



Rep. George Scully Jr.

**Filed: 5/30/2007**

09500SB1592ham004

LRB095 11114 RCE 37318 a

1 AMENDMENT TO SENATE BILL 1592

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1592 by inserting  
3 immediately above the enacting clause the following:

4 "WHEREAS, This Act shall be known as the Electricity Rate  
5 Relief Act of 2007; therefore,"; and

6 by replacing everything after the enacting clause with the  
7 following:

8 "ARTICLE 1. LEGISLATIVE INTENT

9 Section 1-5. Legislative intent. In the Electric Service  
10 Customer Choice and Rate Relief Law of 1997, the General  
11 Assembly authorized market-based electric rates only if retail  
12 and wholesale competition developed in Illinois and if the  
13 Illinois Commerce Commission declared electric service to be  
14 "competitive".

15 In 2006, however, the Illinois Commerce Commission

1 authorized market-based rates for electric service that had  
2 not, and still has not, been declared competitive.

3 As a result, the General Assembly finds it necessary to  
4 take the steps set forth in this amendatory Act to provide  
5 immediate relief to consumers, who have been harmed by the  
6 Illinois Commerce Commission's approval of market-based rates  
7 in the absence of a competitive declaration.

8 ARTICLE 3. AMENDATORY PROVISIONS

9 Section 3-5. The Public Utilities Act is amended by  
10 changing Sections 16-102, 16-103, 16-111, and 16-113 and by  
11 adding Sections 8-205.5 and 16-135 as follows:

12 (220 ILCS 5/8-205.5 new)

13 Sec. 8-205.5. Termination of utility service prior to March  
14 31, 2008. Notwithstanding any other provision of this Act or  
15 any other law to the contrary, a public utility that, on  
16 December 31, 2005, served at least 100,000 electric customers  
17 in Illinois may not terminate electric service to a residential  
18 customer for nonpayment prior to March 31, 2008.

19 (220 ILCS 5/16-102)

20 Sec. 16-102. Definitions. For the purposes of this Article  
21 the following terms shall be defined as set forth in this  
22 Section.

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

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

25 "Base rates" means the rates for those tariffed services  
26 that the electric utility is required to offer pursuant to

1 subsection (a) of Section 16-103 and that were identified in a  
2 rate order for collection of the electric utility's base rate  
3 revenue requirement, excluding (i) separate automatic rate  
4 adjustment riders then in effect, (ii) special or negotiated  
5 contract rates, (iii) delivery services tariffs filed pursuant  
6 to Section 16-108, (iv) real-time pricing, or (v) tariffs that  
7 were in effect prior to October 1, 1996 and that based charges  
8 for services on an index or average of other utilities'  
9 charges, but including (vi) any subsequent redesign of such  
10 rates for tariffed services that is authorized by the  
11 Commission after notice and hearing.

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

18 "Contract service" means (1) services, including the  
19 provision of electric power and energy or other services, that  
20 are provided by mutual agreement between an electric utility  
21 and a retail customer that is located in the electric utility's  
22 service area, provided that, delivery services shall not be a  
23 contract service until such services are declared competitive  
24 pursuant to Section 16-113; and also means (2) the provision of  
25 electric power and energy by an electric utility to retail  
26 customers outside the electric utility's service area pursuant

1 to Section 16-116. Provided, however, contract service does not  
2 include electric utility services provided pursuant to (i)  
3 contracts that retail customers are required to execute as a  
4 condition of receiving tariffed services, or (ii) special or  
5 negotiated rate contracts for electric utility services that  
6 were entered into between an electric utility and a retail  
7 customer prior to the effective date of this amendatory Act of  
8 1997 and filed with the Commission.

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

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

20 "Mandatory transition period" means the period from the  
21 effective date of Public Act 90-561 ~~this amendatory Act of 1997~~  
22 through January 1, 2007 and from the effective date of this  
23 amendatory Act of the 95th General Assembly through the date on  
24 which the Commission has approved declarations of competitive  
25 service, pursuant to Section 16-113, for all classes of service  
26 offered in the service areas of all electric utilities that, on

1 December 31, 2005, served at least 100,000 residential  
2 customers.

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

5 "Real-time pricing" means tariffed retail charges for  
6 delivered electric power and energy that vary hour-to-hour and  
7 are determined from wholesale market prices using a methodology  
8 approved by the Illinois Commerce Commission.

9 "Residential customer" means those retail customers of an  
10 electric utility that receive (i) electric utility service for  
11 household purposes distributed to a dwelling of 2 or fewer  
12 units that is billed under a residential rate or (ii) electric  
13 utility service for household purposes distributed to a  
14 dwelling unit or units that is billed under a residential rate  
15 and is registered by a separate meter for each dwelling unit.

16 "Retail customer" means a single entity using electric  
17 power or energy at a single premises and that (A) either (i) is  
18 receiving or is eligible to receive tariffed services from an  
19 electric utility, or (ii) that is served by a municipal system  
20 or electric cooperative within any area in which the municipal  
21 system or electric cooperative is or would be entitled to  
22 provide service under the law in effect immediately prior to  
23 the effective date of this amendatory Act of 1997, or (B) an  
24 entity which on the effective date of this Act was receiving  
25 electric service from a public utility and (i) was engaged in  
26 the practice of resale and redistribution of such electricity

1 within a building prior to January 2, 1957, or (ii) was  
2 providing lighting services to tenants in a multi-occupancy  
3 building, but only to the extent such resale, redistribution or  
4 lighting service is authorized by the electric utility's  
5 tariffs that were on file with the Commission on the effective  
6 date of this Act.

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

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

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

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

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

1 utility during such year;

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

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

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

23 (A) for nonresidential retail customers, an amount  
24 equal to the greater of (i) 0.5 cents per kilowatt-hour  
25 during the period October 1, 1999 through December 31,  
26 2004, 0.6 cents per kilowatt-hour in calendar year

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

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

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

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

26          (Source: P.A. 94-977, eff. 6-30-06.)

1 (220 ILCS 5/16-103)

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

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

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

17 (c) Notwithstanding any other provision of this Article,  
18 each electric utility shall continue offering to all  
19 residential customers and to all small commercial retail  
20 customers in its service area, as a tariffed service, bundled  
21 electric power and energy delivered to the customer's premises  
22 consistent with the bundled utility service provided by the  
23 electric utility on the effective date of this amendatory Act  
24 of 1997. Upon declaration of the provision of electric power  
25 and energy as competitive, the electric utility shall continue

1 to offer to such customers, as a tariffed service, bundled  
2 service options at rates which reflect recovery of all cost  
3 components for providing the service. For those components of  
4 the service which have been declared competitive, cost shall be  
5 the market based prices. Market based prices as referred to  
6 herein shall mean, for electric power and energy, either (i)  
7 those prices for electric power and energy determined as  
8 provided in Section 16-112, or (ii) the electric utility's cost  
9 of obtaining the electric power and energy at wholesale through  
10 a competitive bidding or other arms-length acquisition  
11 process.

12 (c-1) Electric utilities that serve at least 1,000,000  
13 customers must provide tariffed service to Unit Owners'  
14 Associations, as defined by Section 2 of the Condominium  
15 Property Act, for condominium properties that are not  
16 restricted to nonresidential use at rates that do not exceed  
17 the rates offered to residential customers. Within 10 days  
18 after the effective date of this amendatory Act of the 95th  
19 General Assembly, each electric utility shall provide the  
20 tariffed service to Unit Owners' Associations required by this  
21 subsection and shall reinstate any all-electric discount  
22 applicable to any Unit Owners' Association that received such a  
23 discount on December 31, 2006.

24 (d) Any residential or small commercial retail customer  
25 which elects delivery services is entitled to return to the  
26 electric utility's bundled utility tariffed service offering

1 provided in accordance with subsection (c) of this Section upon  
2 payment of a reasonable administrative fee which shall be set  
3 forth in the tariff, provided, however, that the electric  
4 utility shall be entitled to impose the condition that such  
5 customer may not elect delivery services for up to 24 months  
6 thereafter.

