kilowatt-hour of the instrument funding charge initially authorized by the Commission in its transitional funding order, the relevant electric utility shall file amendatory tariffs reducing the amounts otherwise billed by such electric utility for base rates and transition charges or, where applicable, other rates for tariffed services, by the amount of such excess. Such amendatory tariff shall be subject to the provisions of subsection (j)

of Section 18-104, except that (i) the failure of such amendatory tariff to become effective for any reason shall not delay or impair the effectiveness of the adjustments required under subsection (d) of Section 18-104 and (ii) the obligation of retail customers and other persons or groups of persons to pay instrument funding charges as so adjusted shall not be subject to any defense, counterclaim or right of set off arising as a result of failure by the pertinent electric utility to comply with this subsection (k) of Section 18-104. Nothing in this subsection (k) of Section 18-104 shall restrict any retail customer or other person from bringing any suit in any court or from exercising any other legal or equitable remedy against an electric utility for any failure by such electric utility to comply with this subsection (k) of Section 18-104.

(l) The intangible transition property created under a transitional funding order and the authority of the grantee, assignee, issuer, electric utility or other person authorized thereunder to impose and collect instrument funding charges shall continue beyond the final date set forth in the applicable transitional funding order until such time as all grantee instruments authorized in such order or, if the applicable transitional funding order does not provide for grantee instruments, the related transitional funding instruments authorized in such order, have been paid in full.

Upon the later of the final date set forth in the applicable transitional funding order for the imposition and collection of instrument funding charges or the repayment in full of any grantee instruments or transitional funding instruments, as applicable, authorized in such order, the authority to impose and collect the related instrument funding charges shall cease and the relevant electric utility shall be entitled to file tariffs revoking any deductions from base rates, transition charges or other rates for tariffed services which were granted in connection with such instrument funding charges pursuant to subsection (j) of Section 18-104 or subsection (k) of Section 18-104. The Commission shall have no authority to review such tariffs except to determine that the rates and charges resulting from such revocation do not exceed the applicable base rates, transition charges, or other rates for tariffed services which would otherwise have been in effect at the time of such revocation had no instrument funding charges ever been deducted therefrom.

(m) If so requested by an electric utility in its application for a transitional funding order, the Commission, in the relevant transitional funding order, may authorize (i) the issuance of grantee instruments and/or transitional funding instruments with expected maturity dates later than December 31, 2008 but not later than December 31, 2010 and (ii) the imposition and collection of instrument funding charges by electric utilities, grantees, or assignees later than December 31, 2008 but not later than December 31, 2010 if the electric utility includes in its application a pro forma calculation of the impact of the issuance of the transitional funding instruments or grantee instruments and the associated use of proceeds on the revenue requirement

established by the Commission in the electric utility's last rate case, with such calculation to be presented for illustrative purposes only, and the Commission, in its review of the relevant application for the transitional funding order, finds that such action is in the public interest and that the instrument funding charges to be applied toward payment of transitional funding instruments after December 31, 2008 will be deducted, stated, and collected separately from base rates and, where applicable, other rates for tariffed services otherwise in effect at such time and as scheduled to be in effect through such expected maturity date.

(220 ILCS 5/18-105 new)

Sec. 18-105. Intangible transition property.

(a) Notwithstanding any other provision of this Act or other law, the Commission is hereby authorized, in accordance with the application for a transitional funding order, to create, establish and grant rights in, to and under intangible transition property in and to any grantee, electric utility, issuer or assignee, and such party shall be granted the power to levy general tariffs on retail customers of an electric utility or any other person required to pay an instrument funding charge in order to collect the instrument funding charges related to the intangible transition property in which such party has been granted rights and in order to facilitate the issuance of transitional funding instruments and grantee instruments, if any, to, by or on behalf of electric utilities, grantees, issuers or assignees. The Commission shall be authorized to create, establish and grant such rights hereunder in and to such party with or without receiving consideration from such party.

(b) The State pledges to and agrees with the holders of any transitional funding instruments who may enter into contracts with an electric utility, grantee, assignee or issuer pursuant to this Article XVIII that the State will not in any way limit, alter, impair or reduce the value of intangible transition property created by, or instrument funding charges approved by, a transitional funding order so as to impair the terms of any contract made by such electric utility, grantee, assignee or issuer with such holders or in any way impair the rights and remedies of such holders until the pertinent grantee instruments or, if the related transitional funding order does not provide for the issuance of grantee instruments, the pertinent transitional funding instruments and interest, premium and other fees, costs and charges related thereto, as the case may be, are fully paid and discharged. Electric utilities, grantees and issuers are authorized to include these pledges and agreements of the State in any contract with the holders of transitional funding instruments or with any assignees pursuant to this Article XVIII and any assignees are similarly authorized to include these pledges and agreements of the State in any contract with any issuer, holder or any other assignee. Nothing in this Article XVIII shall preclude the State of Illinois from requiring adjustments as may otherwise be allowed by law to the electric utility's base rates,

transition charges, delivery services charges, or other charges for tariffed services, so long as any such adjustment does not directly affect or impair any instrument funding charges previously authorized by a transitional funding order issued by the Commission.

(c) Transitional funding instruments and grantee instruments, if any, issued under this Article do not constitute debt or liability of the State or of any political subdivision thereof, and transitional funding orders authorizing such issuance do not constitute a pledge of the full faith and credit of the State or of any of its political subdivisions. The issuance of transitional funding instruments and grantee instruments, if any, under this Article shall not directly, indirectly or contingently obligate the State or any political subdivision thereof to levy or to pledge any form of taxation therefor or to make any appropriation for their payment, and any such transitional funding instruments and grantee instruments, if any, shall be payable solely from the intangible transition property or grantee instruments, as the case may be, or from such other proceeds or property as may be pledged therefor. Nothing in this Section shall be construed to prevent the State or any political subdivision thereof from owning any interest in a grantee, assignee or issuer or to prevent any electric utility, issuer, grantee or assignee from selling, pledging or assigning intangible transition property or grantee instruments, as the case may be, or from providing recourse or guarantees or any other third-party credit enhancement in connection with such sale, pledge or assignment.

(220 ILCS 5/18-106 new)

Sec. 18-106. Grantee instruments.

(a) If an electric utility to which grantee instruments have been issued discontinues providing electric power and energy services prior to the maturity date of such grantee instruments, such electric utility shall not be entitled to receive any payment on such grantee instruments on and after the date of such discontinuance.

(b) Notwithstanding the provisions of subsection (a) of this Section, any assignee holding such grantee instruments or any holder of transitional funding instruments which are secured by such grantee instruments shall nevertheless be entitled to recover amounts payable by such grantee under such grantee instruments in accordance with their terms as if such electric utility had not discontinued the provision of electric power and energy.

(c) Notwithstanding any other provision of law, the issuance of any grantee instruments in accordance with the terms and provisions of a transitional funding order shall for all purposes be exempt from the application of Article 39 of the Criminal Code of 1961 and the Interest Act.

(220 ILCS 5/18-107 new)

Sec. 18-107. Security interests in intangible transition property and grantee instruments.

(a) Notwithstanding any other provision of law, neither

intangible transition property, grantee instruments nor any right, title or interest therein, shall constitute property in which a security interest may be created under the Uniform Commercial Code nor shall any such rights be deemed proceeds of any property which is not intangible transition property or grantee instruments, as the case may be. For purposes of the foregoing, the terms "account" and "general intangible" (as defined under Section 9-106 of the Uniform Commercial Code) and the term "instrument" (as defined under Section 9-105 of the Uniform Commercial Code) shall, as used in the Uniform Commercial Code, be deemed to exclude any such intangible transition property, grantee instruments or any right, title, or interest therein.

(b) The granting, perfection and enforcement of security interests in intangible transition property or grantee instruments are governed by this Section rather than by Article 9 of the Uniform Commercial Code.

(c) A valid and enforceable security interest in intangible transition property and in grantee instruments shall attach and be perfected only by the means set forth below in this subsection (c) of Section 18-107:

(1) To the extent transitional funding instruments or grantee instruments are purported to be secured by intangible transition property or to the extent transitional funding instruments are purported to be secured by grantee instruments, as the case may be, as specified in the applicable transitional funding order, the lien of the transitional funding instruments and grantee instruments, if any, shall attach automatically to such intangible transition property and grantee instruments, if any, from the time of issuance of the transitional funding instruments and grantee instruments, if any. Such lien shall be a valid and enforceable security interest in the intangible transition property or the grantee instruments, as the case may be, securing the transitional funding instruments and grantee instruments, if any, and shall be continuously perfected if, before the date of issuance of the applicable transitional funding instruments or grantee instruments, if any, or within no more than 10 days thereafter, a filing has been made by or on behalf of the holder with the Chief Clerk of the Commission stating that such transitional funding instruments or grantee instruments, if any, have been issued. Any such filing made with the Commission in respect to such transitional funding instruments or grantee instruments shall take precedence over any subsequent filing except as may otherwise be provided in the applicable transitional funding order.

(2) The liens under subparagraph (1) are enforceable against the electric utility, any assignee, grantee or issuer, and all third parties, including judicial lien creditors, subject only to the rights of any third parties holding security interests in the intangible transition property or grantee instruments previously perfected in the manner described in this subsection if value has been given by the purchasers of transitional funding instruments or grantee instruments.

A perfected lien in intangible transition property and grantee instruments, if any, is a continuously perfected security interest in all then existing or thereafter arising revenues and proceeds arising with respect to the associated intangible transition property or grantee instruments, as the case may be, whether or not the electric power and energy included in the calculation of such revenues and proceeds have been provided. The lien created under this subsection is perfected and ranks prior to any other lien, including any judicial lien, which subsequently attaches to the intangible transition property or grantee instruments, as the case may be, and to any other rights created by the transitional funding order or any revenues or proceeds of the foregoing. The relative priority of a lien created under this subsection is not defeated or adversely affected by changes to the transitional funding order or to the instrument funding charges payable by any retail customer, class of retail customers or other person or group of persons obligated to pay such charges.

(3) The relative priority of a lien created under this subsection is not defeated or adversely affected by the commingling of revenues arising with respect to intangible transition property or grantee instruments with funds of the electric utility or other funds of the assignee, issuer or grantee.

(4) If an event of default occurs under transitional funding instruments or grantee instruments, the holders thereof or their authorized representatives, as secured parties, may foreclose or otherwise enforce the lien in the grantee instruments or in the intangible transition property securing the transitional funding instruments or grantee instruments, as applicable, subject to the rights of any third parties holding prior security interests in the intangible transition property or grantee instruments previously perfected in the manner provided in this subsection. Upon application by the holders or their authorized representatives, without limiting their other remedies, the Commission shall order the sequestration and payment to the holders or their authorized representatives of revenues arising with respect to the intangible transition property or grantee instruments pledged to the holders. An order under this subsection shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the electric utility, grantee, assignee or issuer.

(5) The Commission shall maintain segregated records which reflect the date and time of receipt of all filings made under this subsection. The Commission may provide that transfers of intangible transition property or of grantee instruments be filed in accordance with the same system.

(220 ILCS 5/18-108 new)

Sec. 18-108. Characterization of transfer. A sale, assignment or other transfer of intangible transition

property or grantee instruments which is expressly stated in the documents governing such transaction to be a sale or other absolute transfer, in a transaction approved in a transitional funding order, shall be treated as an absolute transfer of all of the transferor's right, title and interest in, to and under such intangible transition property or grantee instruments which places such transferred property beyond the reach of the transferor or its creditors, as in a true sale, and not as a pledge or other financing, of such intangible transition property or grantee instruments, as the case may be; provided, however, that whether or not such transfer is deemed to be a sale for federal tax purposes shall be governed by applicable law without regard to this Section 18-108. The characterization of any such transfer as an absolute transfer and the corresponding characterization of the transferee's property interest shall not be defeated or adversely affected by, among other things: (i) the commingling of revenues arising with respect to intangible transition property or grantee instruments, as the case may be, with funds of the electric utility or other funds of the assignee, issuer or grantee; (ii) granting to holders of transitional funding instruments a preferred right to the intangible transition property, whether direct or indirect; (iii) the provision by the electric utility, grantee, assignee, or issuer of any recourse, collateral or credit enhancement with respect to transitional funding instruments or grantee instruments, as the case may be; (iv) the retention by the assigning party of a partial interest in any intangible transition property, whether direct or indirect, or whether subordinate or otherwise; or (v) the electric utility's responsibilities for collecting instrument funding charges and any retention of bare legal title for the purpose of such collection activities; provided, however, that nothing in this Section 18-108 is intended to preclude consideration of such provisions in determining whether or not such transfer is deemed to be a sale for federal tax purposes under other applicable law. A sale, assignment, or other transfer of intangible transition property or grantee instruments, as the case may be, shall be deemed perfected as against third persons, including any judicial lien creditors, when all of the following have taken place:

(1) The Commission has issued the transitional funding order creating the intangible transition property; and

(2) A sale, assignment or transfer of the intangible transition property or grantee instruments, as the case may be, has been executed and delivered in writing by the electric utility.

(220 ILCS 5/18-109 new)

Sec. 18-109. Actions with respect to intangible transition property and related instrument funding charges.

(a) Notwithstanding any other provision of this Act or other law, any electric utility, issuer, assignee, grantee or holder shall be expressly permitted hereby to bring action against a retail customer or other person for nonpayment of any instrument funding charges constituting a part of the

intangible transition property then held by such electric utility, issuer, assignee, grantee or holder. Notwithstanding any other provision of this Act, any such action shall be subject to any and all applicable consumer credit protection laws and other laws relating to origination, collection and reporting of consumer credit obligations.

(b) Notwithstanding any other provision of this Act or other law, the Commission shall have exclusive jurisdiction over any dispute arising out of the obligations to impose and collect instrument funding charges of an electric utility, its successor or any other entity which provides electric power or energy or delivery services to a person from whom the electric utility is authorized to recover transition charges under Section 16-108. Nothing in this Section shall prevent holders from bringing any suit in any court or from exercising any other legal or equitable remedy against an electric utility for failure to distribute collections of instrument funding charges from retail customers, classes of retail customers or other persons or from bringing suit against an electric utility for damages arising from any failure by such electric utility to perform the contractual obligations agreed to by it under any documents pertaining to or executed in connection with the transitional funding instruments issued by or on behalf of such electric utility.

(220 ILCS 5/18-110 new)

Sec. 18-110. Taxation of transfers of intangible transition property and grantee instruments.

(a) Any sale, pledge, assignment or other transfer of intangible transition property and grantee instruments, if any, shall be exempt from any State or local sales, income, transfers, gains, receipts or similar taxes.

(b) Any transfer of intangible transition property and grantee instruments, if any, shall be treated as a pledge or other financing for State tax purposes, including State and local income and franchise taxes, unless the documents governing such transfer specifically state that the transfer is intended to be treated otherwise.

(225 ILCS 5/18-111 new)

Sec. 18-111. Limitations on issuance of transitional funding orders, collection of instrument funding charges, and use of proceeds from issuance of transitional funding instruments and grantee instruments.

Notwithstanding any other provisions of this Article XVIII:

(1) The Commission shall be prohibited from issuing any transitional funding order prior to January 1, 1998, and no electric utility shall issue any transitional funding instrument or grantee instrument, prior to August 1, 1998, or after December 31, 2004.

(2) The Commission shall be authorized to include in any transitional funding order an expiration date after which date the electric utility shall no longer be authorized to issue transitional funding instruments or grantee instruments pursuant to such order, provided, that any such expiration date specified in a transitional funding order shall be no

earlier than 24 months following the date of issuance of the relevant transitional funding order.

(3) No electric utility shall be allowed to increase its rates for tariffed services, including delivery charges, or its transition charges, above the level or levels which would have been allowed in accordance with this Act if the electric utility were not authorized to impose and collect instrument funding charges.

(4) Any transitional funding order issued by the Commission shall set forth, based on the information set forth in the electric utility's application, the procedures to be followed by the electric utility for assuring that proceeds from the issuance of the transitional funding instruments or grantee instruments authorized by such order are applied in accordance with the terms of the order. Any use by an electric utility of the proceeds from issuance of transitional funding instruments or grantee instruments other than in accordance with the purposes specified in the relevant transitional funding order of the Commission, pursuant to subsection (d) of Section 18-103, shall be void.

Section 10. The Public Utilities Act is amended by changing Sections 3-105, 5-104, 6-102, 7-101, 7-102, 7-204, 7-206, 8-406, 8-503, 8-510, 9-201.5, 9-220, 9-244, and 10-113 and adding Section 4-404 as follows:

(220 ILCS 5/3-105) (from Ch. 111 2/3, par. 3-105)

Sec. 3-105. Public utility. "Public utility" means and includes, except where otherwise expressly provided in this Section, every corporation, company, limited liability company, association, joint stock company or association, firm, partnership or individual, their lessees, trustees, or receivers appointed by any court whatsoever that owns, controls, operates or manages, within this State, directly or indirectly, for public use, any plant, equipment or property used or to be used for or in connection with, or owns or controls any franchise, license, permit or right to engage in:

a. the production, storage, transmission, sale, delivery or furnishing of heat, cold, power, electricity, water, or light, except when used solely for communications purposes;

b. the disposal of sewerage; or

c. the conveyance of oil or gas by pipe line.

"Public utility" does not include, however:

1. public utilities that are owned and operated by any political subdivision, public institution of higher education or municipal corporation of this State, or public utilities that are owned by such political subdivision, public institution of higher education, or municipal corporation and operated by any of its lessees or operating agents;

2. water companies which are purely mutual concerns, having no rates or charges for services, but paying the operating expenses by assessment upon the members of such a company and no other person;

3. electric cooperatives as defined in Section

3-119;

4. residential natural gas cooperatives that are not-for-profit corporations established for the purpose of administering and operating, on a cooperative basis, the furnishing of natural gas to residences for the benefit of their members who are residential consumers of natural gas. For entities qualifying as residential natural gas cooperatives and recognized by the Illinois Commerce Commission as such, the State shall guarantee legally binding contracts entered into by residential natural gas cooperatives for the express purpose of acquiring natural gas supplies for their members. The Illinois Commerce Commission shall establish rules and regulations providing for such guarantees. The total liability of the State in providing all such guarantees shall not at any time exceed $1,000,000, nor shall the State provide such a guarantee to a residential natural gas cooperative for more than 3 consecutive years;

5. sewage disposal companies which provide sewage disposal services on a mutual basis without establishing rates or charges for services, but paying the operating expenses by assessment upon the members of the company and no others;

6. (Blank);

7. cogeneration facilities, small power production facilities, and other qualifying facilities, as defined in the Public Utility Regulatory Policies Act and regulations promulgated thereunder, except to the extent State regulatory jurisdiction and action is required or authorized by federal law, regulations, regulatory decisions or the decisions of federal or State courts of competent jurisdiction; ~~and~~

8. the ownership or operation of a facility that sells compressed natural gas at retail to the public for use only as a motor vehicle fuel and the selling of compressed natural gas at retail to the public for use only as a motor vehicle fuel; and~~.~~

9. alternative retail electric suppliers as defined in Article XVI.

~~For the purpose of the least-cost planning obligations of Section 8-401 and for all of Section 8-402, the Illinois Commerce Commission may, for good cause shown in individual cases, exclude from the meaning of "public utility" the electric operations of any public utility, as otherwise defined in this Act, which serves less than 20,000 electric customers within the State of Illinois, or the gas operations of any public utility, as otherwise defined in this Act, which serves less than 20,000 gas customers within the State of Illinois.~~

(Source: P.A. 88-480; 89-42, eff. 1-1-96.)

(220 ILCS 5/4-404 new)

Sec. 4-404. Protection of confidential and proprietary information. The Commission shall provide adequate protection for confidential and proprietary information furnished, delivered or filed by any person, corporation or other entity.

(220 ILCS 5/5-104) (from Ch. 111 2/3, par. 5-104)

Sec. 5-104. Depreciation accounts.

(a) The Commission shall have power, after hearing, to require any or all public utilities, except electric public utilities, to keep such accounts as will adequately reflect depreciation, obsolescence and the progress of the arts. The Commission may, from time to time, ascertain and determine and by order fix the proper and adequate rate of depreciation of the several classes of property for each public utility; and each public utility shall conform its depreciation accounts to the rates so ascertained, determined and fixed.

(b) The Commission shall have the power, after hearing, to require any or all electric public utilities to keep such accounts as will adequately reflect depreciation, obsolescence, and the progress of the arts. The Commission may, from time to time, ascertain and determine and by order fix the proper and adequate rate of depreciation of the several classes of property for each electric public utility; and each electric public utility shall thereafter, absent further order of the Commission, conform its depreciation accounts to the rates so ascertained, determined and fixed until at least the end of the first full calendar year following the date of such determination.

(c) An electric public utility may from time to time alter the annual rates of depreciation, which for purposes of this subsection (c) and subsection (d) shall include amortization, that it applies to its several classes of assets so long as the rates are consistent with generally accepted accounting principles. The electric public utility shall file a statement with the Commission which shall set forth the new rates of depreciation and which shall contain a certification by an independent certified public accountant that the new rates of depreciation are consistent with generally accepted accounting principles. Upon the filing of such statement, the new rates of depreciation shall be deemed to be approved by the Commission as the rates of depreciation to be applied thereafter by the public utility as though an order had been entered pursuant to subsection (b).

(d) In any proceeding conducted pursuant to Section 9-201 or 9-202 to set an electric public utility's rates for service, the Commission may determine not to use, in determining the depreciation expense component of the public utility's rates for service, the rates of depreciation established pursuant to subsection (c), if the Commission in that proceeding finds based on the record that different rates of depreciation are required to adequately reflect depreciation, obsolescence and the progress of the arts, and fixes by order and uses for purposes of that proceeding new rates of depreciation to be thereafter employed by the electric public utility until the end of the first full calendar year following the date of the determination and thereafter until altered in accordance with subsection (b) or (c) of this Section.

(Source: P.A. 84-617.)

(220 ILCS 5/6-102) (from Ch. 111 2/3, par. 6-102)

Sec. 6-102. Authorization of issues of stock.

(a) Subject to the provisions of this Act and of the order of the Commission issued as provided in this Act, a public utility may issue stocks and stock certificates, and bonds, notes and other evidences of indebtedness payable at periods of more than 12 months after the date thereof for any lawful purpose. However, such public utility shall first have secured from the Commission an order authorizing such issue and stating the amount thereof and the purpose or purposes to which the issue or the proceeds thereof are to be applied, and that in the opinion of the Commission, the money, property or labor to be procured or paid for by such issue is reasonably required for the purpose or purposes specified in the order.

(b) The provisions of this subsection (b) shall apply only to (1) any issuances of stock in a cumulative amount, exclusive of any issuances referred to in item (3), that are 10% or more in a calendar year or 20% or more in a 24-month period of the total common stockholders' equity or of the total amount of preferred stock outstanding, as the case may be, of the public utility, and (2) to any issuances of bonds, notes or other evidences of indebtedness in a cumulative principal amount, exclusive of any issuances referred to in item (3), that are 10% or more in a calendar year or 20% or more in a 24-month period of the aggregate principal amount of bonds, notes and other evidences of indebtedness of the public utility outstanding, all as of the date of the issuance, but shall not apply to (3) any issuances of stock or of bonds, notes or other evidences of indebtedness 90% or more of the proceeds of which are to be used by the public utility for purposes of refunding, redeeming or refinancing outstanding issues of stock, bonds, notes or other evidences of indebtedness. To enable it to determine whether it will issue the ~~such~~ order required by subsection (a) of this Section, the Commission may ~~shall~~ hold a hearing and may make such additional inquiry or investigation, and examine such witnesses, books, papers, accounts, documents and contracts and require the filing of such data as it may deem of assistance. The public utility may be required by the Commission to disclose every interest of the directors of such public utility in any transaction under investigation. The Commission shall have power to investigate all such transactions and to inquire into the good faith thereof, to examine books, papers, accounts, documents and contracts of public utilities, construction or other companies or of firms or individuals with whom the public utility shall have had financial transactions, for the purpose of enabling it to verify any statements furnished, and to examine into the actual value of property acquired by or services rendered to such public utility. Before issuing its order, the Commission, when it is deemed necessary by the Commission, shall make an adequate physical valuation of all property of the public utility, but a valuation already made under proper public supervision may be adopted, either in whole or in part, at the discretion of the Commission; and shall also examine all previously authorized or outstanding securities of the public utility, and fixed charges attached thereto. A

statement of the results of such physical valuation, and a statement of the character of all outstanding securities, together with the conditions under which they are held, shall be included in the order. The Commission may require that such information or such part thereof as it thinks proper, shall appear upon the stock, stock certificate, bond, note or other evidence of indebtedness authorized by its order. The Commission may by its order grant permission for the issue of such stock certificates, or bonds, notes or other evidences of indebtedness in the amount applied for, or in a lesser amount, or not at all, and may attach to the exercise of its permission such condition or conditions as it may deem reasonable and necessary. Nothing in this Section shall prevent a public utility from seeking, nor the Commission from approving, a shelf registration plan for issuing securities over a reasonable period in accordance with regulations established by the United States Securities and Exchange Commission. Any securities issued pursuant to an approved shelf registration plan need not be further approved by the Commission so long as they are in compliance with the approved shelf registration plan. The Commission shall have the power to refuse its approval of applications to issue securities, in whole or in part, upon a finding that the issue of such securities would be contrary to public interest. The Commission may also require the public utility to compile for the information of its shareholders such facts in regard to its financial transactions, in such form as the Commission may direct.

No public utility shall, without the consent of the Commission, apply the issue of any stock or stock certificates, or bond, note or other evidence of indebtedness, which was issued pursuant to an order of the Commission entered pursuant to this subsection (b), or any part thereof, or any proceeds thereof, to any purpose not specified in the Commission's order or to any purpose specified in the Commission's order in excess of the amount authorized for such purpose; or issue or dispose of the same on any terms less favorable than those specified in such order, or a modification thereof. The Commission shall have the power to require public utilities to account for the disposition of the proceeds of all sales of stocks and stock certificates, and bonds, notes and other evidences of indebtedness, which were issued pursuant to an order of the Commission entered pursuant to this subsection (b), in such form and detail as it may deem advisable, and to establish such rules and regulations as it may deem reasonable and necessary to insure the disposition of such proceeds for the purpose or purposes specified in its order.

(c) A public utility may issue notes, for proper purposes, and not in violation of any provision of this Act or any other Act, payable at periods of not more than 12 months after the date of issuance of the same, without the consent of the Commission; but no such note shall, in whole or in part, be renewed or be refunded from the proceeds of any other such note or evidence of indebtedness from time to time without the consent of the Commission for an aggregate period of longer than 2 ~~two~~ years.

(d) Any issuance of stock or of bonds, notes or other evidences of indebtedness, other than issuances of notes pursuant to subsection (c) of this Section, which is not subject to subsection (b) of this Section, shall be regulated by the Commission as follows: the public utility shall file with the Commission, at least 15 days before the date of the issuance, an informational statement setting forth the type and amount of the issue and the purpose or purposes to which the issue or the proceeds thereof are to be applied. Prior to the date of the issuance specified in the public utility's filing, the Commission, if it finds that the issuance is not subject to subsection (b) of this Section, shall issue a written order in conformance with subsection (a) of this Section authorizing the issuance. Notwithstanding any other provisions of this Act, the Commission may delegate its authority to enter the order required by this subsection (d) to a hearing examiner.

(e) The Commission shall have no power to authorize the capitalization of the right to be a corporation, or to authorize the capitalization of any franchise, license, or permit whatsoever or the right to own, operate or enjoy any such franchise, license, or permit, in excess of the amount (exclusive of any tax or annual charge) actually paid to the State or to a political subdivision thereof as the consideration for the grant of such franchise, license, permit or right; nor shall any contract for consolidation or lease be capitalized, nor shall any public utility hereafter issue any bonds, notes or other evidences of indebtedness against or as a lien, upon any contract for consolidation or merger.

(f) The provisions of this Section shall not apply to public utilities which are not corporations duly incorporated under the laws of this State to the extent that any such public utility may issue stock, bonds, notes or other evidences of indebtedness not directly or indirectly constituting or creating a lien or charge on, or right to profits from, any property used or useful in rendering service within this State. Nothing in this Section or in Section 6-104 of this Act shall be construed to require a common carrier by railroad subject to Part I of the Interstate Commerce Act, being part of an Act of the 49th Congress of the United States entitled "An Act to Regulate Commerce", as amended, to secure from the Commission authority to issue or execute or deliver any conditional sales contract or similar contract or instrument reserving or retaining title in the seller for all or part of the purchase price of equipment or property used or to be used for or in connection with the transportation of persons or property.

(Source: P.A. 84-617.)

(220 ILCS 5/7-101) (from Ch. 111 2/3, par. 7-101)

Sec. 7-101. Transactions with affiliated interests.

(1) The Commission shall have jurisdiction over holders of the voting capital stock of all public utilities under the jurisdiction of the Commission to such extent as may be necessary to enable the Commission to require the disclosure of the identity in respective interests of every owner of any

substantial interest in such voting capital stocks. One per centum or more is a substantial interest, within the meaning of this subdivision.

(2) (i) Except as provided in subparagraph (ii) of this subsection (2), tThe Commission shall have jurisdiction over affiliated interests having transactions, other than ownership of stock and receipt of dividends thereon, with public utilities under the jurisdiction of the Commission, to the extent of access to all accounts and records of such affiliated interests relating to such transactions, including access to accounts and records of joint or general expenses, any portion of which may be applicable to such transactions; and to the extent of authority to require such reports with respect to such transactions to be submitted by such affiliated interests, as the Commission may prescribe.

(ii) The Commission shall have jurisdiction over affiliated interests having transactions, other than ownership of stock and receipt of dividends thereon, with electric and gas public utilities under the jurisdiction of the Commission, to the extent of access to all accounts and records of such affiliated interests relating to such transactions, including access to accounts and records of joint and general expenses with the electric or gas public utility any portion of which is related to such transactions; and to the extent of authority to require such reports with respect to such transactions to be submitted by such affiliated interests, as the Commission may prescribe; provided, however, that prior to requesting such access or reports from the affiliated interest, the Commission shall first seek to obtain the information that would be included in such accounts, records or reports from the public utility. The Commission shall not have access to any accounts and records of, or require any reports from, an affiliated interest that are not related to a transaction, including without limitation a transfer or exchange of tangible or intangible assets, with the electric or gas public utility. Nothing in this paragraph shall limit the authority of the Commission otherwise provided under this Act to have access to accounts and records of, or to require reports from, the electric or gas public utility or to prescribe guidelines which the electric or gas public utility must follow in allocating costs to transactions with affiliated interests.

For the purpose of this Section, the phrase "affiliated interests" means:

(a) Every corporation and person owning or holding, directly or indirectly, 10% or more of the voting capital stock of such public utility;

(b) Every corporation and person in any chain of successive ownership of 10% or more of voting capital stock;

(c) Every corporation, 10% or more of whose voting capital stock is owned by any person or corporation owning 10% or more of the voting capital stock of such public utility, or by any person or corporation in any such chain of successive ownership of 10% or more of voting capital stock;

(d) Every corporation, 10% or more of whose voting securities is owned, directly or indirectly by such public utility;

(e) Every person who is an elective officer or director of such public utility or of any corporation in any chain of successive ownership of 10% or more of voting capital stock;

(f) Every corporation which has one or more elective officers or one or more directors in common with such public utility;

(g) Every corporation or person which the Commission may determine as a matter of fact after investigation and hearing is actually exercising any substantial influence over the policies and actions of such public utility even though such influence is not based upon stock holding, stockholders, directors or officers to the extent specified in this Section;

(h) Every person or corporation who or which the Commission may determine as a matter of fact after investigation and hearing is actually exercising such substantial influence over the policies and actions of such public utility in conjunction with one or more other corporations or persons with which or whom they are related by ownership or blood relationship or by action in concert that together they are affiliated with such public utility within the meaning of this Section even though no one of them alone is so affiliated.

No such person or corporation is affiliated within the meaning of this Section however, if such person or corporation is otherwise subject to the jurisdiction of the Commission or such person or corporation has not had transactions or dealings other than the holding of stock and the receipt of dividends thereon with such public utility during the 2 year period next preceding.

(3) No management, construction, engineering, supply, financial or similar contract and no contract or arrangement for the purchase, sale, lease or exchange of any property or for the furnishing of any service, property or thing, hereafter made with any affiliated interest, as hereinbefore defined, shall be effective unless it has first been filed with and consented to by the Commission or is exempted in accordance with the provisions of this Section or of Section 16-111 of this Act. The Commission may condition such approval in such manner as it may deem necessary to safeguard the public interest. If it be found by the Commission, after investigation and a hearing, that any such contract or arrangement is not in the public interest, the Commission may disapprove such contract or arrangement. Every contract or arrangement not consented to or excepted by the Commission as provided for in this Section is void.

The consent to, or exemption or waiver of consent to, any contract or arrangement under this Section or Section 16-111 ~~as required above~~, does not constitute approval of payments thereunder for the purpose of computing expense of operation in any rate proceeding. However, the Commission shall not require a public utility to make purchases at prices exceeding the prices offered by an affiliated interest, and the Commission shall not be required to disapprove or disallow, solely on the ground that such payments yield the affiliated interest a return or rate of return in excess of that allowed the public utility, any portion of payments for

purchases from an affiliated interest.

(4) The Commission may by general rules applicable alike to all public utilities affected thereby waive the filing and necessity for approval of contracts and arrangements described in subparagraph (3) of this Section in cases of (a) contracts or arrangements made in the ordinary course of business for the employment of officers or employees; (b) contracts or arrangements made in the ordinary course of business for the purchase of services, supplies, or other personal property at prices not exceeding the standard or prevailing market prices, or at prices or rates fixed pursuant to law; (c) contracts or arrangements where the total obligation to be incurred under such contract or arrangement ~~thereunder~~ does not exceed the lesser of (i) $5,000,000 or (ii) 2% of the public utility's receipts from all tariffed services (as defined in Article XVI) in the preceding calendar year ~~$500~~; (d) the temporary leasing, lending or interchanging of equipment in the ordinary course of business or in case of an emergency; and (e) contracts made by a public utility with a person or corporation whose bid is the most favorable to the public utility, as ascertained by competitive bidding ~~under such rules as may be prescribed by the Commission~~. If the Commission, after a hearing, finds that any public utility is abusing or has abused such general rule and thereby is evading compliance with the standard established herein, the Commission may require such public utility to thereafter file and receive the Commission's approval upon all such transactions, but that general rule shall remain in full force and effect as to all other public utilities.

(Source: P.A. 84-617.)

(220 ILCS 5/7-102) (from Ch. 111 2/3, par. 7-102)

Sec. 7-102. Transactions requiring Commission approval. Unless the consent and approval of the Commission is first obtained or unless such approval is waived by the Commission or is exempted in accordance with the provisions of this Section or of any other Section of this Act:

(a) No 2 or more public utilities may enter into contracts with each other that will enable such public utilities to operate their lines or plants in connection with each other;

(b) No public utility may purchase, lease, or in any other manner acquire control, direct or indirect, over the franchises, licenses, permits, plants, equipment, business or other property of any other public utility;

(c) No public utility may assign, transfer, lease, mortgage, sell (by option or otherwise), or otherwise dispose of or encumber the whole or any part of its franchises, licenses, permits, plant, equipment, business, or other property, but the consent and approval of the Commission shall not be required for the sale, lease, assignment or transfer (1) by any public utility of any tangible personal property which is not necessary or useful in the performance of its duties to the public, or (2) by any railroad of any real or tangible personal property;

(d) No public utility may by any means, direct or

indirect, merge or consolidate its franchises, licenses, permits, plants, equipment, business or other property with that of any other public utility;

(e) No public utility may purchase, acquire, take or receive any stock, stock certificates, bonds, notes or other evidences of indebtedness of any other public utility;

(f) No public utility may in any manner, directly or indirectly, guarantee the performance of any contract or other obligation of any other person, firm or corporation whatsoever;

(g) No public utility may use, appropriate, or divert any of its moneys, property or other resources in or to any business or enterprise which is not, prior to such use, appropriation or diversion essentially and directly connected with or a proper and necessary department or division of the business of such public utility; provided that this subsection shall not be construed as modifying subsections (a) through (e) of this Section;

(h) No public utility may, directly or indirectly, invest, loan or advance, or permit to be invested, loaned or advanced any of its moneys, property or other resources in, for, in behalf of or to any other person, firm, trust, group, association, company or corporation whatsoever, except that no consent or approval by the Commission is necessary for the purchase of stock in development credit corporations organized under the Illinois Development Credit Corporation Act, providing that no such purchase may be made hereunder if, as a result of such purchase, the cumulative purchase price of all such shares owned by the utility would exceed one-fiftieth of one per cent of the utility's gross operating revenue for the preceding calendar year.

(i) Any public utility may present to the Commission for approval options or contracts to sell or lease real property, notwithstanding that the value of the property under option may have changed between the date of the option and the subsequent date of sale or lease. If the options or contracts are approved by the Commission, subsequent sales or leases in conformance with those options or contracts may be made by the public utility without any further action by the Commission. If approval of the options or contracts is denied by the Commission, the options or contracts are void and any consideration theretofore paid to the public utility must be refunded within 30 days following disapproval of the application.

The proceedings for obtaining the approval of the Commission provided for it in this Section shall be as follows: There shall be filed with the Commission a petition, joint or otherwise, as the case may be, signed and verified by the president, any vice president, secretary, treasurer, comptroller, general manager, or chief engineer of the respective companies, or by the person or company, as the case may be, clearly setting forth the object and purposes desired, and setting forth the full and complete terms of the proposed assignment, transfer, lease, mortgage, purchase, sale, merger, consolidation, contract or other transaction, as the case may be. Upon the filing of such petition, the Commission shall, if it deems necessary, fix a time and place

for the hearing thereon. After such hearing, or in case no hearing is required, if the Commission is satisfied that such petition should reasonably be granted, and that the public will be convenienced thereby, the Commission shall make such order in the premises as it may deem proper and as the circumstances may require, attaching such conditions as it may deem proper, and thereupon it shall be lawful to do the things provided for in such order. The Commission shall impose such conditions as will protect the interest of minority and preferred stockholders.

The Commission shall have power by general rules applicable alike to all public utilities, other than electric and gas public utilities, affected thereby to waive the filing and necessity for approval of the following: (a) sales of property involving a consideration of not more than $300,000 for utilities with gross revenues in excess of $50,000,000 annually and a consideration of not more than $100,000 for all other utilities; (b) leases, easements and licenses involving a consideration or rental of not more than $30,000 per year for utilities with gross revenues in excess of $50,000,000 annually and a consideration or rental of not more than $10,000 per year for all other utilities; (c) leases of office building space not required by the public utility in rendering service to the public; (d) the temporary leasing, lending or interchanging of equipment in the ordinary course of business or in case of an emergency; and (e) purchase-money mortgages given by a public utility in connection with the purchase of tangible personal property where the total obligation to be secured shall be payable within a period not exceeding one year. However, if the Commission, after a hearing, finds that any public utility to which such rule is applicable is abusing or has abused such general rule and thereby is evading compliance with the standard established herein, the Commission shall have power to require such public utility to thereafter file and receive the Commission's approval upon all such transactions as described in this Section, but such general rule shall remain in full force and effect as to all other public utilities to which such rule is applicable.

The filing of, and the consent and approval of the Commission for, any assignment, transfer, lease, mortgage, purchase, sale, merger, consolidation, contract or other transaction by an electric or gas public utility with gross revenues in all jurisdictions of $250,000,000 or more annually involving a sale price or annual consideration in an amount of $5,000,000 or less shall not be required. The Commission shall also have the authority, on petition by an electric or gas public utility with gross revenues in all jurisdictions of $250,000,000 or more annually, to establish by order higher thresholds than the foregoing for the requirement of approval of transactions by the Commission pursuant to this Section for the electric or gas public utility, but no greater than 1% of the electric or gas public utility's average total gross utility plant in service in the case of sale, assignment or acquisition of property, or 2.5% of the electric or gas public utility's total revenue in the case of other sales price or annual consideration, in each

case based on the preceding calendar year, and subject to the power of the Commission, after notice and hearing, to further revise those thresholds at a later date. In addition to the foregoing, the Commission shall have power by general rules applicable alike to all electric and gas public utilities affected thereby to waive the filing and necessity for approval of the following: (a) sales of property involving a consideration of $100,000 or less for electric and gas utilities with gross revenues in all jurisdictions of less than $250,000,000 annually; (b) leases, easements and licenses involving a consideration or rental of not more than $10,000 per year for electric and gas utilities with gross revenues in all jurisdictions of less than $250,000,000 annually; (c) leases of office building space not required by the electric or gas public utility in rendering service to the public; (d) the temporary leasing, lending or interchanging of equipment in the ordinary course of business or in the case of an emergency; and (e) purchase-money mortgages given by an electric or gas public utility in connection with the purchase of tangible personal property where the total obligation to be secured shall be payable within a period of one year or less. However, if the Commission, after a hearing, finds that any electric or gas public utility is abusing or has abused such general rule and thereby is evading compliance with the standard established herein, the Commission shall have power to require such electric or gas public utility to thereafter file and receive the Commission's approval upon all such transactions as described in this Section and not exempted pursuant to the first sentence of this paragraph or to subsection (g) of Section 16-111 of this Act, but such general rule shall remain in full force and effect as to all other electric and gas public utilities.

Every assignment, transfer, lease, mortgage, sale or other disposition or encumbrance of the whole or any part of the franchises, licenses, permits, plant, equipment, business or other property of any public utility, or any merger or consolidation thereof, and every contract, purchase of stock, or other transaction referred to in this Section and not exempted in accordance with the provisions of the immediately preceding paragraph of this Section, made otherwise than in accordance with an order of the Commission authorizing the same, except as provided in this Section, shall be void. The provisions of this Section shall not apply to any transactions by or with a political subdivision or municipal corporation of this State.

The provisions of this Section do not apply to the purchase or sale of emission allowances created under and defined in Title IV of the federal Clean Air Act Amendments of 1990 (P.L. 101-549), as amended.

(Source: P.A. 88-604, eff. 9-1-94; 89-99, eff. 7-7-95.)

(220 ILCS 5/7-204) (from Ch. 111 2/3, par. 7-204)

Sec. 7-204. Reorganization defined; Commission approval therefore.

(a) For purposes of this Section, "reorganization" means any transaction which, regardless of the means by which it is

accomplished, results in a change in the ownership of a majority of the voting capital stock of an Illinois public utility; or the ownership or control of any entity which owns or controls a majority of the voting capital stock of a public utility; or by which 2 public utilities merge, or by which a public utility acquires substantially all of the assets of another public utility; provided, however, that "reorganization" as used in this Section shall not include a mortgage or pledge transaction entered into to secure a bona fide borrowing by the party granting the mortgage or making the pledge.

In addition to the foregoing, "reorganization" shall include for purposes of this Section any transaction which, regardless of the means by which it ~~its~~ is accomplished, will have the effect of terminating the affiliated interest status of any entity as defined in paragraphs (a), (b), (c) or (d) of subsection (2) of Section 7-101 of this Act where such entity had transactions with the public utility, in the 12 ~~twelve~~ calendar months immediately preceding the date of termination of such affiliated interest status subject to subsection (3) of Section 7-101 of this Act with a value greater than 15% of the public utility's revenues for that same 12-month ~~twelve-month~~ period. If the proposed transaction would have the effect of terminating the affiliated interest status of more than one Illinois public utility, the utility with the greatest revenues for the 12-month ~~twelve-month~~ period shall be used to determine whether such proposed transaction is a reorganization for the purposes of this Section. The Commission shall have jurisdiction over any reorganization as defined herein.

(b) No reorganization shall take place without prior Commission approval. The Commission shall not approve any proposed reorganization if the Commission finds, after notice and hearing, that the reorganization will adversely affect the utility's ability to perform its duties under this Act. In reviewing any proposed reorganization, the Commission must find that:

(1) ~~(a)~~ the proposed reorganization will not diminish the utility's ability to provide adequate, reliable, efficient, safe and least-cost public utility service;

(2) ~~(b)~~ the proposed reorganization will not result in the unjustified subsidization of non-utility activities by the utility or its customers;

(3) ~~(c)~~ costs and facilities are fairly and reasonably allocated between utility and non-utility activities in such a manner that the Commission may identify those costs and facilities which are properly included by the utility for ratemaking purposes;

(4) ~~(d)~~ the proposed reorganization will not significantly impair the utility's ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure;

(5) ~~(e)~~ the utility will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois public utilities;~~.~~

(6) the proposed reorganization is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction;

(7) the proposed reorganization is not likely to result in any adverse rate impacts on retail customers.

(c) The Commission shall not approve a reorganization without ruling on: (i) the allocation of any savings resulting from the proposed reorganization; and (ii) whether the companies should be allowed to recover any costs incurred in accomplishing the proposed reorganization and, if so, the amount of costs eligible for recovery and how the costs will be allocated.

(d) The Commission shall issue its Order approving or denying the proposed reorganization within 11 months after the application is filed. The Commission may extend the deadline for a period equivalent to the length of any delay which the Commission finds to have been caused by the Applicant's failure to provide data or information requested by the Commission or that the Commission ordered the Applicant to provide to the parties. The Commission may also extend the deadline by an additional period not to exceed 3 months to consider amendments to the Applicant's filing, or to consider reasonably unforeseeable changes in circumstances subsequent to the Applicant's initial filing.

(e) Subsections (c) and (d) and subparagraphs (6) and (7) of subsection (b) of this Section shall apply only to merger applications submitted to the Commission subsequent to April 23, 1997. No other Commission approvals shall be required for mergers that are subject to this Section.

(f) In approving any proposed reorganization pursuant to this Section the Commission may impose such terms, conditions or requirements as, in its judgment, are necessary to protect the interests of the public utility and its customers.

(Source: P.A. 84-617; 84-1025.)

(220 ILCS 5/7-206) (from Ch. 111 2/3, par. 7-206)

Sec. 7-206. Separate accounts for nonpublic business of public utility. The Commission may require every public utility engaged directly or indirectly in any other than a public utility business, as defined by law, to keep separately in like manner and form the accounts of all such other business, and the Commission may provide for the examination and inspection of the books, accounts, papers and records of such other business, in so far as may be necessary to enforce any provisions of this Act. The Commission shall have the power to inquire as to and prescribe the apportionment of capitalization, earnings, debts and expenses fairly and justly to be awarded to or borne by the ownership, operation, management or control of such public utility as distinguished from such other business. Provided, however, that an electric or gas public utility shall not be required to maintain the accounts of any non-public utility business in the same manner and form as the electric or gas public utility is required to keep the accounts of its public utility business unless expressly ordered by the Commission.

(Source: P.A. 84-617.)

(220 ILCS 5/8-406) (from Ch. 111 2/3, par. 8-406)

Sec. 8-406. Certificate of public convenience and necessity.

(a) No public utility not owning any city or village franchise nor engaged in performing any public service or in furnishing any product or commodity within this State as of July 1, 1921 and not possessing a certificate of public convenience and necessity from the Illinois Commerce Commission, the State Public Utilities Commission or the Public Utilities Commission, at the time this amendatory Act of 1985 goes into effect, shall transact any business in this State until it shall have obtained a certificate from the Commission that public convenience and necessity require the transaction of such business.