7 (e) Notwithstanding any other provision of this Section or  
8 this Act, on and after the effective date of this amendatory  
9 Act of the 95th General Assembly, the Illinois Power Authority  
10 has sole authority to implement and execute the process of  
11 procuring electricity for electric utilities that on January 2,  
12 2007 served over 100,000 customers. ~~The Commission shall not~~  
13 ~~require an electric utility to offer any tariffed service other~~  
14 ~~than the services required by this Section, and shall not~~  
15 ~~require an electric utility to offer any competitive service.~~

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

17 (220 ILCS 5/16-111)

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

20 (a) During the mandatory transition period,  
21 notwithstanding any provision of Article IX of this Act, and  
22 except as provided in subsections (b), (d), (e), and (f) of  
23 this Section, the Commission shall order each electric utility  
24 that, on December 31, 2005, served at least 100,000 customers  
25 in this State to file and implement tariffs: (A) to reinstate,

1 within 10 days after the effective date of this amendatory Act  
2 of the 95th General Assembly, all rates charged to the electric  
3 utility's customers on December 31, 2006, except that the  
4 utility may charge any rate under any delivery services tariff  
5 of the utility that became effective on or after January 2,  
6 2007; and (B) to refund to the utility's customers any amounts  
7 charged to those customers, from January 2, 2007 until 10 days  
8 after the effective date of this amendatory Act of the 95th  
9 General Assembly, that exceed the rates charged to the electric  
10 utility's customers on December 31, 2006, not including any  
11 rate charged under any delivery services tariff of the utility  
12 that became effective on or after January 2, 2007. This refund:

13 (1) must be issued no later than October 1, 2007;

14 (2) must be made by a negotiable check of the utility  
15 to be paid to the order of the customer;

16 (3) must include interest on the full amount of the  
17 refund, beginning January 2, 2007, at the same interest  
18 rate the Commission requires utilities to pay on customer  
19 deposits; and

20 (4) must be accompanied by a notice that states, in at  
21 least 14-point bold type, "THIS REFUND IS MADE IN  
22 ACCORDANCE WITH A MANDATE OF THE GENERAL ASSEMBLY OF THE  
23 STATE OF ILLINOIS." No other communication may be contained  
24 in the envelope with the refund check and no other  
25 communication concerning the refund may be contained on the  
26 notice, check, or envelope.

1 After electric rates are reinstated in accordance with this  
2 subsection (a), the Commission shall not, prior to July 1,  
3 2008, (i) initiate, authorize or order any change by way of  
4 increase to those components of the reinstated rates that  
5 reflect the cost of electric energy (other than in connection  
6 with a request for rate increase which was filed after  
7 September 1, 1997 but prior to October 15, 1997, by an electric  
8 utility serving less than 12,500 customers in this State) or  
9 (ii), ~~(ii) initiate or, unless requested by the electric~~  
10 ~~utility, authorize or order any change by way of decrease,~~  
11 ~~restructuring or unbundling (except as provided in Section~~  
12 ~~16-109A), in the rates of any electric utility that were in~~  
13 ~~effect on October 1, 1996, or (iii) in any order approving any~~  
14 ~~application for a merger pursuant to Section 7-204 that was~~  
15 ~~pending as of May 16, 1997, impose any condition requiring any~~  
16 ~~filing for an increase, decrease, or change in, or other review~~  
17 ~~of, an electric utility's rates or enforce any such condition~~  
18 ~~of any such order. However, provided, however, that this~~  
19 subsection shall not prohibit the Commission from:

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

25 (2) authorizing an electric utility to eliminate its  
26 fuel adjustment clause and adjust its base rate tariffs in

1       accordance with subsection (b), (d), or (f) of Section  
2       9-220 of this Act, to fix its fuel adjustment factor in  
3       accordance with subsection (c) of Section 9-220 of this  
4       Act, or to eliminate its fuel adjustment clause in  
5       accordance with subsection (e) of Section 9-220 of this  
6       Act;

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

14          (4) ordering or allowing into effect any tariff to  
15      recover charges pursuant to Sections 9-201.5, 9-220.1,  
16      9-221, 9-222 (except as provided in Section 9-222.1),  
17      16-108, and 16-114 of this Act, Section 5-5 of the  
18      Electricity Infrastructure Maintenance Fee Law, Section  
19      6-5 of the Renewable Energy, Energy Efficiency, and Coal  
20      Resources Development Law of 1997, and Section 13 of the  
21      Energy Assistance Act.

22      After December 31, 2004, the provisions of this subsection  
23      (a) shall not apply to an electric utility whose average  
24      residential retail rate was less than or equal to 90% of the  
25      average residential retail rate for the "Midwest Utilities", as  
26      that term is defined in subsection (b) of this Section, based

1 on data reported on Form 1 to the Federal Energy Regulatory  
2 Commission for calendar year 1995, and which served between  
3 150,000 and 250,000 retail customers in this State on January  
4 1, 1995 unless the electric utility or its holding company has  
5 been acquired by or merged with an affiliate of another  
6 electric utility subsequent to January 1, 2002. This exemption  
7 shall be limited to this subsection (a) and shall not extend to  
8 any other provisions of this Act.

9 (a-5) During the remainder of the mandatory transition  
10 period, if any, the Commission may modify rates only in  
11 accordance with Article IX of this Act.

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

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

1 Federal Energy Regulatory Commission for calendar year 2001;  
2 and (B) if the average residential retail rate of an electric  
3 utility serving between 150,000 and 250,000 retail customers in  
4 this State on January 1, 1995 is less than or equal to 90% of  
5 the average residential retail rate for the Midwest Utilities,  
6 based on data reported on Form 1 to the Federal Energy  
7 Regulatory Commission for calendar year 1995, then it shall  
8 only be required to file tariffs (i) reducing, effective August  
9 1, 1998, each component of its base rates to residential retail  
10 customers by 2% from the base rates in effect immediately prior  
11 to January 1, 1998; (ii) reducing, effective October 1, 2000,  
12 each component of its base rates to residential retail  
13 customers by 2% from the base rate in effect immediately prior  
14 to January 1, 1998; and (iii) reducing, effective October 1,  
15 2002, each component of its base rates to residential retail  
16 customers by 1% from the base rates in effect immediately prior  
17 to January 1, 1998. Provided, further, that any electric  
18 utility for which a decrease in base rates has been or is  
19 placed into effect between October 1, 1996 and the dates  
20 specified in the preceding sentences of this subsection, other  
21 than pursuant to the requirements of this subsection, shall be  
22 entitled to reduce the amount of any reduction or reductions in  
23 its base rates required by this subsection by the amount of  
24 such other decrease. The tariffs required under this subsection  
25 shall be filed 45 days in advance of the effective date.  
26 Notwithstanding anything to the contrary in Section 9-220 of

1 this Act, no restatement of base rates in conjunction with the  
2 elimination of a fuel adjustment clause under that Section  
3 shall result in a lesser decrease in base rates than customers  
4 would otherwise receive under this subsection had the electric  
5 utility's fuel adjustment clause not been eliminated.

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

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

26 (d) (Blank). ~~During the mandatory transition period, but~~

1 ~~not before January 1, 2000, and notwithstanding the provisions~~  
2 ~~of subsection (a), an electric utility may request an increase~~  
3 ~~in its base rates if the electric utility demonstrates that the~~  
4 ~~2-year average of its earned rate of return on common equity,~~  
5 ~~calculated as its net income applicable to common stock divided~~  
6 ~~by the average of its beginning and ending balances of common~~  
7 ~~equity using data reported in the electric utility's Form 1~~  
8 ~~report to the Federal Energy Regulatory Commission but adjusted~~  
9 ~~to remove the effects of accelerated depreciation or~~  
10 ~~amortization or other transition or mitigation measures~~  
11 ~~implemented by the electric utility pursuant to subsection (g)~~  
12 ~~of this Section and the effect of any refund paid pursuant to~~  
13 ~~subsection (c) of this Section, is below the 2-year average for~~  
14 ~~the same 2 years of the monthly average yields of 30 year U.S.~~  
15 ~~Treasury bonds published by the Board of Governors of the~~  
16 ~~Federal Reserve System in its weekly H.15 Statistical Release~~  
17 ~~or successor publication. The Commission shall review the~~  
18 ~~electric utility's request, and may review the justness and~~  
19 ~~reasonableness of all rates for tariffed services, in~~  
20 ~~accordance with the provisions of Article IX of this Act,~~  
21 ~~provided that the Commission shall consider any special or~~  
22 ~~negotiated adjustments to the revenue requirement agreed to~~  
23 ~~between the electric utility and the other parties to the~~  
24 ~~proceeding. In setting rates under this Section, the Commission~~  
25 ~~shall exclude the costs and revenues that are associated with~~  
26 ~~competitive services and any billing or pricing experiments~~