(b) No public utility shall begin the construction of any new plant, equipment, property or facility which is not in substitution of any existing plant, equipment, property or facility or any extension or alteration thereof or in addition thereto, ~~and which in the case of gas and electric utilities may affect the energy plan of the utility~~ unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction. Whenever after a hearing the Commission determines that any new construction or the transaction of any business by a public utility will promote the public convenience and is necessary thereto, it shall have the power to issue certificates of public convenience and necessity. The Commission shall determine that proposed construction will promote the public convenience and necessity only if the utility demonstrates: (1) that the proposed construction is necessary to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers; ~~(2) with respect to gas and electric utilities, that the proposed construction is consistent with the most recent energy plan adopted by the Commission for the utility and the State, as updated;~~ (2) ~~(3)~~ that the utility is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof; and (3) ~~(4)~~ that the utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers. ~~If the Commission finds that the public convenience and necessity requires a new electric generating facility to be added by the utility, the Commission shall evaluate the proposed construction in comparison with the merits of a facility designed to use Illinois coal in an environmentally acceptable way, and shall consider the economic impact on employment directly or indirectly related to the production of coal in Illinois over the entire period of time affected by the proposed construction or its alternatives.~~

(c) After the effective date of this amendatory Act of 1987, no construction shall commence on any new nuclear power plant to be located within this State, and no certificate of public convenience and necessity or other authorization shall be issued therefor by the Commission, until the Director of

the Illinois Environmental Protection Agency finds that the United States Government, through its authorized agency, has identified and approved a demonstrable technology or means for the disposal of high level nuclear waste, or until such construction has been specifically approved by a statute enacted by the General Assembly.

As used in this Section, "high level nuclear waste" means those aqueous wastes resulting from the operation of the first cycle of the solvent extraction system or equivalent and the concentrated wastes of the subsequent extraction cycles or equivalent in a facility for reprocessing irradiated reactor fuel and shall include spent fuel assemblies prior to fuel reprocessing.

(d) In making its determination, the Commission shall attach primary weight to the cost or cost savings to the customers of the utility. The Commission may consider any or all factors which will or may affect such cost or cost savings.

(e) The Commission may issue a temporary certificate which shall remain in force not to exceed one year in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of this Section temporary acts or operations for which the issuance of a certificate will not be required in the public interest.

A public utility shall not be required to obtain but may apply for and obtain a certificate of public convenience and necessity pursuant to this Section with respect to any matter as to which it has received the authorization or order of the Commission under the Electric Supplier Act, and any such authorization or order granted a public utility by the Commission under that Act shall as between public utilities be deemed to be, and shall have except as provided in that Act the same force and effect as, a certificate of public convenience and necessity issued pursuant to this Section.

No electric cooperative shall be made or shall become a party to or shall be entitled to be heard or to otherwise appear or participate in any proceeding initiated under this Section for authorization of power plant construction and as to matters as to which a remedy is available under The Electric Supplier Act.

(f) Such certificates may be altered or modified by the Commission, upon its own motion or upon application by the person or corporation affected. Unless exercised within a period of 2 years from the grant thereof authority conferred by a certificate of convenience and necessity issued by the Commission shall be null and void.

No certificate of public convenience and necessity shall be construed as granting a monopoly or an exclusive privilege, immunity or franchise.

(Source: P.A. 85-377.)

(220 ILCS 5/8-503) (from Ch. 111 2/3, par. 8-503)

Sec. 8-503. Whenever the Commission, after a hearing, shall find that additions, extensions, repairs or

improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any 2 ~~two~~ or more public utilities are necessary and ought reasonably to be made or that a new structure or structures is or are necessary and should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the Commission shall make and serve an order authorizing or directing that such additions, extensions, repairs, improvements or changes be made, or such structure or structures be erected at the location, in the manner and within the time specified in said order; provided, however, that the Commission shall have no authority to order the construction, addition or extension of any electric generating plant unless the public utility requests a certificate for the construction of the plant pursuant to Section 8-406 and in conjunction with such request also requests the entry of an order under this Section. If any additions, extensions, repairs, improvements or changes, or any new structure or structures, which the Commission has authorized or ordered to be erected, require joint action by 2 ~~two~~ or more public utilities, the Commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been authorized or ordered and that the same shall be made at the joint cost whereupon the said public utilities shall have such reasonable time as the Commission may grant within which to agree upon the apportionment or division of cost of such additions, extensions, repairs, improvements or changes or new structure or structures, which each shall bear. If at the expiration of such time such public utilities shall fail to file with the Commission a statement that an agreement has been made for a division or apportionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structure or structures, the Commission shall have authority, after further hearing, to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured.

Nothing in this Act shall prevent the Commission, upon its own motion or upon petition, from ordering, after a hearing, the extension, construction, connection or interconnection of plant, equipment, pipe, line, facilities or other physical property of a public utility in whatever configuration the Commission finds necessary to ensure that natural gas is made available to consumers at no increased cost to the customers of the utility supplying the gas.

Whenever the Commission finds, after a hearing, that the public convenience or necessity requires it, the Commission may order public utilities subject to its jurisdiction to work jointly (1) for the purpose of purchasing and distributing natural gas or gas substitutes, provided it shall not increase the cost of gas to the customers of the participating utilities, or (2) for any other reasonable purpose.

(Source: P.A. 84-617.)

(220 ILCS 5/8-510) (from Ch. 111 2/3, par. 8-510)

Sec. 8-510. Land surveys. For the purpose of making land surveys, any public utility that has been granted a certificate of public convenience and necessity by, or received an order under Section 8-503 of this Act from, the Commission may, 30 days after providing written notice to the owner thereof by registered mail, enter upon the property of any owner who has refused permission for entrance upon that property, but subject to responsibility for all damages which may be inflicted thereby.

(Source: P.A. 84-617.)

(220 ILCS 5/9-201.5)

Sec. 9-201.5. Decommissioning nuclear power plants; rates.

(a) The Commission may after hearing, in a rate case or otherwise, authorize the institution of rate provisions or tariffs that increase or decrease charges to customers to reflect changes in, or additional or reduced costs of, decommissioning nuclear power plants, including accruals for estimates of those costs, irrespective of any changes in other costs or revenues; provided the revenues collected under such rates or tariffs are used to recover costs associated with contributions to appropriate decommissioning trust funds or to reduce the amounts to be charged under such rates or tariffs in the future. These provisions or tariffs shall hereinafter be referred to as "decommissioning rates".

(b) A public utility that does not have a decommissioning rate in effect on the effective date of this amendatory Act of 1994 may not place a decommissioning rate in effect before January 1, 1995. Changes in charges under a decommissioning rate shall not be subject to the notice and filing requirements of subsection (a) of Section 9-201 of this Act, but a decommissioning rate of a utility that does not have such a rate in effect before the effective date of this amendatory Act of 1994 shall provide that no increase in charges under that rate may take effect until 60 days after the utility provides the proposed increased charge to the Commission for review. The Commission may require that a decommissioning rate contain provisions for reconciling amounts collected under the rate with both reasonably projected costs and actual costs prudently incurred. As used in this Section, "decommissioning costs" and "decommissioning trust fund" have the same meaning as in Section 8-508.1 of this Act.

(c) Nothing contained in this amendatory Act of 1994 shall affect any determination of the authority of the Commission before the effective date of this amendatory Act of 1994. Nothing contained in this amendatory Act of 1994 shall be used in any determination of the authority of the Commission after the effective date of this amendatory Act of 1994, except with respect to decommissioning rates.

(d) A decommissioning rate authorized by the Commission under this Section and the decommissioning cost studies underlying the rate shall be subject to hearing and review, in a rate case or otherwise, not less than once every 6 years~~, and the decommissioning rate shall be discontinued by~~

~~the Commission unless specifically approved for continuation by the Commission after the hearing~~.
(Source: P.A. 88-653, eff. 1-1-95.)

(220 ILCS 5/9-220) (from Ch. 111 2/3, par. 9-220)
Sec. 9-220. Rate changes based on changes in fuel costs.
(a) Notwithstanding the provisions of Section 9-201, the Commission may authorize the increase or decrease of rates and charges based upon changes in the cost of fuel used in the generation or production of electric power, changes in the cost of purchased power, or changes in the cost of purchased gas through the application of fuel adjustment clauses or purchased gas adjustment clauses. The Commission may also authorize the increase or decrease of rates and charges based upon expenditures or revenues resulting from the purchase or sale of emission allowances created under the federal Clean Air Act Amendments of 1990, ~~as defined in Section 8-402.1,~~ through such fuel adjustment clauses, as a cost of fuel. For the purposes of this paragraph, cost of fuel used in the generation or production of electric power shall include the amount of any fees paid by the utility for the implementation and operation of a process for the desulfurization of the flue gas when burning high sulfur coal at any location within the State of Illinois irrespective of the attainment status designation of such location~~, except for any fees or costs related to a service contract which is part of a utility's Clean Air Act compliance plan approved pursuant to Section 8-402.1, to the extent that recovery of comparable costs would not be permitted under this Section if incurred directly by a utility owning and operating such a facility~~; but shall not include transportation costs of coal (i) except to the extent that for contracts entered into on and after the effective date of this amendatory Act of 1997, the cost of the coal, including transportation costs, constitutes the lowest cost for adequate and reliable fuel supply reasonably available to the public utility in comparison to the cost, including transportation costs, of other adequate and reliable sources of fuel supply reasonably available to the public utility, or (ii) except as otherwise provided in the next 3 sentences of this paragraph. Such costs of fuel shall, when requested by a utility or at the conclusion of the utility's next general electric rate proceeding, whichever shall first occur, include transportation costs of coal purchased under existing coal purchase contracts. For purposes of this paragraph "existing coal purchase contracts" means contracts for the purchase of coal in effect on the effective date of this amendatory Act of 1991, as such contracts may thereafter be amended, but only to the extent that any such amendment does not increase the aggregate quantity of coal to be purchased under such contract. Nothing herein shall authorize an electric utility to recover through its fuel adjustment clause any amounts of transportation costs of coal that were included in the revenue requirement used to set base rates in its most recent general rate proceeding. Cost shall be based upon uniformly applied accounting principles. Annually, the Commission shall initiate public hearings to determine whether the clauses

reflect actual costs of fuel, gas, power, or coal transportation purchased to determine whether such purchases were prudent, and to reconcile any amounts collected with the actual costs of fuel, power, gas, or coal transportation prudently purchased. In each such proceeding, the burden of proof shall be upon the utility to establish the prudence ~~prudency~~ of its cost of fuel, power, gas, or coal transportation purchases and costs. The Commission shall issue its final order in each such annual proceeding for an electric utility by December 31 of the year immediately following the year to which the proceeding pertains, provided, that the Commission shall issue its final order with respect to such annual proceeding for the years 1996 and earlier by December 31, 1998.

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

(c) Notwithstanding any contrary or inconsistent provisions in Section 9-201 of this Act, in subsection (a) of this Section or in any rules or regulations promulgated by the Commission pursuant to subsection (g) of this Section, a public utility providing electric service, other than a public utility described in subsection (e) or (f) of this Section, may at any time during the mandatory transition period file with the Commission proposed tariff sheets that establish the rate per kilowatt-hour to be applied pursuant to the public utility's fuel adjustment clause at the average value for such rate during the preceding 24 months, provided

that such average rate results in a credit to customers' bills, without making any revisions to the public utility's base rate tariffs. The proposed tariff sheets shall establish the fuel adjustment rate for a specific time period of at least 3 years but not more than 5 years, provided that the terms and conditions for any reinstatement earlier than 5 years shall be set forth in the proposed tariff sheets and subject to modification or approval by the Commission. The Commission shall review and shall by order approve the proposed tariff sheets if it finds that the requirements of this subsection are met. The Commission shall not conduct the annual hearings specified in the last 3 sentences of subsection (a) of this Section for the utility for the period that the factor established pursuant to this subsection is in effect.

(d) A public utility providing electric service, or a public utility providing gas service may file with the Commission proposed tariff sheets that eliminate the public utility's fuel or purchased gas adjustment clause and adjust the public utility's base rate tariffs to provide for recovery of power supply costs or gas supply costs that would have been recovered through such clause; provided, that the provisions of this subsection (d) shall not be available to a public utility described in subsections (e) or (f) of this Section to eliminate its fuel adjustment clause. Notwithstanding any contrary or inconsistent provisions in Section 9-201 of this Act, in subsection (a) of this Section, or in any rules or regulations promulgated by the Commission pursuant to subsection (g) of this Section, the Commission shall review and shall by order approve, or approve as modified in the Commission's order, the proposed tariff sheets within 240 days after the date of the public utility's filing. The Commission's order shall approve rates and charges that the Commission, based on information in the public utility's filing or on the record if a hearing is held by the Commission, finds will recover the reasonable, prudent and necessary jurisdictional power supply costs or gas supply costs incurred or to be incurred by the public utility during a 12 month period found by the Commission to be appropriate for these purposes, provided, that such period shall be either (i) a 12 month historical period occurring during the 15 months ending on the date of the public utility's filing, or (ii) a 12 month future period ending no later than 15 months following the date of the public utility's filing. The public utility shall include with its tariff filing information showing both (1) its actual jurisdictional power supply costs or gas supply costs for a 12 month historical period conforming to (i) above and (2) its projected jurisdictional power supply costs or gas supply costs for a future 12 month period conforming to (ii) above. If the Commission's order requires modifications in the tariff sheets filed by the public utility, the public utility shall have 7 days following the date of the order to notify the Commission whether the public utility will implement the modified tariffs or elect to continue its fuel or purchased gas adjustment clause in force as though no order had been entered. The Commission's order shall provide for any

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

(e) Notwithstanding any contrary or inconsistent provisions in Section 9-201 of this Act, in subsection (a) of this Section, or in any rules promulgated by the Commission pursuant to subsection (g) of this Section, a public utility providing electric service to more than 1,000,000 customers in this State may, within the first 6 months after the effective date of this amendatory Act of 1997, file with the Commission proposed tariff sheets that eliminate, effective January 1, 1997, the public utility's fuel adjustment clause without adjusting its base rates, and such tariff sheets shall be effective upon filing. To the extent the application of the fuel adjustment clause had resulted in net charges to customers after January 1, 1997, the utility shall also file a tariff sheet that provides for a refund stated on a per kilowatt-hour basis of such charges over a period not to exceed 6 months; provided however, that such refund shall not include the proportional amounts of taxes paid under the Use Tax Act, Service Use Tax Act, Service Occupation Tax Act, and Retailers' Occupation Tax Act on fuel used in generation. The Commission shall issue an order within 45 days after the date of the public utility's filing approving or approving as modified such tariff sheet. If the fuel adjustment clause is eliminated pursuant to this subsection, the Commission shall not conduct the annual hearings specified in the last 3 sentences of subsection (a) of this Section for the utility for any period after December 31, 1996 and prior to any reinstatement of such clause. A public utility whose fuel adjustment clause has been eliminated pursuant to this subsection shall not file a proposed tariff sheet seeking, or otherwise petition the Commission for, reinstatement of the fuel adjustment clause prior to January 1, 2005.

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

component of the base rates to recover 91% of the public utility's average fuel and power supply costs for the 2 most recent years for which the Commission, as of January 1, 1997, has issued final orders in annual proceedings pursuant to subsection (a), where the average fuel and power supply costs per kilowatt-hour shall be calculated as the sum of the public utility's prudent and allowable fuel and power supply costs as found by the Commission in the 2 proceedings divided by the public utility's actual jurisdictional kilowatt-hour sales for those 2 years, provided, that such tariff sheets shall be effective upon filing. To the extent the application of the fuel adjustment clause had resulted in net charges to customers after January 1, 1997, the utility shall also file a tariff sheet that provides for a refund stated on a per kilowatt-hour basis of such charges over a period not to exceed 6 months. Provided however, that such refund shall not include the proportional amounts of taxes paid under the Use Tax Act, Service Use Tax Act, Service Occupation Tax Act, and Retailers' Occupation Tax Act on fuel used in generation. The Commission shall issue an order within 45 days after the date of the public utility's filing approving or approving as modified such tariff sheet. If the fuel adjustment clause is eliminated pursuant to this subsection, the Commission shall not conduct the annual hearings specified in the last 3 sentences of subsection (a) of this Section for the utility for any period after December 31, 1996 and prior to any reinstatement of such clause. A public utility whose fuel adjustment clause has been eliminated pursuant to this subsection shall not file a proposed tariff sheet seeking, or otherwise petition the Commission for, reinstatement of the fuel adjustment clause prior to January 1, 2005.

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

(Source: P.A. 87-173; 88-488.)

(220 ILCS 5/9-244) (from Ch. 111 2/3, par. 9-244)

Sec. 9-244. Alternative rate regulation.

(a) Notwithstanding any of the ratemaking provisions of this Article IX or other Sections of this Act, or the Commission's rules that are deemed to require rate of return regulation, and except as provided in Article XVI, the Commission, upon petition by an electric or gas public utility, and after notice and hearing, may authorize for some or all of the regulated services of that utility, the implementation of one or more programs consisting of (i) alternatives to rate of return regulation, including but not limited to earnings sharing, rate moratoria, price caps or flexible rate options, or (ii) other regulatory mechanisms that reward or penalize the utility through the adjustment of rates based on utility performance. In the case of other regulatory mechanisms that reward or penalize utilities through the adjustment of rates based on utility performance, the utility's performance shall be compared to standards established in the Commission order authorizing the implementation of other regulatory mechanisms. The Commission is specifically authorized to approve in response

to such petitions different forms of alternatives to rate of return regulation or other regulatory mechanisms to fit the particular characteristics and requirements of different utilities and their service territories.

(b) The Commission shall approve the program if it finds, based on the record, that:

(1) the program is likely to result in rates lower than otherwise would have been in effect under traditional rate of return regulation for the services covered by the program and that are consistent with the provisions of Section 9-241 of the Act; and

(2) the program is likely to result in other substantial and identifiable benefits that would be realized by customers served under the program and that would not be realized in the absence of the program; and

(3) the utility is in compliance with applicable Commission standards for reliability and implementation of the program is not likely to adversely affect service reliability; and

(4) implementation of the program is not likely to result in deterioration of the utility's financial condition; and

(5) implementation of the program is not likely to adversely affect the development of competitive markets; and

(6) the electric utility is in compliance with its obligation to offer delivery services pursuant to Article XVI; and

(7) the program includes annual reporting requirements and other provisions that will enable the Commission to adequately monitor its implementation of the program; and

(8) the program includes provisions for an equitable sharing of any net economic benefits between the utility and its customers to the extent the program is likely to result in such benefits.

The Commission shall issue its order approving or denying the program no later than 270 days from the date of filing of the petition. Any program approved under this Section shall continue in effect until revised, modified or terminated by order of the Commission as provided in this Section. If the Commission cannot make the above findings, it shall specifically identify in its order the reason or reasons why the proposed program does not meet the above criteria, and shall identify any modifications supported in the record, if any, that would cause the program to satisfy the above criteria. In the event the order identifies any such modifications it shall not become a final order subject to petitions for rehearing until 15 days after service of same by the Commission. The utility shall have 14 days following the date of service of the order to notify the Commission in writing whether it will accept any modifications so identified in the order or whether it has elected not to proceed with the program. If the utility notifies the Commission that it will accept such modifications, the Commission shall issue an amended order, without further hearing, within 14 days following such notification,

approving the program as modified and such order shall be considered to be a final order of the Commission subject to petitions for rehearing and appellate procedures.

(c) The Commission shall open a proceeding to review any program approved under subsection (b) 2 years after the program is first implemented to determine whether the program is meeting its objectives, and may make such revisions, no later than 270 days after the proceeding is opened, as are necessary to result in the program meeting its objectives. A utility may elect to discontinue any program so revised. The Commission shall not otherwise direct a utility to revise, modify or cancel a program during its term of operation, except as found necessary, after notice and hearing, to ensure system reliability.

(d) Upon its own motion or complaint, the Commission may investigate whether the utility is implementing an approved program in accordance with the Commission order approving the program. If the Commission finds after notice and hearing, that the utility is not implementing the program in accordance with such order, the Commission shall order the utility to comply with the terms of the order. Complaints relating to the program filed under Section 9-250 of this Act, alleging that the program does not comply with that Section or the requirements of subsection (b) shall not be filed sooner than one year after the review provided for in subsection (c). The complainant shall bear the burden of proving the allegations in the complaint.

(e) The Commission shall not be authorized to allow or order an electric utility to place a program into effect, pursuant to this Section, applicable to delivery services provided by a utility, unless the utility already has in effect a delivery services tariff conforming to the requirements of Section 16-108 of this Act.

(f) The Commission may, upon subsequent petition by the utility, after notice and hearing, authorize the extension of a program that was previously approved pursuant to this Section or approve revisions or modifications of such a program to be effective, after the initially approved program has been in effect. Any such petition seeking an extension, revision, or modification of such a program must be accompanied by an evaluation of the program addressing the criteria set forth in subsection (b) hereof. The utility's petition may, but is not required to, specify a termination date for the extended, revised or modified program. The Commission may require a review of the extended, revised, or modified program at such intervals as may be ordered by the Commission, for the purpose of determining whether the program should be revised, modified, or terminated. ~~Performance based rates. Notwithstanding any other Sections of this Act or the Commission's rules, the Commission, upon petition by a public utility and after hearing, may authorize for that utility on an experimental basis, the implementation of one or more programs consisting of (a) alternatives to rate of return regulation or (b) other regulatory mechanisms that reward or penalize utilities through the adjustment of rates based on utility performance. In the case of other regulatory mechanisms that reward or penalize utilities~~

~~through the adjustment of rates based on utility performance, the utility's performance shall be compared to standards established in the Commission order authorizing the implementation of the other regulatory mechanisms. Before authorizing the implementation of programs that are either alternatives to rate of return regulation or other regulatory mechanisms that reward or penalize utilities through the adjustment of rates based on utility performance, the Commission shall:~~

~~(1) make a finding that the implementation of such programs is in the public interest;~~

~~(2) make a finding that the implementation of such programs will produce fair, just, and reasonable rates, consistent with the provisions of Section 9-241 of this Act;~~

~~(3) where appropriate, make a finding that the programs respond to changes in the utility's industry that are in fact occurring;~~

~~(4) specifically identify how the programs' departure from traditional rate of return rate making principles will benefit ratepayers through the realization of one or more of the following: efficiency gains; cost savings; or improvements in productivity.~~

~~The Commission shall issue its order no later than 11 months from the date of the filing of the petition. Any such programs shall not extend beyond the public utility's service territory and shall not extend beyond June 30, 2000. No later than December 31, 2000, the Commission shall report to the General Assembly, with appropriate legislative recommendations.~~

(Source: P.A. 89-194, eff. 1-1-96.)

(220 ILCS 5/10-113) (from Ch. 111 2/3, par. 10-113)

Sec. 10-113. Rescission or hearing of order.