1 ~~conducted under Section 16-106.~~

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

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

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

1 ~~September 30, 2006 for all other electric utilities or 7.00~~  
2 ~~percentage points for such utilities for each of the 12-month~~  
3 ~~periods ending September 30, 2000 through September 30, 2006~~  
4 ~~for any such utility that commits not to petition pursuant to~~  
5 ~~Section 16-108(f) for entry of an order by the Commission~~  
6 ~~authorizing the electric utility to implement transition~~  
7 ~~charges for an additional period after December 31, 2006 or~~  
8 ~~11.00 percentage points for each of the 12-month periods ending~~  
9 ~~September 30, 2005 and September 30, 2006 for each electric~~  
10 ~~utility providing service to fewer than 6,500, or between~~  
11 ~~75,000 and 150,000, electric retail customers in this State on~~  
12 ~~January 1, 1995 if such utility commits not to petition~~  
13 ~~pursuant to Section 16-108(f) for entry of an order by the~~  
14 ~~Commission authorizing the electric utility to implement~~  
15 ~~transition charges for an additional period after December 31,~~  
16 ~~2006.~~

17 ~~(1) For purposes of this subsection (c), "excess~~  
18 ~~earnings" means the difference between (A) the 2-year~~  
19 ~~average of the electric utility's earned rate of return on~~  
20 ~~common equity, less (B) the 2-year average of the sum of~~  
21 ~~(i) the Index applicable to each of the 2 years and (ii)~~  
22 ~~1.5 percentage points; provided, that "excess earnings"~~  
23 ~~shall never be less than zero.~~

24 ~~(2) On or before March 31 of each year 2000 through~~  
25 ~~2007 each electric utility shall file a report with the~~  
26 ~~Commission showing its earned rate of return on common~~

1 ~~equity, calculated in accordance with this subsection, for~~  
2 ~~the preceding calendar year and the average for the~~  
3 ~~preceding 2 calendar years.~~

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

10 ~~(i) The electric utility's excess earnings shall~~  
11 ~~be multiplied by the average of the beginning and~~  
12 ~~ending balances of the electric utility's common~~  
13 ~~equity for the 2-year period in which excess earnings~~  
14 ~~occurred.~~

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

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

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

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

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

17               (1) implement a reorganization, other than a merger of  
18               2 or more public utilities as defined in Section 3-105 or  
19               their holding companies;

20               (2) retire generating plants from service;

21               (3) sell, assign, lease or otherwise transfer assets to  
22               an affiliated or unaffiliated entity and as part of such  
23               transaction enter into service agreements, power purchase  
24               agreements, or other agreements with the transferee;  
25               provided, however, that the prices, terms and conditions of  
26               any power purchase agreement must be approved or allowed

1 into effect by the Federal Energy Regulatory Commission; or

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

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

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

26 (ii) a description of how the electric utility will

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

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

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

16 (v) if the electric utility proposes to sell,  
17 assign, lease or otherwise transfer a generating plant  
18 that brings the amount of net dependable generating  
19 capacity transferred pursuant to this subsection to an  
20 amount equal to or greater than 15% of the electric  
21 utility's net dependable capacity as of the effective  
22 date of this amendatory Act of 1997, and enters into a  
23 power purchase agreement with the entity to which such  
24 generating plant is sold, assigned, leased, or  
25 otherwise transferred, the electric utility also  
26 agrees, if its fuel adjustment clause has not already

1           been eliminated, to eliminate its fuel adjustment  
2           clause in accordance with subsection (b) of Section  
3           9-220 for a period of time equal to the length of any  
4           such power purchase agreement or successor agreement,  
5           or until January 1, 2005, whichever is longer; if the  
6           capacity of the generating plant so transferred and  
7           related power purchase agreement does not result in the  
8           elimination of the fuel adjustment clause under this  
9           subsection, and the fuel adjustment clause has not  
10          already been eliminated, the electric utility shall  
11          agree that the costs associated with the transferred  
12          plant that are included in the calculation of the rate  
13          per kilowatt-hour to be applied pursuant to the  
14          electric utility's fuel adjustment clause during such  
15          period shall not exceed the per kilowatt-hour cost  
16          associated with such generating plant included in the  
17          electric utility's fuel adjustment clause during the  
18          full calendar year preceding the transfer, with such  
19          limit to be adjusted each year thereafter by the Gross  
20          Domestic Product Implicit Price Deflator.

21                 (vi) In addition, if the electric utility proposes  
22                 to sell, assign, or lease, (A) either (1) an amount of  
23                 generating plant that brings the amount of net  
24                 dependable generating capacity transferred pursuant to  
25                 this subsection to an amount equal to or greater than  
26                 15% of its net dependable capacity on the effective

1 date of this amendatory Act of 1997, or (2) one or more  
2 generating plants with a total net dependable capacity  
3 of 1100 megawatts, or (B) transmission and  
4 distribution facilities that either (1) bring the  
5 amount of transmission and distribution facilities  
6 transferred pursuant to this subsection to an amount  
7 equal to or greater than 15% of the electric utility's  
8 total depreciated original cost investment in such  
9 facilities, or (2) represent an investment of  
10 \$25,000,000 in terms of total depreciated original  
11 cost, the electric utility shall provide, in addition  
12 to the information listed in subparagraphs (i) through  
13 (v), the following information: (A) a description of  
14 how the electric utility will meet its service  
15 obligations under this Act in a safe and reliable  
16 manner and (B) the electric utility's projected earned  
17 rate of return on common equity, calculated in  
18 accordance with subsection (d) of this Section, for  
19 each year from the date of the notice through December  
20 31, 2006 both with and without the proposed  
21 transaction. If the Commission has not issued an order  
22 initiating a hearing on the proposed transaction  
23 within 30 days after the date the electric utility's  
24 notice is filed, the transaction shall be deemed  
25 approved. The Commission may, after notice and  
26 hearing, prohibit the proposed transaction if it makes

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

20                 In any proceeding conducted by the Commission  
21                 pursuant to this subparagraph (vi), intervention shall  
22                 be limited to parties with a direct interest in the  
23                 transaction which is the subject of the hearing and any  
24                 statutory consumer protection agency as defined in  
25                 subsection (d) of Section 9-102.1. Notwithstanding the  
26                 provisions of Section 10-113 of this Act, any

1 application seeking rehearing of an order issued under  
2 this subparagraph (vi), whether filed by the electric  
3 utility or by an intervening party, shall be filed  
4 within 10 days after service of the order.

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

26 (h) During the mandatory transition period, the Commission

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

23 (i) Subsequent to the mandatory transition period, the  
24 Commission, in any proceeding to establish rates and charges  
25 for tariffed services offered by an electric utility, may ~~shall~~  
26 consider, among other factors, ~~only~~ (1) the then current or

1 projected revenues, costs, investments and cost of capital  
2 directly or indirectly associated with the provision of such  
3 tariffed services; (2) collection of transition charges in  
4 accordance with Sections 16-102 and 16-108 of this Act; (3)  
5 recovery of any employee transition costs as described in  
6 Section 16-128 which the electric utility is continuing to  
7 incur, including recovery of any unamortized portion of such  
8 costs previously incurred or committed, with such costs to be  
9 equitably allocated among bundled services, delivery services,  
10 and contracts with alternative retail electric suppliers; and  
11 (4) recovery of the costs associated with the electric  
12 utility's compliance with decommissioning funding  
13 requirements; and shall not consider any other revenues, costs,  
14 investments or cost of capital of either the electric utility  
15 or of any affiliate of the electric utility that are not  
16 associated with the provision of tariffed services. In setting  
17 rates for tariffed services, the Commission shall equitably  
18 allocate joint and common costs and investments between the  
19 electric utility's competitive and tariffed services. In  
20 determining the justness and reasonableness of the electric  
21 power and energy component of an electric utility's rates for  
22 tariffed services subsequent to the mandatory transition  
23 period and prior to the time that the provision of such  
24 electric power and energy is declared competitive, the  
25 Commission shall consider the extent to which the electric  
26 utility's tariffed rates for such component for each customer

1 class exceed the market value determined pursuant to Section  
2 16-112, and, if the electric power and energy component of such  
3 tariffed rate exceeds the market value by more than 10% for any  
4 customer class, may establish such electric power and energy  
5 component at a rate equal to the market value plus 10%. In any  
6 such case, the Commission may also elect to extend the  
7 provisions of Section 16-111(e) for any period in which the  
8 electric utility is collecting transition charges, using  
9 information applicable to such period.