(a) Anything in this Act to the contrary notwithstanding, the Commission may at any time, upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any rule, regulation, order or decision made by it. Any order rescinding, altering or amending a prior rule, regulation, order or decision shall, when served upon the public utility affected, have the same effect as is herein provided for original rules, regulations, orders or decisions. Within 30 days after the service of any rule or regulation, order or decision of the Commission any party to the action or proceeding may apply for a rehearing in respect to any matter determined in said action or proceeding and specified in the application for rehearing. The Commission shall receive and consider such application and shall grant or deny such application in whole or in part within 20 days from the date of the receipt thereof by the Commission. In case the application for rehearing is granted in whole or in part the Commission shall proceed as promptly as possible to consider such rehearing as allowed. No appeal shall be allowed from any rule, regulation, order or decision of the Commission unless and until an application for a rehearing thereof shall first have been filed with and finally disposed

of by the Commission: provided, however, that in case the Commission shall fail to grant or deny an application for a rehearing in whole or in part within 20 days from the date of the receipt thereof, or shall fail to enter a final order upon rehearing within 150 days after such rehearing is granted, the application for rehearing shall be deemed to have been denied and finally disposed of, and an order to that effect shall be deemed to have been served, for the purpose of an appeal from the rule, regulation, order or decision covered by such application. No person or corporation in any appeal shall urge or rely upon any grounds not set forth in such application for a rehearing before the Commission. An application for rehearing shall not excuse any corporation or person from complying with and obeying any rule, regulation, order or decision or any requirement of any rule, regulation, order or decision of the Commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the Commission may by order direct. If, after such rehearing and consideration of all the facts, including those arising since the making of the rule, regulation, order or decision, the Commission shall be of the opinion that the original rule, regulation, order or decision or any part thereof is in any respect unjust or unwarranted, or should be changed, the Commission may rescind, alter or amend the same. A rule, regulation, order or decision made after such rehearing, rescinding, altering or amending the original rule, regulation, order or decision shall have the same force and effect as an original rule, regulation, order or decision, but shall not affect any right or the enforcement of any right arising from or by virtue of the original rule, regulation, order or decision unless so ordered by the Commission. Only one rehearing shall be granted by the Commission; but this shall not be construed to prevent any party from filing a petition setting up a new and different state of facts after 2 years, and invoking the action of the Commission thereon.

(b) Notwithstanding any contrary or inconsistent provision in the Illinois Administrative Procedure Act, the Commission may, in accordance with this Section, make a change in a rule or regulation adopted or modified pursuant to Section 5-40 of the Illinois Administrative Procedure Act, upon consideration of an application for rehearing of the Commission's order directing that the rule or regulation be filed with the Secretary of State and published in the Illinois Register pursuant to subsection (d) of Section 5-40. The Commission shall provide the parties to the original hearing in which the rule was adopted or modified no less than 7 days notice to provide responses to the change the Commission proposes to make. Any such change shall be based upon evidence submitted in the record in the original hearing or in the rehearing. If the Commission makes such a substantive change in the rule or regulation pursuant to this subsection, it shall provide notice of the amendment to the rule or regulation to the Joint Committee on Administrative Rules in accordance with subsection (c) of Section 5-40, and shall thereafter comply with the requirements of subsection

(d) of Section 5-40 with respect to the rule or regulation as amended. The running of the time period specified in subsection (e) of Section 5-40 of the Illinois Administrative Procedure Act for completing a rulemaking proceeding shall be tolled for the period of time necessary for the Commission to receive and consider an application for rehearing and to conduct any proceedings on rehearing, provided, that such tolling shall not serve to extend any of the time periods provided for in subsection (a) of this Section.

(Source: P.A. 84-617.)

Section 15. ~~Except as otherwise provided in Section 60 of this amendatory Act of 1997, i~~If any provision added by this amendatory Act of 1997 is held invalid, this entire amendatory Act of 1997 shall be deemed invalid, and the provisions of Section 1.31, "Severability", of the Statute on Statutes are hereby expressly declared not applicable to this amendatory Act of 1997; provided, however (i) that any contracts entered into and performed, transactions completed, orders issued, services provided, billings rendered, or payments made in accordance with the provisions of this amendatory Act of 1997, other than as provided in clause (ii) below, prior to the date of the determination of such invalidity, shall not thereby be rendered invalid; (ii) that no presumption as to the validity or invalidity of any contracts, transactions, orders, billings, or payments pursuant to Article XVIII of the Public Utilities Act shall result from a determination of invalidity of this amendatory Act of 1997; and (iii) that the provisions of proviso (i) shall not be deemed to preserve the validity of any executory contracts or transactions, of any actions to be taken pursuant to orders issued, or of any services to be performed, billings to be rendered, or payments to be made, pursuant to provisions of this amendatory Act of 1997 subsequent to the date of determination of such invalidity.

(220 ILCS 5/8-402 rep.)
(220 ILCS 5/8-402.1 rep.)
(220 ILCS 5/8-404 rep.)

Section 18. Sections 8-402, 8-402.1, and 8-404 of the Public Utilities Act are hereby repealed.

ARTICLE 2

Section 2-1. Short title. This Article may be cited as the Electricity Excise Tax Law.

Section 2-2. Findings and intent. The General Assembly finds that the deregulation and restructuring of the electric utility industry in this State mandated and implemented by this amendatory Act of 1997, including the unbundling of services and the authorization of competition in the provision of those services such that consumers may in the future transact with multiple providers to obtain the services that were formerly provided by a single franchised monopoly supplier of electricity, renders the system of taxation embodied in the Public Utilities Revenue Act

impracticable and infeasible. The General Assembly further finds that the deregulation and restructuring of the electric utility industry necessitate changes to the existing system of taxation in order to preserve revenue neutrality in tax collections for the State of Illinois, to avoid placing any supplier engaged in the business of distributing, supplying, furnishing, selling, transmitting or delivering electricity at a competitive disadvantage, to minimize additional administrative costs and burdens of collection, and to avoid the imposition of increased tax burdens on individual consumers of electricity, particularly residential electric users virtually all of whom, pursuant to Section 2 of the Public Utilities Revenue Act, presently bear the economic burden of the tax imposed thereunder at the rate of .32 cents per kilowatt-hour distributed, supplied, furnished, sold, transmitted or delivered to them. The General Assembly further finds that to change the current rates at which non-residential users bear the economic burden of the Public Utilities Revenue Tax, thereby resulting in increases in the amount of tax for which non-residential users bear the economic burden, could impose additional cost burdens on businesses in this State and adversely affect economic development and business retention in Illinois unless such users are provided options for paying an excise tax on the basis of purchase price. The General Assembly therefore finds that there is a compelling public need to modify the system of taxation embodied in the Public Utilities Revenue Act by repealing the tax imposed by Section 2 of that Act and imposing this electricity excise tax so as to:

(1) Impose the electricity excise tax on the privilege of electric use measured by the kilowatt-hours delivered to the purchaser;

(2) As part of this amendatory Act of 1997, repeal the tax imposed by Section 2-202 of the Public Utilities Act as applicable to electric utilities and establish the rates of tax imposed under the electricity excise tax in order to collect substantially the same amount of revenue as was collected under Section 2-202 of that Act; and

(3) Allow non-residential consumers of electricity to elect to register with the Department of Revenue as self-assessing purchasers and to pay the electricity excise tax directly to the Department at a rate which is established as a percentage of such consumer's purchase price for electricity distributed, supplied, furnished, sold, transmitted or delivered to the purchaser.

Section 2-3. Definitions. As used in this Law, unless the context clearly requires otherwise:

(a) "Department" means the Department of Revenue of the State of Illinois.

(b) "Director" means the Director of the Department of Revenue of the State of Illinois.

(c) "Person" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, or a receiver, trustee, guardian, or other representative appointed by order of any court, or any city, town, village,

county, or other political subdivision of this State.

(d) "Purchase price" means the consideration paid for the distribution, supply, furnishing, sale, transmission or delivery of electricity to a person for non-residential use or consumption (and for both residential and non-residential use or consumption in the case of electricity purchased from a municipal system or electric cooperative described in subsection (b) of Section 2-4) and not for resale, and for all services directly related to the production, transmission or distribution of electricity distributed, supplied, furnished, sold, transmitted or delivered for non-residential use or consumption, and includes transition charges imposed in accordance with Article XVI of the Public Utilities Act and instrument funding charges imposed in accordance with Article XVIII of the Public Utilities Act, as well as cash, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of the service, product or commodity supplied, the cost of materials used, labor or service costs, or any other expense whatsoever. However, "purchase price" shall not include consideration paid for:

(i) any charge for a dishonored check;

(ii) any finance or credit charge, penalty or charge for delayed payment, or discount for prompt payment;

(iii) any charge for reconnection of service or for replacement or relocation of facilities;

(iv) any advance or contribution in aid of construction;

(v) repair, inspection or servicing of equipment located on customer premises;

(vi) leasing or rental of equipment, the leasing or rental of which is not necessary to furnishing, supplying or selling electricity;

(vii) any purchase by a purchaser if the supplier is prohibited by federal or State constitution, treaty, convention, statute or court decision from recovering the related tax liability from such purchaser; and

(viii) any amounts added to purchasers' bills because of charges made pursuant to the tax imposed by this Law.

In case credit is extended, the amount thereof shall be included only as and when payments are made.

"Purchase price" shall not include consideration received from business enterprises certified under Section 9-222.1 of the Public Utilities Act, as amended, to the extent of such exemption and during the period of time specified by the Department of Commerce and Community Affairs.

(e) "Purchaser" means any person who acquires electricity for use or consumption and not for resale, for a valuable consideration.

(f) "Non-residential electric use" means any use or consumption of electricity which is not residential electric use.

(g) "Residential electric use" means electricity used or consumed at a dwelling of 2 or fewer units, or electricity for household purposes used or consumed at a building with multiple dwelling units where the electricity is registered by a separate meter for each dwelling unit.

(h) "Self-assessing purchaser" means a purchaser for non-residential electric use who elects to register with and to pay tax directly to the Department in accordance with Sections 2-10 and 2-11 of this Law.

(i) "Delivering supplier" means any person engaged in the business of delivering electricity to persons for use or consumption and not for resale and who, in any case where more than one person participates in the delivery of electricity to a specific purchaser, is the last of the suppliers engaged in delivering the electricity prior to its receipt by the purchaser.

(j) "Delivering supplier maintaining a place of business in this State", or any like term, means any delivering supplier having or maintaining within this State, directly or by a subsidiary, an office, generation facility, transmission facility, distribution facility, sales office or other place of business, or any employee, agent or other representative operating within this State under the authority of such delivering supplier or such delivering supplier's subsidiary, irrespective of whether such place of business or agent or other representative is located in this State permanently or temporarily, or whether such delivering supplier or such delivering supplier's subsidiary is licensed to do business in this State.

(k) "Use" means the exercise by any person of any right or power over electricity incident to the ownership of that electricity, except that it does not include the generation, production, transmission, distribution, delivery or sale of electricity in the regular course of business or the use of electricity for such purposes.

Section 2-4. Tax imposed.

(a) Except as provided in subsection (b), a tax is imposed on the privilege of using in this State electricity purchased for use or consumption and not for resale, other than by municipal corporations owning and operating a local transportation system for public service, at the following rates per kilowatt-hour delivered to the purchaser:

(i) For the first 2000 kilowatt-hours used or consumed in a month: 0.330 cents per kilowatt-hour;

(ii) For the next 48,000 kilowatt-hours used or consumed in a month: 0.319 cents per kilowatt-hour;

(iii) For the next 50,000 kilowatt-hours used or consumed in a month: 0.303 cents per kilowatt-hour;

(iv) For the next 400,000 kilowatt-hours used or consumed in a month: 0.297 cents per kilowatt-hour;

(v) For the next 500,000 kilowatt-hours used or consumed in a month: 0.286 cents per kilowatt-hour;

(vi) For the next 2,000,000 kilowatt-hours used or consumed in a month: 0.270 cents per kilowatt-hour;

(vii) For the next 2,000,000 kilowatt-hours used or consumed in a month: 0.254 cents per kilowatt-hour;

(viii) For the next 5,000,000 kilowatt-hours used or consumed in a month: 0.233 cents per kilowatt-hour;

(ix) For the next 10,000,000 kilowatt-hours used or consumed in a month: 0.207 cents per kilowatt-hour;

(x) For all electricity in excess of 20,000,000 kilowatt-hours used or consumed in a month: 0.202 cents per kilowatt-hour.

Provided, that in lieu of the foregoing rates, the tax is imposed on a self-assessing purchaser at the rate of 5.1% of the self-assessing purchaser's purchase price for all electricity distributed, supplied, furnished, sold, transmitted and delivered to the self-assessing purchaser in a month.

(b) A tax is imposed on the privilege of using in this State electricity purchased from a municipal system or electric cooperative, as defined in Article XVII of the Public Utilities Act, which has not made an election as permitted by either Section 17-200 or Section 17-300 of such Act, at the lesser of 0.32 cents per kilowatt hour of all electricity distributed, supplied, furnished, sold, transmitted, and delivered by such municipal system or electric cooperative to the purchaser or 5% of each such purchaser's purchase price for all electricity distributed, supplied, furnished, sold, transmitted, and delivered by such municipal system or electric cooperative to the purchaser, whichever is the lower rate as applied to each purchaser in each billing period.

(c) The tax imposed by this Section 2-4 is not imposed with respect to any use of electricity by business enterprises certified under Section 9-222.1 of the Public Utilities Act, as amended, to the extent of such exemption and during the time specified by the Department of Commerce and Community Affairs; or with respect to any transaction in interstate commerce, or otherwise, to the extent to which such transaction may not, under the Constitution and statutes of the United States, be made the subject of taxation by this State.

Section 2-5. Multistate exemption. To prevent actual multi-state taxation of the privilege that is subject to taxation under this Law, any purchaser, upon proof that purchaser has paid a tax in another state on such event, shall be allowed a credit against the tax imposed by this Law, to the extent of the amount of the tax properly due and paid in the other state.

Section 2-6. Sunset of exemptions, credits and deductions. The application of every exemption, credit and deduction against tax imposed by this Law, shall be limited by a reasonable and appropriate sunset date. A purchaser subject to the tax imposed by this Law is not entitled to take the exemption, credit, or deduction beginning on the sunset date and thereafter. If a reasonable and appropriate sunset date is not specified in the Public Act that creates the exemption, credit, or deduction, a purchaser shall not be entitled to take the exemption, credit, or deduction beginning 5 years after the effective date of the Public Act

creating the exemption, credit, or deduction and thereafter. The provisions of this Section shall not apply to the exemption provided by Section 2-5 of this Law.

Section 2-7. Collection of electricity excise tax. The tax imposed by this Law shall be collected from the purchaser, other than a self-assessing purchaser who provides a copy of an active certification described in Sections 2-10 and 2-10.5 of this Law, by any delivering supplier maintaining a place of business in this State at the rates stated in Section 2-4 with respect to the electricity delivered by such delivering supplier to or for the purchaser, and shall be remitted to the Department as provided in Section 2-9 of this Law. All sales to a purchaser are presumed subject to tax collection unless the purchaser provides the delivering supplier with a copy of an active certification described in Sections 2-10 and 2-10.5 of this Law. Upon receipt of an active certification from a purchaser, the delivering supplier is relieved of all liability for the collection and remittance of tax from the self-assessing purchaser who has provided the certification. The delivering supplier is relieved of the liability for the collection of the tax from a self-assessing purchaser until such time as the delivering supplier is notified in writing by the purchaser that the purchaser's certification as a self-assessing purchaser is no longer in effect. Delivering suppliers shall collect the tax from purchasers by adding the tax to the amount of the purchase price received from the purchaser for delivering electricity for or to the purchaser. Where a delivering supplier does not collect the tax from a purchaser, other than a self-assessing purchaser, as provided herein, such purchaser shall pay the tax directly to the Department.

Section 2-7.5. Registration of delivering suppliers. A person who engages in business as a delivering supplier of electricity in this State shall register with the Department. Application for a certificate of registration shall be made to the Department upon forms furnished by the Department and shall contain any reasonable information the Department may require. Upon receipt of the application for a certificate of registration in proper form, the Department shall issue to the applicant a certificate of registration.

The Department may deny a certificate of registration to any applicant if such applicant is in default for moneys due under this Law.

Any person aggrieved by any decision of the Department under this Section may, within 20 days after notice of such decision, protest and request a hearing, whereupon the Department shall give notice to such person of the time and place fixed for such hearing and shall hold a hearing in conformity with the provisions of this Law and then issue its final administrative decision in the matter to such person. In the absence of such a protest within 20 days, the Department's decision shall become final without any further determination being made or notice given.

Section 2-7.6. Revocation of certificate of registration. The Department may, after notice and a hearing as provided herein, revoke the certificate of registration of any person who violates any of the provisions of this Law. Before revocation of a certificate of registration, the Department shall, within 90 days after non-compliance and at least 7 days prior to the date of the hearing, give the person so accused notice in writing of the charge against him or her, and on the date designated shall conduct a hearing upon this matter. The lapse of such 90 day period shall not preclude the Department from conducting revocation proceedings at a later date if necessary. Any hearing held under this Section shall be conducted by the Director or by any officer or employee of the Department designated in writing by the Director.

Upon the hearing of any such proceeding, the Director or any officer or employee of the Department designated in writing by the Director may administer oaths, and the Department may procure by its subpoena the attendance of witnesses and, by its subpoena duces tecum, the production of relevant books and papers. Any circuit court, upon application either of the accused or of the Department, may, by order duly entered, require the attendance of witnesses and the production of relevant books and papers before the Department in any hearing relating to the revocation of certificates of registration. Upon refusal or neglect to obey the order of the court, the court may compel obedience thereof by proceedings for contempt.

The Department may, by application to any circuit court, obtain an injunction requiring any person who engages in business as a delivering supplier of electricity to obtain a certificate of registration. Upon refusal or neglect to obey the order of the court, the court may compel obedience by proceedings for contempt.

Section 2-8. Tax collected as debt owed to State. The tax herein required to be collected by any delivering supplier maintaining a place of business in this State, and any such tax collected by that person, shall constitute a debt owed by that person to this State, provided, that the delivering supplier shall be allowed credit for such tax related to deliveries of electricity the charges for which are written off as uncollectible, and provided further, that if such charges are thereafter collected, the delivering supplier shall be obligated to remit such tax. For purposes of this Section, any partial payment not specifically identified by the purchaser shall be deemed to be for the delivery of electricity.

Section 2-9. Return and payment of tax by delivering supplier. Each delivering supplier who is required or authorized to collect the tax imposed by this Law shall make a return to the Department on or before the 15th day of each month for the preceding calendar month stating the following:

(1) The delivering supplier's name.

(2) The address of the delivering supplier's principal place of business and the address of the principal place of

business (if that is a different address) from which the delivering supplier engaged in the business of delivering electricity in this State.

(3) The total number of kilowatt-hours which the supplier delivered to or for purchasers during the preceding calendar month and upon the basis of which the tax is imposed.

(4) Amount of tax, computed upon Item (3) at the rates stated in Section 2-4.

(5) An adjustment for uncollectible amounts of tax in respect of prior period kilowatt-hour deliveries, determined in accordance with rules and regulations promulgated by the Department.

(6) Such other information as the Department reasonably may require.

In making such return the delivering supplier may use any reasonable method to derive reportable "kilowatt-hours" from the delivering supplier's records.

If the average monthly tax liability to the Department of the delivering supplier does not exceed $2,500, the Department may authorize the delivering supplier's returns to be filed on a quarter-annual basis, with the return for January, February and March of a given year being due by April 30 of such year; with the return for April, May and June of a given year being due by July 31 of such year; with the return for July, August and September of a given year being due by October 31 of such year; and with the return for October, November and December of a given year being due by January 31 of the following year.

If the average monthly tax liability to the Department of the delivering supplier does not exceed $1,000, the Department may authorize the delivering supplier's returns to be filed on an annual basis, with the return for a given year being due by January 31 of the following year.

Such quarter-annual and annual returns, as to form and substance, shall be subject to the same requirements as monthly returns.

Notwithstanding any other provision in this Law concerning the time within which a delivering supplier may file a return, any such delivering supplier who ceases to engage in a kind of business which makes the person responsible for filing returns under this Law shall file a final return under this Law with the Department not more than one month after discontinuing such business.

Each delivering supplier whose average monthly liability to the Department under this Law was $10,000 or more during the preceding calendar year, excluding the month of highest liability and the month of lowest liability in such calendar year, and who is not operated by a unit of local government, shall make estimated payments to the Department on or before the 7th, 15th, 22nd and last day of the month during which tax liability to the Department is incurred in an amount not less than the lower of either 22.5% of such delivering supplier's actual tax liability for the month or 25% of such delivering supplier's actual tax liability for the same calendar month of the preceding year. The amount of such quarter-monthly payments shall be credited against the final

tax liability of such delivering supplier's return for that month. An outstanding credit approved by the Department or a credit memorandum issued by the Department arising from such delivering supplier's overpayment of his or her final tax liability for any month may be applied to reduce the amount of any subsequent quarter-monthly payment or credited against the final tax liability of such delivering supplier's return for any subsequent month. If any quarter-monthly payment is not paid at the time or in the amount required by this Section, such delivering supplier shall be liable for penalty and interest on the difference between the minimum amount due as a payment and the amount of such payment actually and timely paid, except insofar as such delivering supplier has previously made payments for that month to the Department in excess of the minimum payments previously due.

If the Director finds that the information required for the making of an accurate return cannot reasonably be compiled by such delivering supplier within 15 days after the close of the calendar month for which a return is to be made, the Director may grant an extension of time for the filing of such return for a period not to exceed 31 calendar days. The granting of such an extension may be conditioned upon the deposit by such delivering supplier with the Department of an amount of money not exceeding the amount estimated by the Director to be due with the return so extended. All such deposits shall be credited against such delivering supplier's liabilities under this Law. If the deposit exceeds such delivering supplier's present and probable future liabilities under this Law, the Department shall issue to such delivering supplier a credit memorandum, which may be assigned by such delivering supplier to a similar person under this Law, in accordance with reasonable rules and regulations to be prescribed by the Department.

The delivering supplier making the return provided for in this Section shall, at the time of making such return, pay to the Department the amount of tax imposed by this Law.

A delivering supplier who has an average monthly tax liability of $10,000 or more shall make all payments required by rules of the Department by electronic funds transfer. The term "average monthly tax liability" shall be the sum of the delivering supplier's liabilities under this Law for the immediately preceding calendar year divided by 12. Any delivering supplier not required to make payments by electronic funds transfer may make payments by electronic funds transfer with the permission of the Department. All delivering suppliers required to make payments by electronic funds transfer and any delivering suppliers authorized to voluntarily make payments by electronic funds transfer shall make those payments in the manner authorized by the Department.

Each month the Department shall pay into the Public Utility Fund in the State treasury an amount determined by the Director to be equal to 3.0% of the funds received by the Department pursuant to this Section. The remainder of all moneys received by the Department under this Section shall be paid into the General Revenue Fund in the State treasury.

Section 2-10. Election to be self-assessing purchaser. Any purchaser for non-residential electric use may elect to register with the Department as a self-assessing purchaser and to pay the tax imposed by Section 2-4 directly to the Department, at the rate stated in that Section for self-assessing purchasers, rather than paying the tax to such purchaser's delivering supplier. The election by a purchaser to register as a self-assessing purchaser may not be revoked by the purchaser for at least 12 months thereafter. A purchaser who revokes his or her registration as a self-assessing purchaser shall not thereafter be permitted to register as a self-assessing purchaser within the succeeding 12 months. A self-assessing purchaser shall renew his or her registration every 12 months, or the registration shall be deemed to be revoked.

Section 2-10.5. Registration of self-assessing purchaser. Application for a certificate of registration as a self-assessing purchaser shall be made to the Department upon forms furnished by the Department and shall contain any reasonable information the Department may require. Upon receipt of the application for a certificate of registration in proper form and payment of a bi-annual renewal fee not to exceed $200, the Department shall issue to the applicant a certificate of registration that permits the person to whom it was issued to pay the tax incurred under this Law directly to the Department for a period of 2 years. A certificate of registration under this Section shall automatically be renewed, subject to revocation as provided by this Law, for additional 2-year periods from the date of its expiration unless otherwise notified by the Department.

Upon the expiration or revocation of a certificate of registration as a self-assessing purchaser, the person to whom such certificate had been issued shall provide written notice of the expiration or revocation of the certificate to that person's delivering supplier or suppliers.

The Department may deny a certificate of registration to any applicant if the owner, any partner, any manager or member of a limited liability company, or a corporate officer of the applicant, is or has been the owner, a partner, a manager or member of a limited liability company, or a corporate officer, of another self-assessing purchaser that is in default for moneys due under this Law.

Any person aggrieved by any decision of the Department under this Section may, within 20 days after notice of such decision, protest and request a hearing, whereupon the Department shall give notice to such person of the time and place fixed for such hearing and shall hold a hearing in conformity with the provisions of this Law and then issue its final administrative decision in the matter to such person. In the absence of such a protest within 20 days, the Department's decision shall become final without any further determination being made or notice given.

Section 2-10.6. Revocation of certificate of registration. The Department may, after notice and a hearing as provided herein, revoke the certificate of

registration of any person who violates any of the provisions of this Law. Before revocation of a certificate of registration the Department shall, within 90 days after non-compliance and at least 7 days prior to the date of the hearing, give the person so accused notice in writing of the charge against him or her, and on the date designated shall conduct a hearing upon this matter. The lapse of such 90 day period shall not preclude the Department from conducting revocation proceedings at a later date if necessary. Any hearing held under this Section shall be conducted by the Director of Revenue or by any officer or employee of the Department designated, in writing, by the Director of Revenue.

Upon the hearing of any such proceeding, the Director of Revenue, or any officer or employee of the Department designated, in writing, by the Director of Revenue, may administer oaths, and the Department may procure by its subpoena the attendance of witnesses and, by its subpoena duces tecum, the production of relevant books and papers. Any circuit court, upon application either of the accused or of the Department, may, by order duly entered, require the attendance of witnesses and the production of relevant books and papers, before the Department in any hearing relating to the revocation of certificates of registration. Upon refusal or neglect to obey the order of the court, the court may compel obedience thereof by proceedings for contempt.

Section 2-11. Direct return and payment by self-assessing purchaser. When electricity is used or consumed by a self-assessing purchaser subject to the tax imposed by this Law who did not pay the tax to a delivering supplier maintaining a place of business within this State and required or authorized to collect the tax, that self-assessing purchaser shall, on or before the 15th day of each month, make a return to the Department for the preceding calendar month, stating all of the following:

(1) The self-assessing purchaser's name and principal address.

(2) The aggregate purchase price paid by the self-assessing purchaser for the distribution, supply, furnishing, sale, transmission and delivery of such electricity to or for the purchaser during the preceding calendar month, including budget plan and other purchaser-owned amounts applied during such month in payment of charges includible in the purchase price, and upon the basis of which the tax is imposed.

(3) Amount of tax, computed upon Item 2 at the rate stated in Section 2-4.

(4) Such other information as the Department reasonably may require.

In making such return the self-assessing purchaser may use any reasonable method to derive reportable "purchase price" from the self-assessing purchaser's records.

If the average monthly tax liability of the self-assessing purchaser to the Department does not exceed $2,500, the Department may authorize the self-assessing purchaser's returns to be filed on a quarter-annual basis,

with the return for January, February and March of a given year being due by April 30 of such year; with the return for April, May and June of a given year being due by July 31 of such year; with the return for July, August, and September of a given year being due by October 31 of such year; and with the return for October, November and December of a given year being due by January 31 of the following year.

If the average monthly tax liability of the self-assessing purchaser to the Department does not exceed $1,000, the Department may authorize the self-assessing purchaser's returns to be filed on an annual basis, with the return for a given year being due by January 31 of the following year.

Such quarter-annual and annual returns, as to form and substance, shall be subject to the same requirements as monthly returns.

Notwithstanding any other provision in this Law concerning the time within which a self-assessing purchaser may file a return, any such self-assessing purchaser who ceases to be responsible for filing returns under this Law shall file a final return under this Law with the Department not more than one month thereafter.

Each self-assessing purchaser whose average monthly liability to the Department pursuant to this Section was $10,000 or more during the preceding calendar year, excluding the month of highest liability and the month of lowest liability during such calendar year, and which is not operated by a unit of local government, shall make estimated payments to the Department on or before the 7th, 15th, 22nd and last day of the month during which tax liability to the Department is incurred in an amount not less than the lower of either 22.5% of such self-assessing purchaser's actual tax liability for the month or 25% of such self-assessing purchaser's actual tax liability for the same calendar month of the preceding year. The amount of such quarter-monthly payments shall be credited against the final tax liability of the self-assessing purchaser's return for that month. An outstanding credit approved by the Department or a credit memorandum issued by the Department arising from the self-assessing purchaser's overpayment of the self-assessing purchaser's final tax liability for any month may be applied to reduce the amount of any subsequent quarter-monthly payment or credited against the final tax liability of such self-assessing purchaser's return for any subsequent month. If any quarter-monthly payment is not paid at the time or in the amount required by this Section, such person shall be liable for penalty and interest on the difference between the minimum amount due as a payment and the amount of such payment actually and timely paid, except insofar as such person has previously made payments for that month to the Department in excess of the minimum payments previously due.

If the Director finds that the information required for the making of an accurate return cannot reasonably be compiled by a self-assessing purchaser within 15 days after the close of the calendar month for which a return is to be made, the Director may grant an extension of time for the filing of such return for a period of not to exceed 31

calendar days. The granting of such an extension may be conditioned upon the deposit by such self-assessing purchaser with the Department of an amount of money not exceeding the amount estimated by the Director to be due with the return so extended. All such deposits shall be credited against such self-assessing purchaser's liabilities under this Law. If the deposit exceeds such self-assessing purchaser's present and probable future liabilities under this Law, the Department shall issue to such self-assessing purchaser a credit memorandum, which may be assigned by such self-assessing purchaser to a similar person under this Law, in accordance with reasonable rules and regulations to be prescribed by the Department.

The self-assessing purchaser making the return provided for in this Section shall, at the time of making such return, pay to the Department the amount of tax imposed by this Law.

A self-assessing purchaser who has an average monthly tax liability of $10,000 or more shall make all payments required by rules of the Department by electronic funds transfer. The term "average monthly tax liability" shall be the sum of the self-assessing purchaser's liabilities under this Law for the immediately preceding calendar year divided by 12. Any self-assessing purchaser not required to make payments by electronic funds transfer may make payments by electronic funds transfer with the permission of the Department. All self-assessing purchasers required to make payments by electronic funds transfer and any self-assessing purchasers authorized to voluntarily make payments by electronic funds transfer shall make those payments in the manner authorized by the Department.

Each month the Department shall pay into the Public Utility Fund in the State treasury an amount determined by the Director to be equal to 3.0% of the funds received by the Department pursuant to this Section. The remainder of all moneys received by the Department under this Section shall be paid into the General Revenue Fund in the State treasury.

Section 2-12. Applicability of Retailers' Occupation Tax Act, Public Utilities Revenue Act and Uniform Penalty and Interest Act. The Department shall have full power to administer and enforce this Law; to collect all taxes, penalties and interest due hereunder; to dispose of taxes, penalties and interest so collected in the manner herein provided; and to determine all rights to credit memoranda or refunds arising on account of the erroneous payment of tax, penalty or interest hereunder.

All of the provisions of Sections 4 (except that the time limitation provisions shall run from the date when the tax is due rather than from the date when gross receipts are received), 5 (except that the time limitation provisions on the issuances of notices of tax liability shall run from the date when the tax is due rather than from the date when gross receipts are received and except that in the case of a failure to file a return required by this Law, no notice of tax liability shall be issued on and after each July 1 and January 1 covering tax due with that return during any month or period more than 6 years before that July 1 or January 1,

respectively, and except that the 30% penalty provided for in Section 5 shall not apply), 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5i and 5j of the Retailers' Occupation Tax Act, and Sections 6, 8, 9, 10 and 11 of the Public Utilities Revenue Act, which are not inconsistent with this Law, and the Uniform Penalty and Interest Act shall apply, as far as practicable, to the subject matter of this Law to the same extent as if such provisions were included herein. References in such incorporated Sections of the Retailers' Occupation Tax Act and Public Utilities Revenue Act and to taxpayers and to persons engaged in the business of selling tangible personal property at retail means both purchasers and delivering suppliers maintaining a place of business in this State, as required by the particular context, when used in this Law. References in such incorporated Sections of the Retailers' Occupation Tax Act and Public Utilities Revenue Act to gross receipts and to gross receipts received means purchase price or kilowatt-hours used or consumed by the purchaser, as required by the particular context.

Section 2-13. Inspection of books and records. Every delivering supplier maintaining a place of business in this State who is obligated to collect and remit the tax imposed on a purchaser by this Law, and every self-assessing purchaser who is obligated to pay the tax imposed by this Law directly to the Department, shall keep books, records, papers and other documents which are adequate to reflect the information which such supplier or such self-assessing purchaser, as the case may be, is required by Section 2-9 or Section 2-11 of this Law to report to the Department by filing returns with the Department. All books and records and other papers and documents required by this Law to be kept shall be kept in the English language and shall, at all times during business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. Books and records reflecting purchase price paid and kilowatt-hours delivered, used or consumed during any period with respect to which the Department is authorized to establish liability as provided in Section 2-12 of this Law shall be preserved until the expiration of such period unless the Department, in writing, authorizes their destruction or disposal at an earlier date.

The Department may, upon written authorization of the Director, destroy any returns or any records, papers or memoranda pertaining to such returns upon the expiration of any period covered by such returns with respect to which the Department is authorized to establish liability.

Section 2-14. Rules and regulations; hearing; review under Administrative Review Law; death or incompetency of party. The Department may make, promulgate and enforce such reasonable rules and regulations relating to the administration and enforcement of this Law as may be deemed expedient.

Whenever notice to a purchaser or to a delivering supplier is required by this Law, such notice may be personally served or given by United States certified or

registered mail, addressed to the purchaser or delivering supplier concerned at his or her last known address, and proof of such mailing shall be sufficient for the purposes of this Law. In the case of a notice of hearing, the notice shall be mailed not less than 21 days prior to the date fixed for the hearing.

All hearings provided for in this Law with respect to a purchaser or to a delivering supplier having its principal address or principal place of business in any of the several counties of this State shall be held in the county wherein the purchaser or delivering supplier has its principal address or principal place of business. If the purchaser or delivering supplier does not have its principal address or principal place of business in this State, such hearings shall be held in Sangamon County. The Circuit Court of any county wherein a hearing is held shall have power to review all final administrative decisions of the Department in administering the provisions of this Law. If, however, the administrative proceeding which is to be reviewed judicially is a claim for refund proceeding commenced in accordance with this Law and Section 2a of the State Officers and Employees Money Disposition Act, the Circuit Court having jurisdiction of the action for judicial review under this Section and under the Administrative Review Law shall be the same court that entered the temporary restraining order or preliminary injunction which is provided for in Section 2a of the State Officers and Employees Money Disposition Act and which enables such claim proceeding to be processed and disposed of as a claim for refund proceeding rather than as a claim for credit proceeding.

The provisions of the Administrative Review Law, and the rules adopted pursuant thereto, shall apply to and govern all proceedings for the judicial review of final administrative decisions of the Department hereunder. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure.

Service upon the Director or Assistant Director of the Department of Revenue of summons issued in any action to review a final administrative decision is service upon the Department. The Department shall certify the record of its proceedings if the person commencing such action shall pay to it the sum of 75 cents per page of testimony taken before the Department and 25 cents per page of all other matters contained in such record, except that these charges may be waived where the Department is satisfied that the aggrieved party is a poor person who cannot afford to pay such charges.

Whenever any proceeding provided by this Law has been begun by the Department or by a person subject thereto and such person thereafter dies or becomes a person under legal disability before the proceeding has been concluded, the legal representative of the deceased person or a person under legal disability shall notify the Department of such death or legal disability. The legal representative, as such, shall then be substituted by the Department in place of and for the person.

Within 20 days after notice to the legal representative of the time fixed for that purpose, the proceeding may

proceed in all respects and with like effect as though the person had not died or become a person under legal disability.

Section 2-15. Illinois Administrative Procedure Act; application. The Illinois Administrative Procedure Act is hereby expressly adopted and shall apply to all administrative rules and procedures of the Department under this Law, except that: (1) paragraph (b) of Section 5-10 of the Illinois Administrative Procedure Act does not apply to final orders, decisions and opinions of the Department, (2) subparagraph (a)(ii) of Section 5-10 of the Illinois Administrative Procedure Act does not apply to forms established by the Department for use under this Law, and (3) the provisions of Section 10-45 of the Illinois Administrative Procedure Act regarding proposals for decision are excluded and not applicable to the Department under this Law.

Section 2-16. Violations. Any purchaser or delivering supplier who is required to but fails to make a return, or who makes a fraudulent return, or who wilfully violates any other provision of this Law or any rule or regulation of the Department for the administration and enforcement of this Law, is guilty of a business offense and, upon conviction thereof, shall be fined not less than $750 nor more than $7,500.

Section 2-17. Office of Attorney General; Consumer Utilities Unit. From the moneys collected under this Law, the General Assembly shall appropriate sufficient moneys to the Office of the Attorney General to pay the expenses of the Consumer Utilities Unit incurred in the performance of its duties under Section 6.5 of the Attorney General Act.

ARTICLE 3

Section 25. The Public Utilities Revenue Act is amended by changing Sections 1, 2a.1, 2a.2, 5, and 7 and adding Section 1a as follows:

(35 ILCS 620/1) (from Ch. 120, par. 468)

Sec. 1. For the purposes of this Law:

"Consumer Price Index" means the Consumer Price Index For All Urban Consumers for all items published by the United States Department of Labor; provided that if this index no longer exists, the Department of Revenue shall prescribe the use of a comparable, substitute index.

"Gross receipts" means the consideration received for electricity distributed, supplied, furnished or sold to persons for use or consumption and not for resale, and for all services (including the transmission of electricity for an end-user) rendered in connection therewith, and includes cash, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of the service, product or commodity supplied, the cost of materials used, labor or service costs, or any other expense whatsoever. However, "gross receipts" shall not

include receipts from:

(i) any minimum or other charge for electricity or electric service where the customer has taken no kilowatt-hours of electricity;

(ii) any charge for a dishonored check;

(iii) any finance or credit charge, penalty or charge for delayed payment, or discount for prompt payment;

(iv) any charge for reconnection of service or for replacement or relocation of facilities;

(v) any advance or contribution in aid of construction;

(vi) repair, inspection or servicing of equipment located on customer premises;

(vii) leasing or rental of equipment, the leasing or rental of which is not necessary to distributing, furnishing, supplying, selling or transporting electricity;

(viii) any sale to a customer if the taxpayer is prohibited by federal or State constitution, treaty, convention, statute or court decision from recovering the related tax liability from such customer; and

(ix) any charges added to customers' bills pursuant to the provisions of Section 9-221 or Section 9-222 of the Public Utilities Act, as amended, or any charges added to customers' bills by taxpayers who are not subject to rate regulation by the Illinois Commerce Commission for the purpose of recovering any of the tax liabilities or other amount specified in such provisions of such Act. In case credit is extended, the amount thereof shall be included only as and when payments are received.

"Gross receipts" shall not include consideration received from business enterprises certified under Section 9-222.1 of the Public Utilities Act, as amended, to the extent of such exemption and during the period of time specified by the Department of Commerce and Community Affairs.

"Department" means the Department of Revenue of the State of Illinois.

"Director" means the Director of Revenue for the Department of Revenue of the State of Illinois.

"Distributing electricity" means delivering electric energy to an end user over facilities owned, leased, or controlled by the taxpayer.

"Taxpayer" for purposes of the tax on the distribution of electricity imposed by this Act means an electric cooperative, an electric utility, or an alternative retail electric supplier (other than a person that is an alternative retail electric supplier solely pursuant to subsection (e) of Section 16-115 of the Public Utilities Act), as those terms are defined in the Public Utilities Act, ~~a person~~ engaged in the business of distributing~~, supplying, furnishing or selling~~ electricity in this State for use or consumption and not for resale.

"Taxpayer" for purposes of the Public Utilities Revenue Tax means a person engaged in the business of distributing, supplying, furnishing or selling electricity for use or

consumption and not for resale.

"Person" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint adventure, corporation, limited liability company, or a receiver, trustee, guardian or other representative appointed by order of any court, or any city, town, county or other political subdivision of this State.

"Invested capital" ~~means that amount equal to (i) the average of the balances at the beginning and end of each taxable period of the taxpayer's total stockholder's equity and total long-term debt, less investments in and advances to all corporations, as set forth on the balance sheets included in the taxpayer's annual report to the Illinois Commerce Commission for the taxable period; (ii) multiplied by a fraction determined under Sections 301 and 304(a) of the "Illinois Income Tax Act" and reported on the Illinois income tax return for the taxable period ending in or with the taxable period in question. However, notwithstanding the income tax return reporting requirement stated above, beginning July 1, 1979, no taxpayer's denominators used to compute the sales, property or payroll factors under subsection (a) of Section 304 of the Illinois Income Tax Act shall include payroll, property or sales of any corporate entity other than the taxpayer for the purposes of determining an allocation for the invested capital tax. This amendatory Act of 1982, Public Act 82-1024, is not intended to and does not make any change in the meaning of any provision of this Act, it having been the intent of the General Assembly in initially enacting the definition of "invested capital" to provide for apportionment of the invested capital of each company, based solely upon the sales, property and payroll of that company.~~ in the case of an electric cooperative subject to the tax imposed by Section 2a.1~~, "invested capital"~~ means an amount equal to the product determined by multiplying, (i) the average of the balances at the beginning and end of the taxable period of the taxpayer's total equity (including memberships, patronage capital, operating margins, non-operating margins, other margins and other equities), as set forth on the balance sheets included in the taxpayer's annual report to the United States Department of Agriculture Rural Utilities Services ~~Electrification Administration~~ (established pursuant to the federal Rural Electrification Act of 1936, as amended), by (ii) the fraction determined under Sections 301 and 304(a) of the Illinois Income Tax Act, as amended, for the taxable period.

"Taxable period" means each calendar year ~~period~~ which ends after the effective date of this Act ~~and which is covered by an annual report filed by the taxpayer with the Illinois Commerce Commission~~. In the case of an electric cooperative subject to the tax imposed by Section 2a.1, "taxable period" means each calendar year ending after the effective date of this Act and covered by an annual report filed by the taxpayer with the United States Department of Agriculture Rural Utilities Services ~~Electrification Administration~~.

(Source: P.A. 88-480.)

(35 ILCS 620/1a new)

Sec. 1a. Legislative Intent. The General Assembly previously imposed a tax on the invested capital of electric utilities to replace in part the personal property tax that was abolished by the Illinois Constitution of 1970. Subsequent to the enactment and imposition of the invested capital tax on electric utilities, State and federal laws regulating the provision of electricity have been enacted which provide for the restructuring of the electric power industry into a competitive industry. In response to this restructuring, this amendatory Act of 1997 is intended to provide for a replacement for the invested capital tax on electric utilities, other than electric cooperatives, and replace it with a new tax based on the quantity of electricity that is delivered in this State. The General Assembly finds and declares that this new tax is a fairer and more equitable means to replace that portion of the personal property tax that was abolished by the Illinois Constitution of 1970 and previously replaced by the invested capital tax on electric utilities, while maintaining a comparable allocation among electric utilities in this State for payment of taxes imposed to replace the personal property tax.

(35 ILCS 620/2a.1) (from Ch. 120, par. 469a.1)

Sec. 2a.1. Imposition of tax on invested capital and on distribution of electricity.

(a) In addition to the tax ~~taxes~~ imposed by the Illinois Income Tax Act ~~and Section 2 of this Act~~, there is hereby imposed upon every taxpayer ~~persons engaged in the business of distributing, supplying, furnishing or selling electricity and subject to the tax imposed by this Act~~ (other than an electric cooperative, a school district or unit of local government as defined in Section 1 of Article VII of the Illinois Constitution of 1970 ~~and other than persons subject to the tax imposed by Section 2a.1 of the "Gas Revenue Tax Act~~), an additional tax as follows: ~~in an amount equal to .8% of such persons' invested capital for the taxable period.~~

(i) For the first 500,000,000 kilowatt-hours distributed by the taxpayer in this State during the taxable period, 0.031 cents per kilowatt-hour;

(ii) For the next 1,000,000,000 kilowatt-hours distributed by the taxpayer in this State during the taxable period, 0.050 cents per kilowatt-hour;

(iii) For the next 2,500,000,000 kilowatt-hours distributed by the taxpayer in this State during the taxable period, 0.070 cents per kilowatt-hour;

(iv) For the next 4,000,000,000 killowatt-hours distributed by the taxpayer in this State during the taxable period, 0.140 cents per kilowatt-hour;

(v) For the next 7,000,000,000 kilowatt-hours distributed by the taxpayer in this State during the taxable period, 0.180 cents per kilowatt-hour;

(vi) For the next 3,000,000,000 killowatt-hours distributed by the taxpayer in this State during the taxable period, 0.142 cents per kilowatt-hour; and

(vii) For all kilowatt-hours distributed by the

taxpayer in this State during the taxable period in excess of 18,000,000,000 kilowatt-hours, 0.131 cents per killowatt-hour.

(b) There is imposed on electric cooperatives that are required to file reports with the Rural Utilities Service a tax equal to 0.8% of such cooperative's invested capital for the taxable period. The invested capital tax imposed by this subsection shall not be imposed on electric cooperatives not required to file reports with the Rural Utilities Service.

(c) If, for any taxable period, the total amount received by the Department from the tax imposed by subsection (a) exceeds $145,279,553 plus, for taxable periods subsequent to 1998, an amount equal to the lesser of (i) 5% or (ii) the percentage increase in the Consumer Price Index during the immediately preceding taxable period, of the total amount received by the Department from the tax imposed by subsection (a) for the immediately preceding taxable period, determined after allowance of the credit provided for in this subsection, the Department shall issue credit memoranda in the aggregate amount of the excess to each of the taxpayers who paid any amount of tax under subsection (a) for that taxable period in the proportion which the amount paid by the taxpayer bears to the total amount paid by all such taxpayers. Any credit memorandum issued to a taxpayer under this subsection may be used as a credit by the taxpayer against its liability in future taxable periods for tax under subsection (a). Any amount credited to a taxpayer shall not be refunded to the taxpayer unless the taxpayer demonstrates to the reasonable satisfaction of the Department that it will not incur future liability for tax under subsection (a). The Department shall adopt reasonable regulations for the implementation of the provisions of this subsection.

~~If such persons are not liable for such additional tax for the entire taxable period, such additional tax shall be computed on the portion of the taxable period during which such persons were liable for such additional tax. The invested capital tax imposed by this Section shall not be imposed upon persons who are not regulated by the Illinois Commerce Commission or who are not required, in the case of electric cooperatives, to file reports with the Rural Electrification Administration.~~

(Source: P.A. 87-205; 87-313.)

(35 ILCS 620/2a.2) (from Ch. 120, par. 469a.2)

Sec. 2a.2. Annual return, collection and payment. A return with respect to the tax imposed by Section 2a.1 shall be made by every person for any taxable period for which such person is liable for such tax. Such return shall be made on such forms as the Department shall prescribe and shall contain the following information:

1. Taxpayer's name;

2. Address of taxpayer's principal place of business, and address of the principal place of business (if that is a different address) from which the taxpayer engages in the business of distributing~~, supplying, furnishing or selling~~ electricity in this State;

3. The ~~total proprietary capital and total~~

~~long-term debt as of the beginning and end of the taxable period as set forth on the balance sheets included in the taxpayer's annual report to the Illinois Commerce Commission (or,~~ total equity, in the case of electric cooperatives, in the annual reports filed with the Rural Utilities Service ~~Electrification Administration)~~ for the taxable period;

3a. The total kilowatt-hours of electricity distributed by a taxpayer, other than an electric cooperative, in this State for the taxable period covered by the return;

~~4. The taxpayer's base income allocable to Illinois under Sections 301 and 304(a) of the "Illinois Income Tax Act", for the period covered by the return;~~

4. ~~5.~~ The amount of tax due for the taxable period (computed on the basis of the amounts set forth in Items 3 and 3a ~~4~~); and

5. ~~6.~~ Such other reasonable information as may be required by forms or regulations prescribed by the Department.