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

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

9 (k) If an electric utility is selling or transferring to a  
10 single buyer 5 or more generating plants located in this State  
11 with a total net dependable capacity of 5000 megawatts or more  
12 pursuant to subsection (g) of this Section and has obtained a  
13 sale price or consideration that exceeds 200% of the book value  
14 of such plants, the electric utility must provide to the  
15 Governor, the President of the Illinois Senate, the Minority  
16 Leader of the Illinois Senate, the Speaker of the Illinois  
17 House of Representatives, and the Minority Leader of the  
18 Illinois House of Representatives no later than 15 days after  
19 filing its notice under subsection (g) of this Section or 5  
20 days after the date on which this subsection (k) becomes law,  
21 whichever is later, a written commitment in which such electric  
22 utility agrees to expend \$2 billion outside the corporate  
23 limits of any municipality with 1,000,000 or more inhabitants  
24 within such electric utility's service area, over a 6-year  
25 period beginning with the calendar year in which the notice is  
26 filed, on projects, programs, and improvements within its

1 service area relating to transmission and distribution  
2 including, without limitation, infrastructure expansion,  
3 repair and replacement, capital investments, operations and  
4 maintenance, and vegetation management.

5 (1) The provisions of this amendatory Act of the 95th  
6 General Assembly relating to (i) the reinstatement of rates and  
7 (ii) refunds to customers are separate issues and severable. If  
8 either of those provisions or its application to any person or  
9 circumstance is held invalid, then the invalidity of that  
10 provision or application does not affect the other provision or  
11 its application. This subsection (1) does not in any way limit  
12 the general severability clause of Section 99-97 of this  
13 amendatory Act of the 95th General Assembly.

14 (Source: P.A. 91-50, eff. 6-30-99; 92-537, eff. 6-6-02; 92-690,  
15 eff. 7-18-02; revised 9-10-02.)

16 (220 ILCS 5/16-113)

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

19 (a) An electric utility may, by petition, request the  
20 Commission to declare a tariffed service provided by the  
21 electric utility to be a competitive service. The electric  
22 utility shall give notice of its petition to the public in the  
23 same manner that public notice is provided for proposed general  
24 increases in rates for tariffed services, in accordance with  
25 rules and regulations prescribed by the Commission. The

1 Commission shall hold a hearing and ~~on the petition if a~~  
2 ~~hearing is deemed necessary by the Commission. The Commission~~  
3 shall declare the class of tariffed service to be a competitive  
4 service ~~for some identifiable customer segment or group of~~  
5 ~~customers, or some clearly defined geographical area within the~~  
6 electric utility's service area, only after the electric  
7 utility demonstrates that at least 33% of the customers in the  
8 electric utility's service area that are eligible to take the  
9 class of tariffed service instead take service from alternative  
10 retail electric suppliers, as defined in Section 16-102, and  
11 that at least 3 alternative retail electric suppliers provide  
12 service that is comparable to the class of tariffed service to  
13 those customers in the utility's service area that do not take  
14 service from the electric utility; ~~if the service or a~~  
15 ~~reasonably equivalent substitute service is reasonably~~  
16 ~~available to the customer segment or group or in the defined~~  
17 ~~geographical area at a comparable price from one or more~~  
18 ~~providers other than the electric utility or an affiliate of~~  
19 ~~the electric utility, and the electric utility has lost or~~  
20 ~~there is a reasonable likelihood that the electric utility will~~  
21 ~~lose business for the service to the other provider or~~  
22 ~~providers;~~ provided, that the Commission may not declare the  
23 provision of electric power and energy to be competitive  
24 pursuant to this subsection with respect to (i) any retail  
25 customer or group of retail customers that is not eligible  
26 pursuant to Section 16-104 to take delivery services provided

1 by the electric utility and (ii) any residential and small  
2 commercial retail customers prior to the last date on which  
3 such customers are required to pay transition charges. In  
4 determining whether to grant or deny a petition to declare the  
5 provision of electric power and energy competitive, the  
6 Commission shall consider, in applying the above criteria,  
7 whether there is adequate transmission capacity into the  
8 service area of the petitioning electric utility to make  
9 electric power and energy reasonably available to the customer  
10 segment or group or in the defined geographical area from one  
11 or more providers other than the electric utility or an  
12 affiliate of the electric utility, in accordance with this  
13 subsection. The Commission shall make its determination and  
14 issue its final order declaring or refusing to declare the  
15 service to be a competitive service within 180 ~~120~~ days  
16 following the date that the petition is filed, ~~or otherwise the~~  
17 ~~petition shall be deemed to be granted; provided, that if the~~  
18 ~~petition is deemed to be granted by operation of law, the~~  
19 ~~Commission shall not thereby be precluded from finding and~~  
20 ~~ordering, in a subsequent proceeding initiated by the~~  
21 ~~Commission, and after notice and hearing, that the service is~~  
22 ~~not competitive based on the criteria set forth in this~~  
23 ~~subsection.~~

24 (b) Any customer except a customer identified in subsection  
25 (c) of Section 16-103 who is taking a tariffed service that is  
26 declared to be a competitive service pursuant to subsection (a)

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

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

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

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

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

20 (220 ILCS 5/16-135 new)

21 Sec. 16-135. The Consumers Overbilled and Reimbursed for  
22 Electricity Fund.

23 (a) The Consumers Overbilled and Reimbursed for  
24 Electricity Fund is created as a special fund in the State  
25 treasury. Subject to appropriation, moneys in the Fund shall be

1 distributed and paid or credited as provided in this Section.  
2 Income earned on amounts in the Fund shall be deposited into  
3 the Fund.

4 (b) No later than November 2007, the Department of Revenue  
5 shall make payments from the Fund to each utility that has made  
6 refunds under item (B) in subsection (a) of Section 16-111 in  
7 the amount of those refunds made by the utility together with  
8 interest that is reasonably incurred from the date that the  
9 refunds were made to the date of payment to the utility under  
10 this subsection.

11 (c) Beginning 10 days after the effective date of this  
12 amendatory Act of the 95th General Assembly and through the end  
13 of the calendar month in which that date occurs constitutes the  
14 first rate-reduction month. Thereafter, each calendar month  
15 constitutes a rate-reduction month.

16 (d) For each rate-reduction month, the Department of  
17 Revenue shall make a payment from the Fund to each utility that  
18 is subject to subsection (a) of Section 16-111. Payments shall  
19 be made each calendar month beginning December 2007. The  
20 payment to each such utility for a rate-reduction month shall  
21 be in an amount equal to (i) the number of total kilowatt hours  
22 used by the utility's customers during the billing periods  
23 ending in the rate-reduction month, multiplied by (ii) a rate  
24 determined by subtracting the rate charged to the utility's  
25 customers on December 31, 2006 from the rate charged to the  
26 utility's customers on January 2, 2007 for each rate-reduction

1 month through the rate-reduction month of June 2008; 66% of  
2 that amount for each rate-reduction month from July 2008  
3 through June 2009; 33% of that amount for each rate-reduction  
4 month from July 2009 through June 2010; and none thereafter.  
5 For the purpose of calculating the payment under this  
6 subsection, the rate charged to the utility's customers on  
7 January 2, 2007 does not include the portion of the rate  
8 charged under any delivery services tariff of the utility that  
9 became effective on January 2, 2007.

10 Payments under this subsection (d) shall include interest  
11 that is reasonably incurred; interest shall be calculated on  
12 the remaining balance beginning 10 days after the end of the  
13 rate-reduction month through the date of payment. If there is  
14 not a sufficient balance in the Fund to make the payment under  
15 this subsection (d), then the Department of Revenue shall pay  
16 each utility a pro-rata share of the balance of the Fund (less  
17 any amount necessary to make refunds under Section 5-65 of the  
18 Electricity Generator Tax Act) based on the amount of the  
19 payment owing to that utility compared to the total of payments  
20 owing to all such utilities. Payments shall be made first with  
21 respect to the earliest rate-reduction month for which payment  
22 has not been made in full.

23 (e) For each rate-reduction month through and including  
24 June 2008, if, during the entire rate-reduction month, the  
25 utility charged its customers the same rates charged to its  
26 customers on December 31, 2006 (plus any rate charged under any

1 of the utility's delivery services tariffs that became  
2 effective on or after January 2, 2007), then the amount paid to  
3 the utility for that rate-reduction month shall be retained by  
4 the utility. Otherwise, the amount paid to the utility for that  
5 rate-reduction month shall immediately be credited to the  
6 customers of the utility prorated based on the total kilowatt  
7 hours used by the customer during the rate-reduction month as  
8 compared to the total kilowatt hours used by all customers of  
9 that utility during the rate-reduction month. The utility must  
10 identify the credit on the bill as a STATE FUNDED CREDIT and  
11 must insert a separate notice with the bill to the customer  
12 showing the credit. That notice must state the following in at  
13 least 14-point bold type:

14 THE "STATE FUNDED CREDIT" SHOWN ON THIS BILL WAS FUNDED IN  
15 ACCORDANCE WITH A MANDATE OF THE GENERAL ASSEMBLY OF THE  
16 STATE OF ILLINOIS.

17 No other communication concerning the credit may be contained  
18 on the notice or the bill or any other material sent with the  
19 bill.