The returns prescribed by this Section shall be due and shall be filed with the Department not later than the 15th day of the third month following the close of the taxable period. The taxpayer making the return herein provided for shall, at the time of making such return, pay to the Department the remaining amount of tax herein imposed and due for the taxable period. Each taxpayer shall make estimated quarterly payments on the 15th day of the third, sixth, ninth and twelfth months of each taxable period. Such estimated payments shall be 25% of the tax liability for the immediately preceding taxable period or the tax liability that would have been imposed in the immediately preceding taxable period if this amendatory Act of 1979 had been in effect. All moneys received by the Department under Sections 2a.1 and 2a.2 shall be paid into the Personal Property Tax Replacement Fund in the State Treasury.

(Source: P.A. 87-205.)

(35 ILCS 620/5) (from Ch. 120, par. 472)

Sec. 5. All of the provisions of Sections 4, (except that the time limitation provisions shall run from the date when the tax is due rather than from the date when gross receipts are received), 5 (except that the time limitation provisions on the issuance of notices of tax liability shall run from the date when the tax is due rather than from the date when gross receipts are received and except that, in the case of a failure to file a return required by this Act, no notice of tax liability shall be issued covering tax due with that return more than 6 years after the original due date of that return, and except that the 30% penalty provided for in Section 5 shall not apply), 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5i and 5j of the Retailers' Occupation Tax Act, which are not inconsistent with this Act, and ~~Section 3-7 of~~ the Uniform Penalty and Interest Act shall apply, as far as practicable, to the subject matter of this Act to the same extent as if such provisions were included herein. References in such incorporated Sections of the Retailers' Occupation Tax Act to

retailers, to sellers or to persons engaged in the business of selling tangible personal property mean persons engaged in the business of distributing~~, supplying, furnishing or selling~~ electricity when used in this Act. ~~References in such incorporated Sections of the Retailers' Occupation Tax Act to purchasers of tangible personal property mean purchasers of electricity when used in this Act.~~ References in such incorporated Sections of the Retailers' Occupation Tax Act to sales of tangible personal property mean the distributing~~, supplying, furnishing or selling~~ of electricity when used in this Act.

(Source: P.A. 87-205.)

(35 ILCS 620/7) (from Ch. 120, par. 474)

Sec. 7. Every taxpayer under this Act shall keep books, records, papers and other documents which are adequate to reflect the information which such taxpayers are required by Section 2a.2 ~~3~~ of this Act to report to the Department by filing annual ~~monthly~~ returns with the Department. The Department may adopt rules that establish requirements, including record forms and formats, for records required to be kept and maintained by taxpayers. For purposes of this Section, "records" means all data maintained by the taxpayer, including data on paper, microfilm, microfiche or any type of machine-sensible data compilation. All books and records and other papers and documents required by this Act to be kept shall be kept in the English language and shall, at all times during business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. Books and records reflecting kilowatt-hours of electricity distributed ~~gross receipts received~~ during any period with respect to which the Department is authorized to establish liability as provided in Section ~~Sections 4 and~~ 5 of this Act shall be preserved until the expiration of such period unless the Department, in writing, authorizes their destruction or disposal at an earlier date.

The Department may, upon written authorization of the Director, destroy any returns or any records, papers or memoranda pertaining to such returns upon the expiration of any period covered by such returns with respect to which the Department is authorized to establish liability.

(Source: P.A. 88-480.)

(35 ILCS 620/2 rep.)
(35 ILCS 620/2a.3 rep.)
(35 ILCS 620/3 rep.)

Section 26. The Public Utilities Revenue Act is amended by repealing Sections 2, 2a.3, and 3.

Section 30. The Gas Revenue Tax Act is amended by changing Section 2a.1 as follows:

(35 ILCS 615/2a.1) (from Ch. 120, par. 467.17a.1)

Sec. 2a.1. Imposition of tax on invested capital. In addition to the taxes imposed by the Illinois Income Tax Act and Section 2 of this Act, there is hereby imposed upon persons engaged in the business of distributing, supplying,

furnishing or selling gas and subject to the tax imposed by this Act (other than a school district or unit of local government as defined in Section 1 of Article VII of the Illinois Constitution of 1970), an additional tax in an amount equal to .8% of such persons' invested capital for the taxable period. If such persons are not liable for such additional tax for the entire taxable period, such additional tax shall be computed on the portion of the taxable period during which such persons were liable for such additional tax. The invested capital tax imposed by this Section shall not be imposed upon persons who are not regulated by the Illinois Commerce Commission. Provided, in the case of any person which is subject to the invested capital tax imposed by this Section and which is also subject to the tax on the distribution of electricity imposed by Section 2a.1 of the Public Utilities Revenue Act, the invested capital tax imposed by this Section shall be an amount equal to 0.8% of such person's invested capital for the taxable period multiplied by a fraction the numerator of which is the average of the beginning and ending balances of such person's gross gas utility plant in service and the denominator of which is the average of the beginning and ending balances of such person's gross electric and gas utility plant in service, as set forth in such person's annual report to the Illinois Commerce Commission for the taxable period.

(Source: P.A. 87-205; 87-313.)

Section 35. The Public Utilities Act is amended by changing Section 2-202 as follow:

(220 ILCS 5/2-202) (from Ch. 111 2/3, par. 2-202)

Sec. 2-202. (a) It is declared to be the public policy of this State that in order to maintain and foster the effective regulation of public utilities under this Act in the interests of the People of the State of Illinois and the public utilities as well, the public utilities subject to regulation under this Act and which enjoy the privilege of operating as public utilities in this State, shall bear the expense of administering this Act by means of a tax on such privilege measured by the annual gross revenue of such public utilities in the manner provided in this Section. For purposes of this Section, "expense of administering this Act" includes any costs incident to studies, whether made by the Commission or under contract entered into by the Commission, concerning environmental pollution problems caused or contributed to by public utilities and the means for eliminating or abating those problems. Such proceeds shall be deposited in the Public Utility Fund in the State treasury.

(b) All of the ordinary and contingent expenses of the Commission incident to the administration of this Act shall be paid out of the Public Utility Fund except the compensation of the members of the Commission which shall be paid from the General Revenue Fund. Notwithstanding other provisions of this Act to the contrary, the ordinary and contingent expenses of the Commission incident to the administration of the Illinois Commercial Transportation Law may be paid from appropriations from the Public Utility Fund through the end of fiscal year 1986.

(c) A tax is imposed upon each public utility subject to the provisions of this Act equal to .08% of its gross revenue for each calendar year commencing with the calendar year beginning January 1, 1982, except that the Commission may, by rule, establish a different rate no greater than 0.1%. For purposes of this Section, "gross revenue" shall not include revenue from the production, transmission, distribution, sale, delivery, or furnishing of electricity.

(d) Annual gross revenue returns shall be filed in accordance with paragraph (1) or (2) of this subsection (d).

(1) Except as provided in paragraph (2) of this subsection (d), on or before January 10 of each year each public utility subject to the provisions of this Act shall file with the Commission an estimated annual gross revenue return containing an estimate of the amount of its gross revenue for the calendar year commencing January 1 of said year and a statement of the amount of tax due for said calendar year on the basis of that estimate. Public utilities may also file revised returns containing updated estimates and updated amounts of tax due during the calendar year. These revised returns, if filed, shall form the basis for quarterly payments due during the remainder of the calendar year. In addition, on or before February 15 of each year, each public utility shall file an amended return showing the actual amount of gross revenues shown by the company's books and records as of December 31 of the previous year. Forms and instructions for such estimated, revised, and amended returns shall be devised and supplied by the Commission.

(2) Beginning January 1, 1993, the requirements of paragraph (1) of this subsection (d) shall not apply to any public utility in any calendar year for which the total tax the public utility owes under this Section is less than $1,000. For such public utilities with respect to such years, the public utility shall file with the Commission, on or before January 31 of the following year, an annual gross revenue return for the year and a statement of the amount of tax due for that year on the basis of such a return. Forms and instructions for such returns and corrected returns shall be devised and supplied by the Commission.

(e) All returns submitted to the Commission by a public utility as provided in this subsection (e) or subsection (d) of this Section shall contain or be verified by a written declaration by an appropriate officer of the public utility that the return is made under the penalties of perjury. The Commission may audit each such return submitted and may, under the provisions of Section 5-101 of this Act, take such measures as are necessary to ascertain the correctness of the returns submitted. The Commission has the power to direct the filing of a corrected return by any utility which has filed an incorrect return and to direct the filing of a return by any utility which has failed to submit a return. A taxpayer's signing a fraudulent return under this Section is perjury, as defined in Section 32-2 of the Criminal Code of 1961.

(f) (1) For all public utilities subject to paragraph

(1) of subsection (d), at least one quarter of the annual amount of tax due under subsection (c) shall be paid to the Commission on or before the tenth day of January, April, July, and October of the calendar year subject to tax. In the event that an adjustment in the amount of tax due should be necessary as a result of the filing of an amended or corrected return under subsection (d) or subsection (e) of this Section, the amount of any deficiency shall be paid by the public utility together with the amended or corrected return and the amount of any excess shall, after the filing of a claim for credit by the public utility, be returned to the public utility in the form of a credit memorandum in the amount of such excess or be refunded to the public utility in accordance with the provisions of subsection (k) of this Section. However, if such deficiency or excess is less than $1, then the public utility need not pay the deficiency and may not claim a credit.

(2) Any public utility subject to paragraph (2) of subsection (d) shall pay the amount of tax due under subsection (c) on or before January 31 next following the end of the calendar year subject to tax. In the event that an adjustment in the amount of tax due should be necessary as a result of the filing of a corrected return under subsection (e), the amount of any deficiency shall be paid by the public utility at the time the corrected return is filed. Any excess tax payment by the public utility shall be returned to it after the filing of a claim for credit, in the form of a credit memorandum in the amount of the excess. However, if such deficiency or excess is less than $1, the public utility need not pay the deficiency and may not claim a credit.

(g) Each installment or required payment of the tax imposed by subsection (c) becomes delinquent at midnight of the date that it is due. Failure to make a payment as required by this Section shall result in the imposition of a late payment penalty, an underestimation penalty, or both, as provided by this subsection. The late payment penalty shall be the greater of:

(1) $25 for each month or portion of a month that the installment or required payment is unpaid or

(2) an amount equal to the difference between what should have been paid on the due date, based upon the most recently filed estimate, and what was actually paid, times 1% ~~one percent~~, for each month or portion of a month that the installment or required payment goes unpaid. This penalty may be assessed as soon as the installment or required payment becomes delinquent.

The underestimation penalty shall apply to those public utilities subject to paragraph (1) of subsection (d) and shall be calculated after the filing of the amended return. It shall be imposed if the amount actually paid on any of the dates specified in subsection (f) is not equal to at least one-fourth of the amount actually due for the year, and shall equal the greater of:

(1) $25 for each month or portion of a month that the amount due is unpaid or

(2) an amount equal to the difference between what should have been paid, based on the amended return, and

what was actually paid as of the date specified in subsection (f), times a percentage equal to 1/12 of the sum of 10% and the percentage most recently established by the Commission for interest to be paid on customer deposits under 83 Ill. Adm. Code 280.70(e)(1), for each month or portion of a month that the amount due goes unpaid, except that no underestimation penalty shall be assessed if the amount actually paid on each of the dates specified in subsection (f) was based on an estimate of gross revenues at least equal to the actual gross revenues for the previous year. The Commission may enforce the collection of any delinquent installment or payment, or portion thereof by legal action or in any other manner by which the collection of debts due the State of Illinois may be enforced under the laws of this State. The executive director or his designee may excuse the payment of an assessed penalty if he determines that enforced collection of the penalty would be unjust.

(h) All sums collected by the Commission under the provisions of this Section shall be paid promptly after the receipt of the same, accompanied by a detailed statement thereof, into the Public Utility Fund in the State treasury.

(i) During the month of October of each odd-numbered year the Commission shall:

(1) determine the amount of all moneys deposited in the Public Utility Fund during the preceding fiscal biennium plus the balance, if any, in that fund at the beginning of that biennium;

(2) determine the sum total of the following items: (A) all moneys expended or obligated against appropriations made from the Public Utility Fund during the preceding fiscal biennium, plus (B) the sum of the credit memoranda then outstanding against the Public Utility Fund, if any; and

(3) determine the amount, if any, by which the sum determined as provided in item (1) exceeds the amount determined as provided in item (2).

If the amount determined as provided in item (3) of this subsection exceeds $2,500,000, the Commission shall then compute the proportionate amount, if any, which (x) the tax paid hereunder by each utility during the preceding biennium, and (y) the amount paid into the Public Utility Fund during the preceding biennium by the Department of Revenue pursuant to Sections 2-9 and 2-11 of the Electricity Excise Tax Law, bears to the difference between the amount determined as provided in item (3) of this subsection (i) and $2,500,000. The Commission shall cause the proportionate amount determined with respect to payments made under the Electricity Excise Tax Law to be transferred into the General Revenue Fund in the State Treasury, and notify each public utility that it may file during the 3 month period after the date of notification a claim for credit for the ~~in such~~ proportionate amount determined with respect to payments made hereunder by the public utility. If the proportionate amount is less than $10, no notification will be sent by the Commission, and no right to a claim exists as to that amount. Upon the filing of a claim for credit within the period

provided, the Commission shall issue a credit memorandum in such amount to such public utility. Any claim for credit filed after the period provided for in this Section is void.

(j) Credit memoranda issued pursuant to subsection (f) and credit memoranda issued after notification and filing pursuant to subsection (i) may be applied for the 2 year period from the date of issuance, against the payment of any amount due during that period under the tax imposed by subsection (c), or, subject to reasonable rule of the Commission including requirement of notification, may be assigned to any other public utility subject to regulation under this Act. Any application of credit memoranda after the period provided for in this Section is void.

(k) The chairman or executive director may make refund of fees, taxes or other charges whenever he shall determine that the person or public utility will not be liable for payment of such fees, taxes or charges during the next 24 months and he determines that the issuance of a credit memorandum would be unjust.

(Source: P.A. 86-209; 87-971.)

Section 40. The Attorney General Act is amended by adding Section 6.5 as follows:

(15 ILCS 205/6.5 new)

Sec. 6.5. Consumer Utilities Unit.

(a) The General Assembly finds that the health, welfare, and prosperity of all Illinois citizens, and the public's interest in adequate, safe, reliable, cost-effective electric services, requires effective public representation by the Attorney General to protect the rights and interests of the public in the provision of all elements of electric service both during and after the transition to a competitive market, and that to ensure that the benefits of competition in the provision of electric services to all consumers are attained, there shall be created within the Office of the Attorney General a Consumer Utilities Unit.

(b) As used in this Section: "Electric services" means services sold by an electric service provider. "Electric service provider" shall mean anyone who sells, contracts to sell, or markets electric power, generation, distribution, transmission, or services (including metering and billing) in connection therewith. Electric service providers shall include any electric utility and any alternative retail electric supplier as defined in Section 16-102 of the Public Utilities Act.

(c) There is created within the Office of the Attorney General a Consumer Utilities Unit, consisting of Assistant Attorneys General appointed by the Attorney General, who, together with such other staff as is deemed necessary by the Attorney General, shall have the power and duty on behalf of the people of the State to intervene in, initiate, enforce, and defend all legal proceedings on matters relating to the provision, marketing, and sale of electric service whenever the Attorney General determines that such action is necessary to promote or protect the rights and interest of all Illinois citizens, classes of customers, and users of electric

services.

(d) In addition to the investigative and enforcement powers available to the Attorney General, including without limitation those under the Consumer Fraud and Deceptive Business Practices Act and the Illinois Antitrust Act, the Attorney General shall be a party as a matter of right to all proceedings, investigations, and related matters involving the provision of electric services before the Illinois Commerce Commission and shall, upon request, have access to and the use of all files, records, data, and documents in the possession or control of the Commission, which material the Attorney General's office shall maintain as confidential, to be used for law enforcement purposes only, which material may be shared with other law enforcement officials. Nothing in this Section is intended to take away or limit any of the powers the Attorney General has pursuant to common law or other statutory law.

Section 45. The Consumer Fraud and Deceptive Business Practices Act is amended by changing Section 2P and adding Sections 2EE, 2FF, 2GG, and 2HH as follows:

(815 ILCS 505/2EE new)

Sec. 2EE. Electric service provider selection. An electric service provider shall not submit or execute a change in a subscriber's selection of a provider of electric service except as follows:

The new electric service provider has obtained the customer's written authorization in a form that meets the following requirements:

(1) An electric service provider shall obtain any necessary written authorization from a subscriber for a change in electric service by using a letter of agency as specified in this Section. Any letter of agency that does not conform with this Section is invalid.

(2) The letter of agency shall be a separate document (an easily separable document containing only the authorization language described in subparagraph (5) of this Section) whose sole purpose is to authorize an electric service provider change. The letter of agency must be signed and dated by the subscriber requesting the electric service provider change.

(3) The letter of agency shall not be combined with inducements of any kind on the same document.

(4) Notwithstanding subparagraphs (1) and (2) of this Section, the letter of agency may be combined with checks that contain only the required letter of agency language prescribed in paragraph (5) of this Section and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain in easily readable, bold-face type on the face of the check, a notice that the consumer is authorizing an electric service provider change by signing the check. The letter of agency language also shall be placed near the signature line on the back of the check.

(5) At a minimum, the letter of agency must be printed with a print of sufficient size to be clearly legible, and must contain clear and unambiguous language that confirms:

(i) The subscriber's billing name and address;

(ii) The decision to change the electric service provider from the current provider to the prospective provider;

(iii) The terms, conditions, and nature of the service to be provided to the subscriber must be clearly and conspicuously disclosed, in writing, and an electric service provider must directly establish the rates for the service contracted for by the subscriber; and

(iv) That the subscriber understand that any electric service provider selection the subscriber chooses may involve a charge to the subscriber for changing the subscriber's electric service provider.

(6) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current electric service provider.

(7) If any portion of a letter of agency is translated into another language, then all portions of the letter of agency must be translated into that language.

For purposes of this Section, "electric service provider" shall have the meaning given that phrase in Section 6.5 of the Attorney General Act.

(815 ILCS 505/2FF new)

Sec. 2FF. Electric service fraud; elderly persons or disabled persons; additional penalties. With respect to the advertising, sale, provider selection, billings, or collections relating to the provision of electric service, where the consumer is an elderly person or disabled person, a civil penalty of $50,000 may be imposed for each violation. For purposes of this Section:

(1) "Elderly person" means a person 60 years of age or older.

(2) "Disabled person" means a person who suffers from a permanent physical or mental impairment resulting from disease, injury, functional disorder or congenital condition.

(3) "Electric service" shall have the meaning given that term in Section 6.5 of the Attorney General Act.

(815 ILCS 505/2GG new)

Sec. 2GG. Electric service advertising. Any advertisement for electric service that lists rates shall clearly and conspicuously disclose all associated costs for such service including, but not limited to, access fees and service fees.

(815 ILCS 505/2HH new)

Sec. 2HH. Billing and collection practices of electric service providers. Each person selling generation, transmission, distribution, metering, or billing of electric service shall display the name, the toll-free telephone

number of such service provider, and a description of the services provided on all bills submitted to subscribers of such services. All personal information relating to the subscriber of generation, transmission, distribution, metering, or billing of electric service shall be maintained by the service providers solely for the purpose of generating the bill for such services, and shall not be divulged to any other persons with the exception of credit bureaus, collection agencies, and persons licensed to market electric service in the State of Illinois, without the written consent of the subscriber.

(815 ILCS 505/2P) (from Ch. 121 1/2, par. 262P)

Sec. 2P. Offers of free prizes, gifts, or gratuities; disclosure of conditions. It is an unlawful practice for any person to promote or advertise any business, product, utility service, including but not limited to, the provision of electric, telecommunication, or gas service, or interest in property, by means of offering free prizes, gifts, or gratuities to any consumer, unless all material terms and conditions relating to the offer are clearly and conspicuously disclosed at the outset of the offer so as to leave no reasonable probability that the offering might be misunderstood.

(Source: P.A. 84-1308.)

Section 65. The Illinois Municipal Code is amended by changing Section 8-11-2 as follows:

(65 ILCS 5/8-11-2) (from Ch. 24, par. 8-11-2)

Sec. 8-11-2. The corporate authorities of any municipality may tax any or all of the following occupations or privileges:

1. Persons engaged in the business of transmitting messages by means of electricity or radio magnetic waves, or fiber optics, at a rate not to exceed 5% of the gross receipts from that business originating within the corporate limits of the municipality.

2. Persons engaged in the business of distributing, supplying, furnishing, or selling gas for use or consumption within the corporate limits of a municipality of 500,000 or fewer population, and not for resale, at a rate not to exceed 5% of the gross receipts therefrom.

2a. Persons engaged in the business of distributing, supplying, furnishing, or selling gas for use or consumption within the corporate limits of a municipality of over 500,000 population, and not for resale, at a rate not to exceed 8% of the gross receipts therefrom. If imposed, this tax shall be paid in monthly payments.

3. The privilege of using or consuming electricity acquired in a purchase at retail and used or consumed within the corporate limits of the municipality at rates not to exceed the following maximum rates, calculated on a monthly basis for each purchaser:

(i) For the first 2,000 kilowatt-hours used or consumed in a month; 0.61 cents per kilowatt-hour;

(ii) For the next 48,000 kilowatt-hours used or consumed in a month; 0.40 cents per kilowatt-hour;

(iii) For the next 50,000 kilowatt-hours used or consumed in a month; 0.36 cents per kilowatt-hour;

(iv) For the next 400,000 kilowatt-hours used or consumed in a month; 0.35 cents per kilowatt-hour;

(v) For the next 500,000 kilowatt-hours used or consumed in a month; 0.34 cents per kilowatt-hour;

(vi) For the next 2,000,000 kilowatt-hours used or consumed in a month; 0.32 cents per kilowatt-hour;

(vii) For the next 2,000,000 kilowatt-hours used or consumed in a month; 0.315 cents per kilowatt-hour;

(viii) For the next 5,000,000 kilowatt-hours used or consumed in a month; 0.31 cents per kilowatt-hour;

(ix) For the next 10,000,000 kilowatt-hours used or consumed in a month; 0.305 cents per kilowatt-hour; and

(x) For all electricity used or consumed in excess of 20,000,000 kilowatt-hours in a month, 0.30 cents per kilowatt-hour.

If a municipality imposes a tax at rates lower than either the maximum rates specified in this Section or the alternative maximum rates promulgated by the Illinois Commerce Commission, as provided below, the tax rates shall be imposed upon the kilowatt hour categories set forth above with the same proportional relationship as that which exists among such maximum rates. Notwithstanding the foregoing, until December 31, 2008, no municipality shall establish rates that are in excess of rates reasonably calculated to produce revenues that equal the maximum total revenues such municipality could have received under the tax authorized by this subparagraph in the last full calendar year prior to the effective date of Section 65 of this amendatory Act of 1997; provided that this shall not be a limitation on the amount of tax revenues actually collected by such municipality.

Upon the request of the corporate authorities of a municipality, the Illinois Commerce Commission shall, within 90 days after receipt of such request, promulgate alternative rates for each of these kilowatt-hour categories that will reflect, as closely as reasonably practical for that municipality, the distribution of the tax among classes of purchasers as if the tax were based on a uniform percentage of the purchase price of electricity. A municipality that has adopted an ordinance imposing a tax pursuant to subparagraph 3 as it existed prior to the effective date of Section 65 of this amendatory Act of 1997 may, rather than imposing the tax permitted by this amendatory Act of 1997, continue to impose the tax pursuant to that ordinance with respect to gross receipts received from residential customers through July 31, 1999, and with respect to gross receipts from any non-residential customer until the first bill issued to such customer for delivery services in accordance with Section 16-104 of the Public Utilities Act but in no case later than the last bill issued to such customer before December 31, 2000. No ordinance

imposing the tax permitted by this amendatory Act of 1997 shall be applicable to any non-residential customer until the first bill issued to such customer for delivery services in accordance with Section 16-104 of the Public Utilities Act but in no case later than the last bill issued to such non-residential customer before December 31, 2000. ~~Persons engaged in the business of distributing, supplying, furnishing, or selling electricity for use or consumption within the corporate limits of the municipality, and not for resale, at a rate not to exceed 5% of the gross receipts therefrom.~~

4. Persons engaged in the business of distributing, supplying, furnishing, or selling water for use or consumption within the corporate limits of the municipality, and not for resale, at a rate not to exceed 5% of the gross receipts therefrom.

None of the taxes authorized by this Section may be imposed with respect to any transaction in interstate commerce or otherwise to the extent to which the business or privilege may not, under the constitution and statutes of the United States, be made the subject of taxation by this State or any political sub-division thereof; nor shall any persons engaged in the business of distributing, supplying, furnishing, ~~or~~ selling or transmitting gas, water, or electricity, or engaged in the business of transmitting messages, or using or consuming electricity acquired in a purchase at retail, be subject to taxation under the provisions of this Section for those transactions that are or may become subject to taxation under the provisions of the "Municipal Retailers' Occupation Tax Act" authorized by Section 8-11-1; nor shall any tax authorized by this Section be imposed upon any person engaged in a business or on any privilege unless the tax is imposed in like manner and at the same rate upon all persons engaged in businesses of the same class in the municipality, whether privately or municipally owned or operated, or exercising the same privilege within the municipality.

Any of the taxes enumerated in this Section may be in addition to the payment of money, or value of products or services furnished to the municipality by the taxpayer as compensation for the use of its streets, alleys, or other public places, or installation and maintenance therein, thereon or thereunder of poles, wires, pipes or other equipment used in the operation of the taxpayer's business.

(a) If the corporate authorities of any home rule municipality have adopted an ordinance that imposed a tax on public utility customers, between July 1, 1971, and October 1, 1981, on the good faith belief that they were exercising authority pursuant to Section 6 of Article VII of the 1970 Illinois Constitution, that action of the corporate authorities shall be declared legal and valid, notwithstanding a later decision of a judicial tribunal declaring the ordinance invalid. No municipality shall be required to rebate, refund, or issue credits for any taxes described in this paragraph, and those taxes shall be deemed to have been levied and collected in accordance with the Constitution and laws of this State.

(b) In any case in which (i) prior to October 19, 1979, the corporate authorities of any municipality have adopted an ordinance imposing a tax authorized by this Section (or by the predecessor provision of the "Revised Cities and Villages Act") and have explicitly or in practice interpreted gross receipts to include either charges added to customers' bills pursuant to the provision of paragraph (a) of Section 36 of the Public Utilities Act or charges added to customers' bills by taxpayers who are not subject to rate regulation by the Illinois Commerce Commission for the purpose of recovering any of the tax liabilities or other amounts specified in such paragraph (a) of Section 36 of that Act, and (ii) on or after October 19, 1979, a judicial tribunal has construed gross receipts to exclude all or part of those charges, then neither those municipality nor any taxpayer who paid the tax shall be required to rebate, refund, or issue credits for any tax imposed or charge collected from customers pursuant to the municipality's interpretation prior to October 19, 1979. This paragraph reflects a legislative finding that it would be contrary to the public interest to require a municipality or its taxpayers to refund taxes or charges attributable to the municipality's more inclusive interpretation of gross receipts prior to October 19, 1979, and is not intended to prescribe or limit judicial construction of this Section. The legislative finding set forth in this subsection does not apply to taxes imposed after the effective date of this amendatory Act of 1995.

(c) The tax authorized by subparagraph 3 shall be collected from the purchaser by the person maintaining a place of business in this State who delivers the electricity to the purchaser. This tax shall constitute a debt of the purchaser to the person who delivers the electricity to the purchaser and if unpaid, is recoverable in the same manner as the original charge for delivering the electricity. Any tax required to be collected pursuant to an ordinance authorized by subparagraph 3 and any such tax collected by a person delivering electricity shall constitute a debt owed to the municipality by such person delivering the electricity, provided, that the person delivering electricity shall be allowed credit for such tax related to deliveries of electricity the charges for which are written off as uncollectible, and provided further, that if such charges are thereafter collected, the delivering supplier shall be obligated to remit such tax. For purposes of this subsection (c), any partial payment not specifically identified by the purchaser shall be deemed to be for the delivery of electricity. Persons delivering electricity shall collect the tax from the purchaser by adding such tax to the gross charge for delivering the electricity, in the manner prescribed by the municipality. Persons delivering electricity shall also be authorized to add to such gross charge an amount equal to 3% of the tax to reimburse the person delivering electricity for the expenses incurred in keeping records, billing customers, preparing and filing returns, remitting the tax and supplying data to the municipality upon request. If the person delivering electricity fails to collect the tax from the purchaser, then the purchaser shall be required to pay

the tax directly to the municipality in the manner prescribed by the municipality. Persons delivering electricity who file returns pursuant to this paragraph (c) shall, at the time of filing such return, pay the municipality the amount of the tax collected pursuant to subparagraph 3. ~~(Blank).~~

(d) For the purpose of the taxes enumerated in this Section:

"Gross receipts" means the consideration received for the transmission of messages, the consideration received for distributing, supplying, furnishing or selling gas for use or consumption and not for resale, ~~and the consideration received for distributing, supplying, furnishing or selling electricity for use or consumption and not for resale,~~ and the consideration received for distributing, supplying, furnishing or selling water for use or consumption and not for resale, and for all services rendered in connection therewith valued in money, whether received in money or otherwise, including cash, credit, services and property of every kind and material and for all services rendered therewith, and shall be determined without any deduction on account of the cost of transmitting such messages, without any deduction on account of the cost of the service, product or commodity supplied, the cost of materials used, labor or service cost, or any other expenses whatsoever. "Gross receipts" shall not include that portion of the consideration received for distributing, supplying, furnishing, or selling gas, ~~electricity,~~ or water to, or for the transmission of messages for, business enterprises described in paragraph (e) of this Section to the extent and during the period in which the exemption authorized by paragraph (e) is in effect or for school districts or units of local government described in paragraph (f) during the period in which the exemption authorized in paragraph (f) is in effect.

For utility bills issued on or after May 1, 1996, but before May 1, 1997, and for receipts from those utility bills, "gross receipts" does not include one-third of (i) amounts added to customers' bills under Section 9-222 of the Public Utilities Act, or (ii) amounts added to customers' bills by taxpayers who are not subject to rate regulation by the Illinois Commerce Commission for the purpose of recovering any of the tax liabilities described in Section 9-222 of the Public Utilities Act. For utility bills issued on or after May 1, 1997, but before May 1, 1998, and for receipts from those utility bills, "gross receipts" does not include two-thirds of (i) amounts added to customers' bills under Section 9-222 of the Public Utilities Act, or (ii) amount added to customers' bills by taxpayers who are not subject to rate regulation by the Illinois Commerce Commission for the purpose of recovering any of the tax liabilities described in Section 9-222 of the Public Utilities Act. For utility bills issued on or after May 1, 1998, and for receipts from those utility bills, "gross receipts" does not include (i) amounts added to customers' bills under Section 9-222 of the Public Utilities Act, or (ii) amounts added to customers' bills by taxpayers who are not subject to rate regulation by the Illinois Commerce Commission for the purpose of recovering any of the tax

liabilities described in Section 9-222 of the Public Utilities Act.

For purposes of this Section "gross receipts" shall not include (i) amounts added to customers' bills under Section 9-221 of the Public Utilities Act, or (ii) charges added to customers' bills to recover the surcharge imposed under the Emergency Telephone System Act. This paragraph is not intended to nor does it make any change in the meaning of "gross receipts" for the purposes of this Section, but is intended to remove possible ambiguities, thereby confirming the existing meaning of "gross receipts" prior to the effective date of this amendatory Act of 1995.

The words "transmitting messages", in addition to the usual and popular meaning of person to person communication, shall include the furnishing, for a consideration, of services or facilities (whether owned or leased), or both, to persons in connection with the transmission of messages where those persons do not, in turn, receive any consideration in connection therewith, but shall not include such furnishing of services or facilities to persons for the transmission of messages to the extent that any such services or facilities for the transmission of messages are furnished for a consideration, by those persons to other persons, for the transmission of messages.

"Person" as used in this Section means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint adventure, corporation, limited liability company, municipal corporation, the State or any of its ~~or~~ political subdivisions ~~subdivision of this State~~, any State university created by statute, or a receiver, trustee, guardian or other representative appointed by order of any court.

"Person maintaining a place of business in this State" shall mean any person having or maintaining within this State, directly or by a subsidiary or other affiliate, an office, generation facility, distribution facility, transmission facility, sales office or other place of business, or any employee, agent, or other representative operating within this State under the authority of the person or its subsidiary or other affiliate, irrespective of whether such place of business or agent or other representative is located in this State permanently or temporarily, or whether such person, subsidiary or other affiliate is licensed or qualified to do business in this State.

"Public utility" shall have the meaning ascribed to it in Section 3-105 of the Public Utilities Act and shall include telecommunications carriers as defined in Section 13-202 of that Act and alternative retail electric suppliers as defined in Section 16-102 of that Act.

"Purchase at retail" shall mean any acquisition of electricity by a purchaser for purposes of use or consumption, and not for resale, but shall not include the use of electricity by a public utility directly in the generation, production, transmission, delivery or sale of electricity.

"Purchaser" shall mean any person who uses or consumes, within the corporate limits of the municipality, electricity

acquired in a purchase at retail.

In the case of persons engaged in the business of transmitting messages through the use of mobile equipment, such as cellular phones and paging systems, the gross receipts from the business shall be deemed to originate within the corporate limits of a municipality only if the address to which the bills for the service are sent is within those corporate limits. If, however, that address is not located within a municipality that imposes a tax under this Section, then (i) if the party responsible for the bill is not an individual, the gross receipts from the business shall be deemed to originate within the corporate limits of the municipality where that party's principal place of business in Illinois is located, and (ii) if the party responsible for the bill is an individual, the gross receipts from the business shall be deemed to originate within the corporate limits of the municipality where that party's principal residence in Illinois is located.

(e) Any municipality that imposes taxes upon public utilities or upon the privilege of using or consuming electricity pursuant to this Section whose territory includes any part of an enterprise zone or federally designated Foreign Trade Zone or Sub-Zone may, by a majority vote of its corporate authorities, exempt from those taxes for a period not exceeding 20 years any specified percentage of gross receipts of public utilities received from, or electricity used or consumed by, business enterprises that:

(1) either (i) make investments that cause the creation of a minimum of 200 full-time equivalent jobs in Illinois, (ii) make investments of at least $175,000,000 that cause the creation of a minimum of 150 full-time equivalent jobs in Illinois, or (iii) make investments that cause the retention of a minimum of 1,000 full-time jobs in Illinois; and

(2) are either (i) located in an Enterprise Zone established pursuant to the Illinois Enterprise Zone Act or (ii) Department of Commerce and Community Affairs designated High Impact Businesses located in a federally designated Foreign Trade Zone or Sub-Zone; and

(3) are certified by the Department of Commerce and Community Affairs as complying with the requirements specified in clauses (1) and (2) of this paragraph (e).

Upon adoption of the ordinance authorizing the exemption, the municipal clerk shall transmit a copy of that ordinance to the Department of Commerce and Community Affairs. The Department of Commerce and Community Affairs shall determine whether the business enterprises located in the municipality meet the criteria prescribed in this paragraph. If the Department of Commerce and Community Affairs determines that the business enterprises meet the criteria, it shall grant certification. The Department of Commerce and Community Affairs shall act upon certification requests within 30 days after receipt of the ordinance.

Upon certification of the business enterprise by the Department of Commerce and Community Affairs, the Department of Commerce and Community Affairs shall notify the Department of Revenue of the certification. The Department of Revenue

shall notify the public utilities of the exemption status of the gross receipts received from, and the electricity used or consumed by, the certified business enterprises. Such exemption status shall be effective within 3 months after certification.

(f) A municipality that imposes taxes upon public utilities or upon the privilege of using or consuming electricity under this Section and whose territory includes part of another unit of local government or a school district may by ordinance exempt the other unit of local government or school district from those taxes.

(g) The amendment of this Section by Public Act 84-127 shall take precedence over any other amendment of this Section by any other amendatory Act passed by the 84th General Assembly before the effective date of Public Act 84-127.

(h) In any case in which, before July 1, 1992, a person engaged in the business of transmitting messages through the use of mobile equipment, such as cellular phones and paging systems, has determined the municipality within which the gross receipts from the business originated by reference to the location of its transmitting or switching equipment, then (i) neither the municipality to which tax was paid on that basis nor the taxpayer that paid tax on that basis shall be required to rebate, refund, or issue credits for any such tax or charge collected from customers to reimburse the taxpayer for the tax and (ii) no municipality to which tax would have been paid with respect to those gross receipts if the provisions of this amendatory Act of 1991 had been in effect before July 1, 1992, shall have any claim against the taxpayer for any amount of the tax.

(Source: P.A. 89-325, eff. 1-1-96; 90-16, eff. 6-16-97.)

ARTICLE 4

Section 75. Effective date of Articles 2 and 5 and Sections 25, 26, 30, 35 and 65. Sections 25 and 30 of this amendatory Act of 1997 take effect January 1, 1998. Articles 2 and 5 and Sections 26, 35 and 65 of this amendatory Act of 1997 take effect August 1, 1998.

ARTICLE 5

Section 5-1. Short title. This Article shall be known and may be cited as the Electricity Infrastructure Maintenance Fee Law.

Section 5-2. Legislative intent. This Law is intended to create a uniform system for the imposition and collection of fees associated with the privilege of using the public right of way for the delivery of electricity.

Section 5-3. Definitions. For the purposes of this Law:

(a) "Electricity deliverer" means any person who uses any portion of any public rights of way of an Illinois municipality for the purpose of distributing, transmitting, or otherwise delivering electricity, regardless of its

source, for use or consumption within that municipality, and not for resale. For purposes of this definition, use of the public rights of way shall not include the use of real property pursuant to the terms of an easement, lease, or other similar property interest held over municipally-owned property.

(b) "Delivery of electricity" means the distribution, transmission, or other delivery of electricity through the use of the municipality's public rights of way, regardless of the source of the electricity, for use or consumption within that municipality, and not for resale. The term includes the delivery of electricity for use or consumption by the electricity deliverer, except for electricity used or consumed by the electricity deliverer for the production or distribution of electricity.

(c) "Person" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint adventure, corporation, limited liability company, municipal corporation, the State or any of its political subdivisions, any State university created by statute, or a receiver, trustee, guardian, or other representative appointed by order of any court.

(d) "Public rights of way" means streets, alleys, and similar public ways, and all areas over and under such public ways, title to which is owned by the municipality, and which are dedicated exclusively to public use.

(e) "Purchaser" means any person who uses or consumes, within the corporate limits of the municipality, electricity acquired in a purchase at retail.

(f) "Resale" includes any and all sales of electricity for the purpose of a subsequent sale to another, including the sale of electric energy within the meaning of the Federal Power Act (16 U.S.C. 824), but excluding the distribution of electricity to occupants of a building or buildings, or to a group of customers within the municipality, by a person who owns, controls or manages, or acts as agent for, the building, buildings, or group of customers.

Section 5-4. Right to franchise contract. A municipality shall be entitled to require a franchise contract from an electricity deliverer as a condition of allowing the electricity deliverer to use any portion of any public right of way within the municipality for the placement and maintenance of facilities for distributing, transmitting, or delivering electricity. Such franchise contract shall be established by ordinance and shall be valid when accepted in writing by the electricity deliverer.

Section 5-5. Municipal electricity infrastructure maintenance fee.

(a) Any municipality that on the effective date of this Law had in effect a franchise agreement with an electricity deliverer may impose an infrastructure maintenance fee upon electricity deliverers, as compensation for granting electricity deliverers the privilege of using public rights of way, in an amount specified in subsection (b) of this Section. If more than one electricity deliverer is

responsible for the delivery of the same electricity to the same consumer, the fee related to that electricity shall be imposed upon the electricity deliverer who last physically uses the public way for delivery of that electricity prior to its consumption.

(b) (1) In municipalities with a population greater than 500,000, the amount of the infrastructure maintenance fee imposed under this Section shall not exceed the following maximum rates for kilowatt-hours delivered within the municipality to each purchaser:

(i) For the first 2,000 kilowatt-hours of electricity used or consumed in a month: 0.53 cents per kilowatt-hour;

(ii) For the next 48,000 kilowatt-hours of electricity used or consumed in a month: 0.35 cents per kilowatt-hour;

(iii) For the next 50,000 kilowatt-hours of electricity used or consumed in a month: 0.31 cents per kilowatt-hour;

(iv) For the next 400,000 kilowatt-hours of electricity used or consumed in a month: 0.305 cents per kilowatt-hour;

(v) For the next 500,000 kilowatt-hours of electricity used or consumed in a month: 0.30 cents per kilowatt-hour;

(vi) For the next 2,000,000 kilowatt-hours of electricity used or consumed in a month: 0.28 cents per kilowatt-hour;

(vii) For the next 2,000,000 kilowatt-hours of electricity used or consumed in a month: 0.275 cents per kilowatt-hour;

(viii) For the next 5,000,000 kilowatt-hours of electricity used or consumed in a month: 0.27 cents per kilowatt-hour;

(ix) For the next 10,000,000 kilowatt-hours used or consumed in a month: 0.265 cents per kilowatt-hour;

(x) For all kilowatt-hours of electricity in excess of 20,000,000 kilowatt-hours used or consumed in a month: 0.26 cents per kilowatt-hour.

(2) In municipalities with a population of 500,000 or less, the amount of the infrastructure maintenance fee imposed under this Section shall be imposed based on the kilowatt-hour categories set forth above and shall be calculated on a monthly basis for kilowatt-hours of electricity delivered to each purchaser; provided, that if, immediately prior to imposing an infrastructure maintenance fee, such municipality receives franchise fees, permit fees, free electrical service, or other forms of compensation pursuant to an existing franchise agreement, the rates established for these kilowatt-hour categories for such infrastructure maintenance fee during the term of the franchise agreement shall not exceed rates reasonably calculated, at the time such infrastructure maintenance fee is initially imposed, to generate an amount of revenue equivalent to the value of the compensation received or provided under the franchise agreement.

(3) Notwithstanding any other provision of this

subsection (b), a fee shall not be imposed if and to the extent that imposition or collection of the fee would violate the Constitution or statutes of the United States or the statutes or Constitution of the State of Illinois.

(c) Any electricity deliverer may collect the amount of a fee imposed under this Section from the purchaser using or consuming the electricity with respect to which the fee was imposed. The fee may be collected by the electricity deliverer from the purchaser as a separately stated charge on the purchaser's bills or in any other manner permitted from time to time by law or by the electricity deliverer's tariffs. The electricity deliverer shall be allowed credit for any portion of the fee related to deliveries of electricity the charges for which are written off as uncollectible, provided, that if such charges are thereafter collected, the electricity deliverer shall be obligated to pay such fee. For purposes of this Section, any partial payment not specifically identified by the purchaser shall be deemed to be for the delivery of electricity. No ordinance imposing the fee authorized by this Section with respect to the kilowatt-hours delivered to non-residential customers shall be effective until October 1, 1999. For purposes of this Law, the period of time from the effective date of this Law through and including September 30, 1999 shall be referred to as the "Initial Period."

(d) As between the electricity deliverer and the municipality, the fee authorized by this Section shall be collected, enforced, and administered by the municipality imposing the fee. Any municipality adopting an ordinance imposing an infrastructure maintenance fee under this Law shall give written notice to each electricity deliverer subject to the fee not less than 60 days prior to the date the fee is imposed.

Section 5-6. Validity of existing franchise fees and agreement; police powers.

(a) On and after the effective date of this Law, no electricity deliverer paying an infrastructure maintenance fee imposed under this Law may be denied the right to use, directly or indirectly, public rights of way because of the failure to pay any other fee or charge for the right to use those rights of way except to the extent that the electricity deliverer during the Initial Period fails under any existing franchise agreement to pay franchise fees which are based on the gross receipts or gross revenues attributable to non-residential customers or to provide free electrical service or other compensation attributable to non-residential customers. A municipality that imposes an infrastructure maintenance fee pursuant to Section 5-5 shall impose no other fees or charges upon electricity deliverers for such use except as provided by subsections (b) or (c) of this Section.

(b) Agreements between electricity deliverers and municipalities regarding use of the public way shall remain valid according to and for their stated terms. However, a municipality that, pursuant to a franchise agreement in existence on the effective date of this Law, receives any franchise fees, permit fees, free electrical service or other

compensation for use of the public rights of way, may impose an infrastructure maintenance fee pursuant to this Law only if the municipality: (1) waives its right to receive all compensation from the electricity deliverer for use of the public rights of way during the time the infrastructure maintenance fee is imposed, except as provided in subsection (c), and except that during the Initial Period any municipality may continue to receive franchise fees, free electrical service or other compensation from the electricity deliverer which are equal in value to the Initial Period Compensation; and (2) provides written notice of this waiver to the appropriate electricity deliverer at the time that the municipality provides notice of the imposition of the infrastructure maintenance fee under subsection (d) of Section 5-5. For purposes of this Section, "Initial Period Compensation" shall mean the total amount of compensation due under the existing franchise agreement during the Initial Period less the amount of the infrastructure maintenance fee imposed under this Section during the Initial Period.

(c) Nothing in this Law prohibits a municipality from the reasonable exercise of its police powers over the public rights of way. In addition, a municipality may require an electricity deliverer to reimburse any special or extraordinary expenses or costs reasonably incurred by the municipality as a direct result of damages to its property or public rights of way, such as the costs of restoration of streets damaged by a electricity deliverer that does not make timely repair of the damage, or for the loss of revenue due to the inability to use public facilities as a direct result of the actions of the electricity deliverer, such as parking meters that are required to be removed because of work of an electricity deliverer.

ARTICLE 6

Section 6-1. Short title. This Article may be cited as the Renewable Energy, Energy Efficiency, and Coal Resources Development Law of 1997.

Section 6-2. Findings and intent. The General Assembly finds and declares that it is desirable to obtain the environmental quality, public health, and fuel diversity benefits of developing new renewable energy resources and clean coal technologies for use in Illinois and to lower the cost of renewable energy resources and clean coal resources provided to utility consumers. The General Assembly finds and declares that the benefits of electricity from renewable energy resources and clean coal technologies accrue to the public at large, thus consumers and electric utilities and alternative retail electric suppliers share an interest in developing and using a significant level of these environmentally preferable resources in the State's electricity supply portfolio. The General Assembly finds and declares that encouraging energy efficiency will improve the environmental quality and public health in the State of Illinois.

Section 6-3. Renewable energy resources program.

(a) The Department of Commerce and Community Affairs, to be called the "Department" hereinafter in this Law, shall administer the Renewable Energy Resources Program to provide grants, loans, and other incentives to foster investment in and the development and use of renewable energy resources.

(b) The Department shall establish eligibility criteria for grants, loans, and other incentives to foster investment in and the development and use of renewable energy resources. These criteria shall be reviewed annually and adjusted as necessary. The criteria should promote the goal of fostering investment in and the development and use, in Illinois, of renewable energy resources.

(c) The Department shall accept applications for grants, loans, and other incentives to foster investment in and the development and use of renewable energy resources.

(d) To the extent that funds are available and appropriated, the Department shall provide grants, loans, and other incentives to applicants that meet the criteria specified by the Department.