20 (f) All information necessary to implement and administer  
21 this Section must be provided by each utility to the Commission  
22 within 10 days after the end of each calendar month. The  
23 Commission shall then verify the information and make  
24 certifications to the Department of Revenue necessary for the  
25 Department to make payments under this Section.

26 If a utility, without good cause shown, does not provide

1 accurate information within the 10-day period and the payment  
2 based on that information is required to be credited to its  
3 customers under subsection (e), then the utility must  
4 additionally credit its customers with interest, at the  
5 utility's expense, for the period during which the application  
6 of the credit is delayed. The interest shall be at the same  
7 rate that the Commission requires the utility to pay on  
8 customer deposits.

9 The Commission must, and has all powers necessary to, (i)  
10 fully enforce this Section and (ii) examine and audit the books  
11 and records of utilities to ensure compliance with this  
12 Section.

13 For the public interest, safety, and welfare, in order to  
14 initially implement this Section, the Commission is authorized  
15 to adopt emergency rules under Section 5-45 of the Illinois  
16 Administrative Procedure Act.

17 Section 3-10. The State Finance Act is amended by changing  
18 Section 8h and by adding Section 5.675 as follows:

19 (30 ILCS 105/5.675 new)

20 Sec. 5.675. The Consumers Overbilled and Reimbursed for  
21 Electricity Fund.

22 (30 ILCS 105/8h)

23 Sec. 8h. Transfers to General Revenue Fund.

1           (a) Except as otherwise provided in this Section and  
2 Section 8n of this Act, and ~~(c), (d), or (e)~~, notwithstanding  
3 any other State law to the contrary, the Governor may, through  
4 June 30, 2007, from time to time direct the State Treasurer and  
5 Comptroller to transfer a specified sum from any fund held by  
6 the State Treasurer to the General Revenue Fund in order to  
7 help defray the State's operating costs for the fiscal year.  
8 The total transfer under this Section from any fund in any  
9 fiscal year shall not exceed the lesser of (i) 8% of the  
10 revenues to be deposited into the fund during that fiscal year  
11 or (ii) an amount that leaves a remaining fund balance of 25%  
12 of the July 1 fund balance of that fiscal year. In fiscal year  
13 2005 only, prior to calculating the July 1, 2004 final  
14 balances, the Governor may calculate and direct the State  
15 Treasurer with the Comptroller to transfer additional amounts  
16 determined by applying the formula authorized in Public Act  
17 93-839 to the funds balances on July 1, 2003. No transfer may  
18 be made from a fund under this Section that would have the  
19 effect of reducing the available balance in the fund to an  
20 amount less than the amount remaining unexpended and unreserved  
21 from the total appropriation from that fund estimated to be  
22 expended for that fiscal year. This Section does not apply to  
23 any funds that are restricted by federal law to a specific use,  
24 to any funds in the Motor Fuel Tax Fund, the Intercity  
25 Passenger Rail Fund, the Hospital Provider Fund, the Medicaid  
26 Provider Relief Fund, the Teacher Health Insurance Security

1 Fund, the Reviewing Court Alternative Dispute Resolution Fund,  
2 the Voters' Guide Fund, the Foreign Language Interpreter Fund,  
3 the Lawyers' Assistance Program Fund, the Supreme Court Federal  
4 Projects Fund, the Supreme Court Special State Projects Fund,  
5 the Supplemental Low-Income Energy Assistance Fund, the Good  
6 Samaritan Energy Trust Fund, the Low-Level Radioactive Waste  
7 Facility Development and Operation Fund, the Horse Racing  
8 Equity Trust Fund, or the Hospital Basic Services Preservation  
9 Fund, or to any funds to which subsection (f) of Section 20-40  
10 of the Nursing and Advanced Practice Nursing Act applies. No  
11 transfers may be made under this Section from the Pet  
12 Population Control Fund. Notwithstanding any other provision  
13 of this Section, for fiscal year 2004, the total transfer under  
14 this Section from the Road Fund or the State Construction  
15 Account Fund shall not exceed the lesser of (i) 5% of the  
16 revenues to be deposited into the fund during that fiscal year  
17 or (ii) 25% of the beginning balance in the fund. For fiscal  
18 year 2005 through fiscal year 2007, no amounts may be  
19 transferred under this Section from the Road Fund, the State  
20 Construction Account Fund, the Criminal Justice Information  
21 Systems Trust Fund, the Wireless Service Emergency Fund, or the  
22 Mandatory Arbitration Fund.

23 In determining the available balance in a fund, the  
24 Governor may include receipts, transfers into the fund, and  
25 other resources anticipated to be available in the fund in that  
26 fiscal year.

1           The State Treasurer and Comptroller shall transfer the  
2 amounts designated under this Section as soon as may be  
3 practicable after receiving the direction to transfer from the  
4 Governor.

5           (a-5) Transfers directed to be made under this Section on  
6 or before February 28, 2006 that are still pending on May 19,  
7 2006 (the effective date of Public Act 94-774) ~~this amendatory~~  
8 ~~Act of the 94th General Assembly~~ shall be redirected as  
9 provided in Section 8n of this Act.

10           (b) This Section does not apply to: (i) the Ticket For The  
11 Cure Fund; (ii) any fund established under the Community Senior  
12 Services and Resources Act; or (iii) on or after January 1,  
13 2006 (the effective date of Public Act 94-511), the Child Labor  
14 and Day and Temporary Labor Enforcement Fund.

15           (c) This Section does not apply to the Demutualization  
16 Trust Fund established under the Uniform Disposition of  
17 Unclaimed Property Act.

18           (d) This Section does not apply to moneys set aside in the  
19 Illinois State Podiatric Disciplinary Fund for podiatric  
20 scholarships and residency programs under the Podiatric  
21 Scholarship and Residency Act.

22           (e) Subsection (a) does not apply to, and no transfer may  
23 be made under this Section from, the Pension Stabilization  
24 Fund.

25           (f) This Section does not apply to the Consumers Overbilled  
26 and Reimbursed for Electricity Fund.

1 (Source: P.A. 93-32, eff. 6-20-03; 93-659, eff. 2-3-04; 93-674,  
2 eff. 6-10-04; 93-714, eff. 7-12-04; 93-801, eff. 7-22-04;  
3 93-839, eff. 7-30-04; 93-1054, eff. 11-18-04; 93-1067, eff.  
4 1-15-05; 94-91, eff. 7-1-05; 94-120, eff. 7-6-05; 94-511, eff.  
5 1-1-06; 94-535, eff. 8-10-05; 94-639, eff. 8-22-05; 94-645,  
6 eff. 8-22-05; 94-648, eff. 1-1-06; 94-686, eff. 11-2-05;  
7 94-691, eff. 11-2-05; 94-726, eff. 1-20-06; 94-773, eff.  
8 5-18-06; 94-774, eff. 5-19-06; 94-804, eff. 5-26-06; 94-839,  
9 eff. 6-6-06; revised 6-19-06.)

10 Section 3-15. "An Act in relation to the competitive  
11 provision of utility services, amending named Acts", Public Act  
12 90-561, approved December 16, 1997, is amended by changing  
13 Section 15 of Article I as follows:

14 (P.A. 90-561, Art. I, Sec. 15)

15 Sec. 15.

16 (a) If any provision added by this amendatory Act of 1997  
17 is held invalid, this entire amendatory Act of 1997 shall be  
18 deemed invalid, and the provisions of Section 1.31,  
19 "Severability", of the Statute on Statutes are hereby expressly  
20 declared not applicable to this amendatory Act of 1997;  
21 provided, however (i) that any contracts entered into and  
22 performed, transactions completed, orders issued, services  
23 provided, billings rendered, or payments made in accordance  
24 with the provisions of this amendatory Act of 1997, other than

1 as provided in clause (ii) below, prior to the date of the  
2 determination of such invalidity, shall not thereby be rendered  
3 invalid; (ii) that no presumption as to the validity or  
4 invalidity of any contracts, transactions, orders, billings,  
5 or payments pursuant to Article XVIII of the Public Utilities  
6 Act shall result from a determination of invalidity of this  
7 amendatory Act of 1997; and (iii) that the provisions of  
8 proviso (i) shall not be deemed to preserve the validity of any  
9 executory contracts or transactions, of any actions to be taken  
10 pursuant to orders issued, or of any services to be performed,  
11 billings to be rendered, or payments to be made, pursuant to  
12 provisions of this amendatory Act of 1997 subsequent to the  
13 date of determination of such invalidity.

14 (b) This Section applies only to Public Act 90-561; this  
15 Section does not apply to any Public Act (i) with an effective  
16 date after the effective date of Public Act 90-561 and (ii)  
17 that amends, adds to, or otherwise affects the provisions added  
18 by Public Act 90-561.

19 (Source: P.A. 90-561.)

20 ARTICLE 4

21 Section 4-1. Short title. This Article may be cited as the  
22 Illinois Power Authority Act. References in this Article to  
23 "this Act" mean this Article.

1           Section 4-5. Legislative findings and declarations. The  
2 General Assembly hereby finds and declares all of the  
3 following:

4           (1) The health, welfare, and prosperity of all Illinois  
5 citizens require the provision of adequate, efficient,  
6 reliable, environmentally safe, and least-cost electric  
7 service at prices that accurately reflect the long-term  
8 average cost of such services and that are equitable to all  
9 citizens, and that public utilities and alternative retail  
10 electric suppliers have failed to provide electric service  
11 that meets all of these criteria.

12           (2) Escalating and excessive prices for electricity in  
13 the State of Illinois pose a serious threat to the economic  
14 well-being, health, and safety of the residents of and the  
15 commerce and industry in the State.

16           (3) There is a lack of confidence that the electricity  
17 needs of residents, commerce, and industry can be supplied  
18 in a reliable, efficient, and economical manner in Illinois  
19 because ComEd and AmerenIP, AmerenCIPS, and AmerenCILCO  
20 have (i) increased their rates unreasonably and  
21 unnecessarily; (ii) repeatedly threatened bankruptcy;  
22 (iii) failed to maintain their transmission and  
23 distribution systems in a manner that ensures reliability;  
24 and (iv) in some cases, failed to restore power to  
25 customers for more than a week after an outage.

26           (4) The excessive rates and lack of confidence have

1       deterred commerce and industry from locating in Illinois  
2       and have caused existing commerce and industry to seriously  
3       consider moving out of the State.

4       (5) The auction that ComEd and Ameren used to procure  
5       electricity resulted in rate increases of 26% to 55%,  
6       causing consumers' electric bills to skyrocket and  
7       straining the budgets of small and large ratepayers in the  
8       State. Some bill increases have been between 100% and 300%.  
9       Further substantial rate increases have been forecast by  
10      the utilities.

11      (6) These matters of State concern can best be  
12      addressed by creating a publicly-owned power authority.  
13      Such an authority can best accomplish the purposes and  
14      objectives of this Act by planning, procuring, generating,  
15      and supplying power for use by residents and businesses in  
16      the State.

17      The General Assembly therefore finds that it is necessary  
18      to create the Illinois Power Authority and that the goals and  
19      objectives of such Authority shall be to:

20      (A) prepare an annual integrated resource plan that  
21      identifies the least-cost mix of electric generating,  
22      energy-efficiency, and demand-response resources needed to  
23      serve Illinois residents and businesses 20 years into the  
24      future;

25      (B) procure least-cost electricity, energy efficiency  
26      and demand-response resources through competitive

1 procurement processes to meet the electricity needs of all  
2 customers of electric utilities that on January 2, 2007  
3 served at least 100,000 customers;

4 (C) construct, improve, rehabilitate, and operate  
5 electric generation and cogeneration facilities that use  
6 indigenous coal or renewable resources, or both, financed  
7 with bonds issued by the Illinois Power Authority; and

8 (D) supply electricity from the Authority's facilities  
9 at cost to municipal electric systems, municipal  
10 aggregators, and rural electric cooperatives in Illinois.

11 The General Assembly declares that the Authority's coal  
12 generating facilities shall use only Illinois coal and will  
13 provide safe and adequate service at rates that will be lower  
14 than the rates that would otherwise result and will facilitate  
15 investment in more beneficial energy and demand-side  
16 management alternatives, resulting in savings for consumers in  
17 the State and otherwise restoring the confidence and protecting  
18 the interests of consumers and the economy in the State.  
19 Moreover, competition with investor-owned utilities by the  
20 authority will result in an improved system, and reduction of  
21 future costs, a safer, more efficient, reliable, and economical  
22 supply of electric energy. The General Assembly further  
23 declares that the Authority shall use, to the fullest extent  
24 practical, all economical means of conservation, and  
25 technologies that rely on renewable energy resources,  
26 cogeneration, and improvements in energy efficiency that will

1 benefit the interests of consumers of the State.

2 Section 4-10. Definitions. In this Act, unless a different  
3 meaning clearly appears from the context:

4 "Acquire" means, with respect to any right, title, or  
5 interest in or to any property, the act of taking by the  
6 exercise of the power of eminent domain, or acquisition by  
7 purchase or otherwise.

8 "Act" means the Illinois Power Authority Act.

9 "Authority" means the Illinois Power Authority.

10 "Board" means the board of trustees of the Authority.

11 "Bonds" or "notes" mean the bonds, notes, or other  
12 obligations issued by the Authority pursuant to this Act.

13 "Facility" means an electric generating unit or a  
14 cogeneration unit that produces electricity.

15 "Federal government" means the United States of America and  
16 any agency or instrumentality, corporate or otherwise, of the  
17 United States of America.

18 "Local government" means any unit of local government, as  
19 defined in Section 1 of Article VII of the Illinois  
20 Constitution, and any school district.

21 "Municipal electric system" means a municipality that owns  
22 and operates its own electric distribution system.

23 "Municipal aggregator" means one or more units of local  
24 government that procure electricity to serve residential  
25 retail electrical loads located within its or their

1 jurisdiction.

2 "Project" means an action undertaken by the Authority that:

3 (i) causes the Authority to issue bonds, notes, or  
4 other obligations, or shares in any subsidiary  
5 corporation;

6 (ii) significantly modifies the use of an asset valued  
7 at more than \$1,000,000 owned by the Authority or involves  
8 the sale, lease, or other disposition of such an asset; or

9 (iii) commits the Authority to a contract or agreement  
10 with a total consideration of greater than \$1,000,000 and  
11 does not involve the day-to-day operations of the  
12 Authority.

13 "Real property" means lands, structures, franchises, and  
14 interests in land, including lands under water and riparian  
15 rights, and all other things and rights usually included within  
16 that term, and includes also all interests in such property  
17 less than full title, such as easements, rights-of-way, uses,  
18 leases, licenses, and all other incorporeal hereditaments and  
19 every estate, interest, or right, legal or equitable, including  
20 terms for years and liens thereon by way of judgments,  
21 mortgages, or otherwise, and also all claims for damages for  
22 that real estate.

23 "Renewable energy resources" includes energy from wind,  
24 solar thermal energy, photovoltaic cells and panels, dedicated  
25 crops grown for energy production and organic waste biomass,  
26 hydropower that does not involve new construction or

1 significant expansion of hydropower dams, and other  
2 alternative sources of environmentally preferable energy.  
3 "Renewable energy resources" does not include, however, energy  
4 from the incineration, burning, or heating of waste wood,  
5 tires, garbage, general household, institutional, and  
6 commercial waste, industrial lunchroom or office waste,  
7 landscape waste, or construction or demolition debris.

8 "Rural electric cooperative" means an electric cooperative  
9 as defined in Section 3.4 of the Electric Supplier Act.

10 "Security" means any note, stock (whether common or  
11 preferred), bond, debenture, evidence of indebtedness,  
12 transferable share, voting-trust certificate, or, in general,  
13 any interest or instrument commonly known as a "security", or  
14 any certificate of interest or participation in, temporary or  
15 interim certificate for, receipt for, or warrant or right to  
16 subscribe to or purchase any of the foregoing.

17 "State" means the State of Illinois.

18 "State agency" means any board, authority, agency,  
19 department, commission, public corporation, body politic, or  
20 instrumentality of the State.

21 "Trustees" means the trustees of the Authority appointed  
22 pursuant to Section of this Act.

23 Section 4-15. Illinois Power Authority.

24 (a) For the purpose of effectuating the policy declared in  
25 Section 4-15 of this Act, there is hereby created a State

1 agency to be known as the Illinois Power Authority, which shall  
2 be a body corporate and politic, a political subdivision of the  
3 State, exercising governmental and public powers, perpetual in  
4 duration, capable of suing and being sued, and having a seal,  
5 and which shall have the powers and duties enumerated in this  
6 Act, together with such others conferred upon it by law.