(e) The Department shall conduct an annual study on the use and availability of renewable energy resources in Illinois. Each year, the Department shall submit a report on the study to the General Assembly. This report shall include suggestions for legislation which will encourage the development and use of renewable energy resources.

(f) As used in this Law, "renewable energy resources" includes energy from wind, solar thermal energy, photovoltaic cells and panels, dedicated crops grown for energy production and organic waste biomass, hydropower that does not involve new construction or significant expansion of hydropower dams, and other such alternative sources of environmentally preferable energy. "Renewable energy resources" does not include, however, energy from the incineration, burning or heating of waste wood, tires, garbage, general household, institutional and commercial waste, industrial lunchroom or office waste, landscape waste, or construction or demolition debris.

Section 6-4. Renewable Energy Resources Trust Fund.

(a) A fund to be called the Renewable Energy Resources Trust Fund is hereby established in the State Treasury.

(b) The Renewable Energy Resources Trust Fund shall be administered by the Department to provide grants, loans, and other incentives to foster investment in and the development and use of renewable energy resources as provided in Section 6-3 of this Law.

(c) All funds used by the Department for the Renewable Energy Resources Program shall be subject to appropriation by the General Assembly.

Section 6-5. Renewable Energy Resources and Coal Technology Development Assistance Charge.

(a) Beginning January 1, 1998, the following charges shall be imposed:

(1) $0.05 per month on each account for residential electric service as defined in Section 13 of the Energy

Assistance Act of 1989;

(2) $0.05 per month on each account for residential gas service as defined in Section 13 of the Energy Assistance Act of 1989;

(3) $0.50 per month on each account for nonresidential electric service, as defined in Section 13 of the Energy Assistance Act of 1989, taking less than 10 megawatts of peak demand during the previous calendar year;

(4) $0.50 per month on each account for nonresidential gas service, as defined in Section 13 of the Energy Assistance Act of 1989, taking less than 4,000,000 therms of gas during the previous calendar year;

(5) $37.50 per month on each account for nonresidential electric service, as defined in Section 13 of the Energy Assistance Act of 1989, taking 10 megawatts or greater of peak demand during the previous calendar year; and

(6) $37.50 per month on each account for nonresidential gas service, as defined in Section 13 of the Energy Assistance Act of 1989, taking 4,000,000 or more therms of gas during the previous calendar year.

(b) Except as provided in subsection (e) of this Section, this charge is to be collected by electric and gas utilities, whether owned by investors, municipalities or cooperatives, and alternative retail electric suppliers on a monthly basis from their respective customers.

(c) Fifty percent of the moneys collected pursuant to this Section shall be deposited in the Renewable Energy Resources Trust Fund. The remaining 50 percent of the moneys collected pursuant to this Section shall be deposited in the Coal Technology Development Assistance Fund for use under the Illinois Coal Technology Development Assistance Act.

(d) On a monthly basis, each utility and alternative retail electric supplier collecting charges pursuant to this Section shall remit to the Department for deposit in the Renewable Energy Resources Trust Fund all moneys received as payment of the charge provided for in this Section.

(e) The charges imposed by this Section shall only apply to customers of municipal electric utilities and electric cooperatives if the municipal electric utility or electric cooperative makes an affirmative decision to impose the charge. If a municipal electric utility or electric cooperative does not assess this charge, its customers shall not be eligible for the Renewable Energy Resources Program.

Section 6-6. Energy efficiency program.

(a) For the year beginning January 1, 1998, and thereafter as provided in this Section, each electric utility and each alternative retail electric supplier supplying electric power and energy to retail customers located in the State of Illinois shall contribute annually to the Department a pro rata share of a total amount of $3,000,000 based upon the number of kilowatt-hours sold by each such entity in the 12 months preceding the year of contribution. These contributions shall be remitted to the Department on or

before June 30 of each year the contribution is due. The funds received by the Department pursuant to this Section shall be subject to the appropriation of funds by the General Assembly. The Department shall place the funds remitted under this Section in a trust fund, that is hereby created in the State Treasury, called the Energy Efficiency Trust Fund.

(b) The Department shall disburse the moneys in the Energy Efficiency Trust Fund to residential electric customers to fund projects which the Department has determined will promote energy efficiency in the State of Illinois. The Department shall establish a list of projects eligible for grants from the Energy Efficiency Trust Fund including, but not limited to, supporting energy efficiency efforts for low-income households, replacing energy inefficient windows with more efficient windows, replacing energy inefficient appliances with more efficient appliances, replacing energy inefficient lighting with more efficient lighting, insulating dwellings and buildings, and such other projects which will increase energy efficiency in homes and rental properties.

(c) The Department shall establish criteria and an application process for this grant program.

(d) The Department shall conduct a study of other possible energy efficiency improvements and evaluate methods for promoting energy efficiency and conservation, especially for the benefit of low-income customers.

(e) The Department shall submit an annual report to the General Assembly evaluating the effectiveness of the projects and programs provided in this Section, and recommending further legislation which will encourage additional development and implementation of energy efficiency projects and programs in Illinois and other actions that help to meet the goals of this Section.

Section 6-7. Repeal. The provisions of this Law are repealed 10 years after the effective date of this amendatory Act of 1997 unless renewed by act of the General Assembly.

ARTICLE 7

Section 80. The Illinois Coal Technology Development Assistance Act is amended by changing Section 3 as follows:

(30 ILCS 730/3) (from Ch. 96 1/2, par. 8203)

Sec. 3. Transfers to Coal Technology Development Assistance Funds. As soon as may be practicable after the first day of each month, the Department of Revenue shall certify to the Treasurer an amount equal to 1/64 of the revenue realized from the tax imposed by the Electricity Excise Tax Law, Section 2 of the Public Utilities Revenue Act, Section 2 of the Messages Tax Act, and Section 2 of the Gas Revenue Tax Act, during the preceding month. Upon receipt of the certification, the Treasurer shall transfer the amount shown on such certification from the General Revenue Fund to the Coal Technology Development Assistance Fund, which is hereby created as a special fund in the State treasury, except that no transfer shall be made in any month

in which the Fund from moneys received under this Section has reached the following balance:

(1) $7,000,000 during fiscal year 1994.

(2) $8,500,000 during fiscal year 1995.

(3) $10,000,000 during fiscal year 1996 and each year thereafter.

(Source: P.A. 88-391.)

Section 85. The Energy Assistance Act of 1989 is amended by changing Section 5 and adding Sections 13 and 14 as follows:

(305 ILCS 20/5) (from Ch. 111 2/3, par. 1405)

(Text of Section before amendment by P.A. 89-507)

Sec. 5. Policy Advisory Council.

(a) Within the Department of Commerce and Community Affairs is created a Policy Advisory Council to be comprised of:

(1) the following ex officio members or their designees: the Director of Commerce and Community Affairs who shall serve as Chair of the Committee, the Director of Natural Resources, the Director of Public Aid, and the Chairman of the Illinois Commerce Commission; and

(2) 9 persons who shall be appointed by the Governor to serve 2 year terms and until their successors are appointed and qualified, 3 of whom shall be persons who represent low income households or organizations which represent such households, 3 of whom shall be representatives of public utilities or other entities which provide winter energy services, and 3 of whom shall be representatives of local agencies engaged by the Department to assist in the administration of this Act.

(3) 6 persons who shall be appointed by the Director of the Department of Commerce and Community Affairs to serve 2 ~~two~~ year terms and until their successors are appointed and qualified, who shall be persons meeting such qualifications as may be required by the federal government for the administration of the Weatherization Assistance Program funded by the U.S. Department of Energy and any such related energy assistance programs.

(4) Members shall serve without compensation, but may receive reimbursement for actual costs incurred in fulfilling their duties as members of the Council.

(b) The Policy Advisory Council shall have the following duties:

(1) to monitor the administration of this Act to ensure effective, efficient, and coordinated program development and implementation;

(2) to assist the Department in developing and administering rules and regulations required to be promulgated pursuant to this Act in a manner consistent with the purpose and objectives of this Act;

(3) to facilitate and coordinate the collection and exchange of all program data and other information needed by the Department and others in fulfilling their duties

pursuant to this Act;

(4) to advise the Department on the proper level of support required for effective administration of the Act;

(5) to provide a written opinion concerning any regulation proposed pursuant to this Act, and to review and comment on any energy assistance or related plan required to be prepared by the Department; ~~and~~

(6) on or before March 1 of each year beginning in 1990, to prepare and submit a report to the Governor and General Assembly which describes the activities of the Department in the development and implementation of energy assistance and related policies and programs, which characterizes progress towards meeting the objectives and requirements of this Act, and which recommends any statutory changes which might be needed to further such progress. The report submitted in 1991 shall include an analysis of and recommendations regarding this Act's provisions concerning State payment of pre-program arrearages; and~~.~~

(7) to advise the Department on the use of funds collected pursuant to Section 13 of this Act, and on any changes to existing low-income energy assistance programs to make effective use of such funds, so long as such uses and changes are consistent with the requirements of subsection (a) of Section 13 of this Act.

(Source: P.A. 89-445, eff. 2-7-96.)

(Text of Section after amendment by P.A. 89-507)

Sec. 5. Policy Advisory Council.

(a) Within the Department of Commerce and Community Affairs is created a Policy Advisory Council to be comprised of:

(1) the following ex officio members or their designees: the Director of Commerce and Community Affairs who shall serve as Chair of the Committee, the Director of Natural Resources, the Secretary of Human Services, and the Chairman of the Illinois Commerce Commission; and

(2) 9 persons who shall be appointed by the Governor to serve 2 year terms and until their successors are appointed and qualified, 3 of whom shall be persons who represent low income households or organizations which represent such households, 3 of whom shall be representatives of public utilities or other entities which provide winter energy services, and 3 of whom shall be representatives of local agencies engaged by the Department to assist in the administration of this Act.

(3) 6 persons who shall be appointed by the Director of the Department of Commerce and Community Affairs to serve 2 ~~two~~ year terms and until their successors are appointed and qualified, who shall be persons meeting such qualifications as may be required by the federal government for the administration of the Weatherization Assistance Program funded by the U.S. Department of Energy and any such related energy assistance programs.

(4) Members shall serve without compensation, but

may receive reimbursement for actual costs incurred in fulfilling their duties as members of the Council.

(b) The Policy Advisory Council shall have the following duties:

(1) to monitor the administration of this Act to ensure effective, efficient, and coordinated program development and implementation;

(2) to assist the Department in developing and administering rules and regulations required to be promulgated pursuant to this Act in a manner consistent with the purpose and objectives of this Act;

(3) to facilitate and coordinate the collection and exchange of all program data and other information needed by the Department and others in fulfilling their duties pursuant to this Act;

(4) to advise the Department on the proper level of support required for effective administration of the Act;

(5) to provide a written opinion concerning any regulation proposed pursuant to this Act, and to review and comment on any energy assistance or related plan required to be prepared by the Department; ~~and~~

(6) on or before March 1 of each year beginning in 1990, to prepare and submit a report to the Governor and General Assembly which describes the activities of the Department in the development and implementation of energy assistance and related policies and programs, which characterizes progress towards meeting the objectives and requirements of this Act, and which recommends any statutory changes which might be needed to further such progress. The report submitted in 1991 shall include an analysis of and recommendations regarding this Act's provisions concerning State payment of pre-program arrearages; and~~.~~

(7) to advise the Department on the use of funds collected pursuant to Section 13 of this Act, and on any changes to existing low-income energy assistance programs to make effective use of such funds, so long as such uses and changes are consistent with the requirements of subsection (a) of Section 13 of this Act.

(Source: P.A. 89-445, eff. 2-7-96; 89-507, eff. 7-1-97.)

(305 ILCS 20/13 new)

Sec. 13. Supplemental Low-Income Energy Assistance Fund.

(a) The Supplemental Low-Income Energy Assistance Fund is hereby created as a special fund in the State Treasury. The Supplemental Low-Income Energy Assistance Fund is authorized to receive, by statutory deposit, the moneys collected pursuant to this Section. Subject to appropriation, the Department shall use moneys from the Supplemental Low-Income Energy Assistance Fund for payments to electric or gas public utilities, municipal electric or gas utilities, and electric cooperatives on behalf of their customers who are participants in the program authorized by Section 4 of this Act, for the provision of weatherization services and for administration of the Supplemental Low-Income Energy Assistance Fund. The yearly expenditures for weatherization may not exceed 10% of the amount collected

during the year pursuant to this Section. In determining which customers will participate in the weatherization component, the Department shall target weatherization for those customers with the greatest energy burden, that is the lowest income and greatest utility bills. The yearly administrative expenses of the Supplemental Low-Income Energy Assistance Fund may not exceed 10% of the amount collected during that year pursuant to this Section.

(b) Notwithstanding the provisions of Section 16-111 of the Public Utilities Act, each public utility, electric cooperative, as defined in Section 3.4 of the Electric Supplier Act, and municipal utility, as referenced in Section 3-105 of the Public Utilities Act, that is engaged in the delivery of electricity or the distribution of natural gas within the State of Illinois shall, effective January 1, 1998, assess each of its customer accounts a monthly Energy Assistance Charge for the Supplemental Low-Income Energy Assistance Fund. The monthly charge shall be as follows:

(1) $0.40 per month on each account for residential electric service;

(2) $0.40 per month on each account for residential gas service;

(3) $4 per month on each account for non-residential electric service which had less than 10 megawatts of peak demand during the previous calendar year;

(4) $4 per month on each account for non-residential gas service which had distributed to it less than 4,000,000 therms of gas during the previous calendar year;

(5) $300 per month on each account for non-residential electric service which had 10 megawatts or greater of peak demand during the previous calendar year; and

(6) $300 per month on each account for non-residential gas service which had 4,000,000 or more therms of gas distributed to it during the previous calendar year.

(c) For purposes of this Section:

(1) "residential electric service" means electric utility service for household purposes delivered to a dwelling of 2 or fewer units which is billed under a residential rate, or electric utility service for household purposes delivered to a dwelling unit or units which is billed under a residential rate and is registered by a separate meter for each dwelling unit;

(2) "residential gas service" means gas utility service for household purposes distributed to a dwelling of 2 or fewer units which is billed under a residential rate, or gas utility service for household purposes distributed to a dwelling unit or units which is billed under a residential rate and is registered by a separate meter for each dwelling unit;

(3) "non-residential electric service" means electric utility service which is not residential electric service; and

(4) "non-residential gas service" means gas utility

service which is not residential gas service.

(d) At least 45 days prior to the date on which it must begin assessing Energy Assistance Charges, each public utility engaged in the delivery of electricity or the distribution of natural gas shall file with the Illinois Commerce Commission tariffs incorporating the Energy Assistance Charge in other charges stated in such tariffs.

(e) The Energy Assistance Charge assessed by electric and gas public utilities shall be considered a charge for public utility service.

(f) On a monthly basis, each public utility, municipal utility, and electric cooperative shall remit to the Department of Revenue all moneys received as payment of the Energy Assistance Charge. If a customer makes a partial payment, a public utility, municipal utility, or electric cooperative may elect either: (i) to apply such partial payments first to amounts owed to the utility or cooperative for its services and then to payment for the Energy Assistance Charge or (ii) to apply such partial payments on a pro-rata basis between amounts owed to the utility or cooperative for its services and to payment for the Energy Assistance Charge.

(g) The Department of Revenue shall deposit into the Supplemental Low-Income Energy Assistance Fund all moneys remitted to it in accordance with subsection (f) of this Section.

(h) If as of December 31, 2002 the program authorized by Section 4 of this Act has not been replaced by a new energy assistance program which is in operation, then the General Assembly shall review the program; provided however, that after that date, any public utility, municipal utility, or electric cooperative shall continue to assess an Energy Assistance Charge which was originally assessed on or before December 31, 2002 and which remains unpaid.

On or before December 31, 2003, the Department shall prepare a report for the General Assembly on the expenditure of funds appropriated from the Low-Income Energy Assistance Block Grant Fund for the program authorized under Section 4 of this Act.

(i) The Department of Revenue may establish such rules as it deems necessary to implement this Section.

(j) The Department of Commerce and Community Affairs may establish such rules as it deems necessary to implement this Section.

(k) The charges imposed by this Section shall only apply to customers of municipal electric utilities and electric cooperatives if the municipal electric utility or electric cooperative makes an affirmative decision to impose the charge. If a municipal electric utility or electric cooperative does not assess this charge, the Department may not use funds from the Supplemental Low-Income Energy Assistance Fund to provide benefits to its customers under the program authorized by Section 4 of this Act.

(305 ILCS 20/14 new)

Sec. 14. Energy Assistance Program Design Group.

(a) This Section establishes an Energy Assistance

Program Design Group to advise the General Assembly with respect to designing a low-income energy assistance program for the period beginning on January 1, 2003.

(b) As promptly as practicable following the enactment of this amendatory Act of 1997, the General Assembly, or a Joint Committee thereof, shall establish an Energy Assistance Program Design Group. The Energy Assistance Program Design Group shall be chaired by the Director of the Department of Commerce and Community Affairs and shall include one representative of each of the following: (i) the Illinois Commerce Commission; (ii) the Department of Natural Resources; (iii) electric public utilities; (iv) gas public utilities; (v) combination gas and electric public utilities; (vi) municipal utilities and electric cooperatives; (vii) electricity and natural gas marketers; (viii) low-income energy customers; (ix) local agencies engaged by the Department of Commerce and Community Affairs to assist in the administration of the Energy Assistance Act of 1989; (x) residential energy customers; (xi) commercial energy customers; and (xii) industrial energy customers.

(c) Within 3 months of its establishment, the Energy Assistance Program Design Group shall meet to begin consideration of the design and implementation of an energy assistance program in Illinois for the period beginning on January 1, 2003. Within 12 months of its establishment, the Program Design Group shall hold public hearings to assist its deliberations.

(d) The Program Design Group shall provide a report containing its recommendations to the General Assembly on or before January 1, 2002. This report must include the following:

(1) recommendations on the definition of an eligible low-income residential customer;

(2) recommendations regarding the continuation of the program authorized by Section 4 of this Act and the Supplemental Low-Income Energy Assistance Fund;

(3) recommendations on ensuring low-income residential customers have access to essential energy services;

(4) recommendations on addressing past due amounts owed to utilities by low-income persons in Illinois;

(5) demographic and other information (including household consumption information) necessary to determine the total number of customers eligible for assistance, the total number of customers likely to apply for assistance, and funding estimates for any recommended program;

(6) recommendations on appropriate measures to encourage energy conservation, efficiency, and responsibility among low-income residential customers;

(7) any recommended changes to existing legislation; and

(8) an estimate of the cost of implementing the Program Design Group's recommendations.

(e) The recommendations adopted by the Program Design Group shall be competitively neutral in their impact on providers in the energy market and shall spread program costs

across the broadest possible base.

(f) The Department of Commerce and Community Affairs shall hold public hearings on the recommendations of the Energy Assistance Program Design Group during calendar year 2002.

Section 90. The State Finance Act is amended by adding Sections 5.449, 5.450, and 5.451 as follows:

(30 ILCS 105/5.449 new)

Sec. 5.449. The Renewable Energy Resources Trust Fund.

(30 ILCS 105/5.450 new)

Sec. 5.450. The Energy Efficiency Trust Fund.

(30 ILCS 105/5.451 new)

Sec. 5.451. The Supplemental Low-Income Energy Assistance Fund.

Section 95. The Illinois Antitrust Act is amended by changing Section 5 as follows:

(740 ILCS 10/5) (from Ch. 38, par. 60-5)

Sec. 5. No provisions of this Act shall be construed to make illegal:

(1) the activities of any labor organization or of individual members thereof which are directed solely to labor objectives which are legitimate under the laws of either the State of Illinois or the United States;

(2) the activities of any agricultural or horticultural cooperative organization, whether incorporated or unincorporated, or of individual members thereof, which are directed solely to objectives of such cooperative organizations which are legitimate under the laws of either the State of Illinois or the United States;

(3) the activities of any public utility, as defined in Section 3-105 of the Public Utilities Act to the extent that such activities are subject to a clearly articulated and affirmatively expressed State policy to replace competition with regulation, where the conduct to be exempted is actively supervised by the State itself ~~the jurisdiction of the Illinois Commerce Commission~~;

(4) The activities of a telecommunications carrier, as defined in Section 13-202 of the Public Utilities Act, to the extent those activities relate to the provision of noncompetitive telecommunications services under the Public Utilities Act and are subject to the jurisdiction of the Illinois Commerce Commission or to the activities of telephone mutual concerns referred to in Section 13-202 of the Public Utilities Act to the extent those activities relate to the provision and maintenance of telephone service to owners and customers;

(5) the activities (including, but not limited to, the making of or participating in joint underwriting or joint reinsurance arrangement) of any insurer, insurance agent, insurance broker, independent insurance adjuster or rating organization to the extent that such activities are subject

to regulation by the Director of Insurance of this State under, or are permitted or are authorized by, the Insurance Code or any other law of this State;

(6) the religious and charitable activities of any not-for-profit corporation, trust or organization established exclusively for religious or charitable purposes, or for both purposes;

(7) the activities of any not-for-profit corporation organized to provide telephone service on a mutual or co-operative basis or electrification on a co-operative basis, to the extent such activities relate to the marketing and distribution of telephone or electrical service to owners and customers;

(8) the activities engaged in by securities dealers who are (i) licensed by the State of Illinois or (ii) members of the National Association of Securities Dealers or (iii) members of any National Securities Exchange registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, in the course of their business of offering, selling, buying and selling, or otherwise trading in or underwriting securities, as agent, broker, or principal, and activities of any National Securities Exchange so registered, including the establishment of commission rates and schedules of charges;

(9) the activities of any board of trade designated as a "contract market" by the Secretary of Agriculture of the United States pursuant to Section 5 of the Commodity Exchange Act, as amended;

(10) the activities of any motor carrier, rail carrier, or common carrier by pipeline, as defined in the Common Carrier by Pipeline Law of the Public Utilities Act, to the extent that such activities are permitted or authorized by the Act or are subject to regulation by the Illinois Commerce Commission;

(11) the activities of any state or national bank to the extent that such activities are regulated or supervised by officers of the state or federal government under the banking laws of this State or the United States;

(12) the activities of any state or federal savings and loan association to the extent that such activities are regulated or supervised by officers of the state or federal government under the savings and loan laws of this State or the United States;

(13) the activities of any bona fide not-for-profit association, society or board, of attorneys, practitioners of medicine, architects, engineers, land surveyors or real estate brokers licensed and regulated by an agency of the State of Illinois, in recommending schedules of suggested fees, rates or commissions for use solely as guidelines in determining charges for professional and technical services;

(14) Conduct involving trade or commerce (other than import trade or import commerce) with foreign nations unless:

(a) such conduct has a direct, substantial, and reasonably foreseeable effect:

(i) on trade or commerce which is not trade or commerce with foreign nations, or on import trade or import commerce with foreign nations; or

(ii) on export trade or export commerce with foreign nations of a person engaged in such trade or commerce in the United States; and

(b) such effect gives rise to a claim under the provisions of this Act, other than this subsection (14).

(c) If this Act applies to conduct referred to in this subsection (14) only because of the provisions of paragraph (a)(ii), then this Act shall apply to such conduct only for injury to export business in the United States which affects this State; or

(15) the activities of a unit of local government or school district and the activities of the employees, agents and officers of a unit of local government or school district.

(Source: P.A. 90-185, eff. 7-23-97.)

Section 97. No acceleration or delay. Where this Act makes changes in a statute that is represented in this Act by text that is not yet or no longer in effect (for example, a Section represented by multiple versions), the use of that text does not accelerate or delay the taking effect of (i) the changes made by this Act or (ii) provisions derived from any other Public Act.

ARTICLE 8

Section 99. Effective date. Except as provided in Article 4, this Act takes effect on becoming law.