7 (b) The Authority shall report annually to the Governor and  
8 the General Assembly upon its operations and transactions. The  
9 annual report shall identify the Authority by its statutory  
10 name, and include a letter of transmittal in the report to the  
11 Governor and the General Assembly. The annual report shall also  
12 include, but not be limited to, the following: (1) the amount  
13 of power and energy produced by each Authority facility; (2)  
14 the quantity and price of any electricity procured by the  
15 Authority under wholesale contracts; (3) the quantity of  
16 electricity supplied by each Authority facility to municipal  
17 electric systems, municipal aggregators and rural electric  
18 cooperatives in Illinois; (4) the revenues as allocated by the  
19 Authority to each facility; (5) the costs as allocated by the  
20 Authority to each facility; (6) the accumulated depreciation  
21 for each facility; and (7) basic financial and operating  
22 information specifically detailed for the reporting year and  
23 including, but not limited to, income and expense statements,  
24 balance sheets, and changes in financial position, all in  
25 accordance with generally accepted accounting principles, debt  
26 structure, and a summary of funds on a cash basis. The

1 requirement to provide information pursuant to this subsection  
2 is not intended to affect the Authority's responsibilities or  
3 obligations under this Act.

4 (c) The Authority is not created or organized, and its  
5 operations shall not be conducted, for the purpose of making a  
6 profit. No part of the revenues or assets of the Authority  
7 shall inure to the benefit of or be distributable to any of its  
8 trustees or officers or any other private persons, except as  
9 provided in this Act for actual services rendered.

10 Section 4-20. Trustees.

11 (a) The Authority shall consist of 5 trustees, each of whom  
12 shall serve respectively for terms of one, 2, 3, 4, or 5 years.  
13 Each trustee shall hold office until a successor has been  
14 appointed and qualified. The Governor shall appoint all  
15 trustees, with the advice and consent of the Senate and House  
16 of Representatives. No person serving as a Commissioner of the  
17 Illinois Commerce Commission on January 2, 2007 is eligible to  
18 be appointed to a term as a trustee of the Authority or as a  
19 temporary appointee. One appointee shall serve an initial term  
20 of one year; the second appointee shall serve an initial term  
21 of 2 years; the third appointee shall serve an initial term of  
22 3 years; the fourth appointee shall serve an initial term of 4  
23 years; and the fifth appointee shall serve an initial term of 5  
24 years. Thereafter, all terms shall be for a period of 5 years.  
25 Three trustees shall be attorneys, certified public

1 accountants, or professional engineers and shall each have at  
2 least 10 years of experience. Two trustees must have at least  
3 10 years of experience in one of the following fields: (i)  
4 economics, (ii) finance, (iii) accounting, (iv) physical or  
5 natural sciences, (v) natural resources, or (vi) environmental  
6 studies.

7 (b) At the expiration of the term of each trustee, the  
8 Governor shall appoint a successor, with the advice and consent  
9 of the Senate and House of Representatives, who shall hold  
10 office for a term of 5 years. In the event of a vacancy  
11 occurring in the office of the trustee by death, resignation,  
12 or otherwise, the Governor shall appoint a successor, with the  
13 advice and consent of the Senate and House of Representatives,  
14 who shall hold office for the unexpired term. Three trustees  
15 constitute a quorum for the purpose of organizing the Authority  
16 and conducting its business.

17 (b-5) In the case of vacancy in office during a recess of  
18 the Senate or House of Representatives, the Governor shall make  
19 a temporary appointment until the next meeting of the Senate  
20 and House, when the Governor shall nominate some person to fill  
21 the office; and the person so nominated who is confirmed by the  
22 Senate and House, shall hold office during the remainder of the  
23 term and until a successor is appointed and qualified. No  
24 person rejected by the Senate or House for appointment shall,  
25 except at the request of both the Senate and House, be again  
26 nominated for appointment at the same session or be appointed

1 to the office during a recess of the Senate or House.

2 (c) The trustees shall receive an annual salary of \$50,000  
3 or an amount set by the Compensation Review Board, whichever is  
4 greater. Each shall be entitled to reimbursement for reasonable  
5 expenses in the performance of duties assigned under this Act.

6 (d) Notwithstanding the provisions of any other law, no  
7 trustee, officer, or employee of the State, any State agency,  
8 or any local government that is appointed a trustee shall be  
9 deemed to have forfeited or shall forfeit his or her office or  
10 employment by reason of his or her acceptance of a trusteeship  
11 on the Authority, his or her service thereon, or his or her  
12 employment therewith.

13 (e) No trustee shall be employed by a public utility,  
14 independent power producer, power marketer, alternative retail  
15 electric supplier, an affiliate of any of the foregoing, or the  
16 Authority while serving as a trustee for 2 years prior to  
17 appointment or for 2 years after he or she leaves his or her  
18 position as a trustee.

19 (f) Trustees shall be prohibited from all of the following  
20 while serving as a trustee and for 2 years prior to the  
21 appointment or for 2 years after he or she leaves his or her  
22 position as a trustee:

23 (1) Owning or holding, directly or indirectly, 5% or  
24 more of the voting capital stock of any public utility,  
25 independent power producer, power marketer, alternative  
26 retail electric supplier, or an affiliate of any of the

1 foregoing.

2 (2) Being in any chain of successive ownership of 5% or  
3 more of the voting capital stock of any public utility,  
4 independent power producer, power marketer, alternative  
5 retail electric supplier, or an affiliate of any of the  
6 foregoing.

7 (3) Receiving any form of compensation, fee, payment,  
8 or other consideration from any public utility,  
9 independent power producer, power marketer, alternative  
10 retail electric supplier, or an affiliate of any of the  
11 foregoing, including legal fees, consulting fees, bonuses,  
12 or other sums.

13 (g) Until the Board certifies in writing that it is fully  
14 operational and capable of carrying out its duties and powers  
15 under subsections (a) and (b) of Section 4-35, the Lieutenant  
16 Governor is authorized, empowered, and required to  
17 expeditiously carry out the duties and powers under those  
18 subsections (a) and (b) of Section 4-35. Within 28 days after  
19 the effective date of this Act, the Lieutenant Governor shall  
20 initiate a competitive solicitation process to retain a  
21 procurement officer who shall conduct the procurement process  
22 scheduled to occur in January 2008 for the procurement of  
23 electricity for delivery beginning in June 2008.

24 Section 4-25. Officers and employees; expenses. The  
25 trustees shall choose from among their own number a chairperson

1 and vice-chairperson. They shall from time to time select such  
2 officers and employees, including a chief executive officer,  
3 and such engineering, marketing, and legal officers and  
4 employees, as they may require for the performance of their  
5 duties and shall prescribe the duties and compensation of each  
6 officer and employee. They shall adopt by-laws and rules and  
7 regulations suitable to the purposes of this Act. As long as  
8 and to the extent that the Authority is dependent upon  
9 appropriations for the payment of its expenses, it shall incur  
10 no obligations for salary, office, or other expenses prior to  
11 the making of appropriations adequate to meet those expenses.

12 Section 4-30. General powers of the Authority.

13 (a) The Authority is authorized to:

14 (1) prepare an annual integrated resource plan that  
15 identifies the least-cost mix of electric generating,  
16 energy-efficiency, and demand-response resources needed to  
17 serve Illinois residents and businesses 20 years into the  
18 future;

19 (2) procure least-cost electricity, energy efficiency  
20 and demand-response resources through competitive  
21 procurement processes to meet the electricity needs of all  
22 customers of electric utilities that on January 2, 2007  
23 served at least 100,000 customers;

24 (3) construct, improve, rehabilitate, and operate  
25 electric generation and cogeneration facilities that use

1 indigenous coal or renewable resources, or both, financed  
2 with bonds issued by the Illinois Power Authority; and

3 (4) supply electricity from the Authority's facilities  
4 at cost to municipal electric systems, municipal  
5 aggregators, and rural electric cooperatives in Illinois.

6 (b) Except as otherwise limited by this Act, the Authority  
7 shall have all of the powers necessary or convenient to carry  
8 out the purposes and provisions of this Act, including without  
9 limitation, the following:

10 (1) To sue and be sued in all courts and to participate  
11 in actions and proceedings, whether judicial,  
12 administrative, arbitratative, or otherwise.

13 (2) To have a corporate seal, and to alter that seal at  
14 pleasure, and to use it by causing it or a facsimile to be  
15 affixed or impressed or reproduced in any other manner.

16 (3) To appoint officers, agents, and employees,  
17 without regard to the Personnel Code or any other personnel  
18 or civil service law, rule, or regulation of the State and  
19 in accordance with guidelines adopted by the Authority,  
20 prescribe their duties and qualifications, and fix and pay  
21 their compensation.

22 (4) To purchase, receive, take by grant, gift, devise,  
23 bequest, or otherwise, lease, or otherwise acquire, own,  
24 hold, improve, employ, use, and otherwise deal in and with,  
25 real or personal property whether tangible or intangible,  
26 or any interest therein, within the State.

1           (5) To acquire real or personal property, whether  
2           tangible or intangible, including without limitation  
3           property rights, interests in property, franchises,  
4           obligations, contracts, and debt and equity securities, by  
5           the exercise of the power of eminent domain; except that  
6           any real property acquired by the exercise of the power of  
7           eminent domain must be located within the State.

8           (6) To sell, convey, lease, exchange, transfer,  
9           abandon, or otherwise dispose of, or mortgage, pledge, or  
10          create a security interest in, any of its assets,  
11          properties, or any interest therein, wherever situated.

12          (7) To purchase, take, receive, subscribe for, or  
13          otherwise acquire, hold, make a tender offer for, vote,  
14          employ, sell, lend, lease, exchange, transfer, or  
15          otherwise dispose of, mortgage, pledge, or grant a security  
16          interest in, use and otherwise deal in and with, bonds and  
17          other obligations, shares, or other securities (or  
18          interests therein) issued by others, whether engaged in a  
19          similar or different business or activity.

20          (8) To make and execute agreements, contracts, and  
21          other instruments necessary or convenient in the exercise  
22          of the powers and functions of the Authority under this  
23          Act, including contracts with any person, firm,  
24          corporation, local government, State agency, or other  
25          entity, and all State agencies and all local governments  
26          are hereby authorized to enter into and do all things

1 necessary to perform any such agreement, contract, or other  
2 instrument with the Authority.

3 (9) To borrow money at such rate or rates of interest  
4 as the Authority may determine, issue its notes, bonds, or  
5 other obligations to evidence that indebtedness, and  
6 secure any of its obligations by mortgage or pledge of any  
7 of its property or any interest therein, wherever situated.

8 (10) To arrange for guarantees of its bonds, notes, or  
9 other obligations by the federal government or by any  
10 private insurer or otherwise, and to pay any premiums  
11 therefor.

12 (11) To issue its bonds or notes or other obligations  
13 whether or not the income therefrom is exempt from federal  
14 income taxation.

15 (12) To purchase bonds, notes, or other obligations of  
16 the Authority at such price or prices as the Authority may  
17 determine.

18 (13) To lend money, invest and reinvest its funds, and  
19 take and hold real and personal property as security for  
20 the payment of funds loaned or invested.

21 (14) To procure insurance against any loss in  
22 connection with its properties or operations in such amount  
23 or amounts and from such insurers, including the federal  
24 government, as it may deem necessary or desirable, and to  
25 pay any premiums therefor.

26 (15) To negotiate and enter into agreements with

1 trustees or receivers appointed by United States  
2 bankruptcy courts or federal district courts or in other  
3 proceedings involving adjustment of debts and authorize  
4 legal counsel for the Authority to appear in any such  
5 proceedings.

6 (16) To file a petition under Chapter 9 of Title 11 of  
7 the United States Bankruptcy Code or take other similar  
8 action for the adjustment of its debts.

9 (17) To enter into management agreements for the  
10 operation of any of the property or facilities owned by the  
11 Authority.

12 (18) To transfer any asset of the Authority to one or  
13 more municipal electric systems or rural electric agencies  
14 or cooperatives, for such consideration and upon such terms  
15 as the Authority may determine to be in the best interest  
16 of the citizens of the State of Illinois.

17 (19) To enter upon any lands and within any building  
18 whenever in its judgment it may be necessary for the  
19 purpose of making surveys and examinations to accomplish  
20 any purpose authorized by this Act.

21 (20) To enter into agreements to pay annual sums in  
22 lieu of taxes to any local government with respect to any  
23 real property that is owned by the Authority and is located  
24 in that local government.

25 (21) To maintain an office or offices at such place or  
26 places in the State as it may determine.

1           (22) To make any inquiry, investigation, survey, or  
2 study that the Authority may deem necessary to enable it  
3 effectively to carry out the provisions of this Act.

4           (23) To adopt, revise, amend, and repeal rules and  
5 regulations with respect to its operations, properties,  
6 and facilities as may be necessary or convenient to carry  
7 out the purposes of this Act, subject to the provisions of  
8 the Illinois Administrative Procedure Act.

9           Section 4-35. Specific powers. Without limiting the  
10 generality of the powers conferred upon the Authority by  
11 Section 4-30 of this Act, the Authority shall have the specific  
12 powers described in this Section.

13           (a) Least-cost planning.

14           (1) Electricity demand forecast. The Authority shall  
15 have the power to direct investor-owned utilities,  
16 municipal electric systems, rural electric cooperatives,  
17 municipal aggregators, and alternative retail electric  
18 suppliers that serve retail customers in Illinois to supply  
19 any data that the Authority deems necessary to prepare and  
20 annually update a 20-year electricity demand forecast for  
21 the State.

22           (2) Electric generating unit inventory. The Authority  
23 shall have the power to direct all owners of electric  
24 generating units in Illinois to supply any operational and  
25 cost data about their respective generating units that the

1 Authority deems necessary to prepare and annually update an  
2 inventory of generating resources in Illinois.

3 (3) Energy efficiency and demand-response potential.  
4 The Authority shall have the power to survey Illinois  
5 residents and businesses to assess: (i) the potential for  
6 reductions in electricity consumption that can be achieved  
7 by implementing energy efficiency measures and the  
8 cost-effectiveness of such measures, expressed in cents  
9 per kilowatt-hour; and (ii) the potential to reduce peak  
10 demand that can be achieved by implementing  
11 demand-response programs and the cost-effectiveness of  
12 such programs.

13 (4) Least-cost plan to meet demand for electricity. The  
14 Authority shall have the power to contract with the  
15 University of Illinois and U.S. Department of Energy to  
16 develop and run any models of the Illinois electric system  
17 needed to prepare an annual least-cost plan that identifies  
18 the least-cost mix of electric generating, energy  
19 efficiency and demand-response resources needed to serve  
20 Illinois residents and businesses 20 years into the future.

21 (A) The Authority shall prepare a draft plan and  
22 solicit public comment on the draft plan. To facilitate  
23 public comment, the Authority shall hold at least 2  
24 public hearings on the draft plan. At least 30-days'  
25 notice of the hearing shall be given by publication  
26 once in each week during such period in each of 6

1 newspapers within the State to be selected by the  
2 Authority. Copies of the draft plan shall be available  
3 for public inspection during that period of 30 days at  
4 the office or offices of the Authority and at such  
5 other places throughout the State as it may designate.

6 (B) The Authority shall review these comments and  
7 revise the draft plan, as necessary, before issuing the  
8 final plan.

9 (b) Least-cost procurement.

10 (1) The Board shall have the power to retain a  
11 Procurement Officer to develop and procure electricity,  
12 energy efficiency and demand-response resources at least  
13 cost through a competitive procurement process to meet the  
14 electricity needs of the customers of electric utilities  
15 that on January 2, 2007 served at least 100,000 customers.  
16 Such utilities shall execute all contracts awarded through  
17 the Authority procurement process and shall make direct  
18 payment to the counter-parties to those contracts. Such a  
19 utility may self-procure only the electricity that is  
20 necessary for load-following.

21 (A) Procurement for residential and small  
22 commercial customers. The Procurement Officer shall  
23 develop least-cost portfolios of contracts for  
24 electricity supply, energy efficiency measures and  
25 demand-response to meet the requirements of each  
26 utility's residential and small commercial customers,

1           which shall be updated on a quarterly basis, and based  
2           on load data supplied by the utilities, the least-cost  
3           plan mandated under subsection (a) of this Section, and  
4           other sources of information that the Procurement  
5           Officer deems necessary to develop these portfolios.  
6           One portfolio shall be constructed for Commonwealth  
7           Edison. One portfolio shall be constructed for  
8           AmerenCIPS, AmerenCILCO and AmerenIP, collectively.

9                   (i) Base load. When constructing these  
10                  portfolios the Procurement Officer shall maximize  
11                  the quantity of baseload electricity purchased  
12                  through long-term, 100% load factor contracts.

13                  (ii) Intermediate load. When constructing  
14                  these portfolios the Procurement Officer shall  
15                  maximize the load factor in intermediate load  
16                  contracts by contracting for targeted energy  
17                  efficiency and demand-response measures.

18                  (iii) Peak load. When constructing these  
19                  portfolios the Procurement Officer shall minimize  
20                  the quantity of peak load electricity purchased by  
21                  contracting for targeted energy efficiency and  
22                  demand-response measures.

23                  (iv) Renewable energy. When constructing these  
24                  portfolios, the Procurement Officer shall  
25                  designate a percentage of purchases made each year  
26                  to be from electricity generated from renewable

1 sources in Illinois, in the following quantities:  
2 no less than 2% in 2009; no less than 4% in 2010;  
3 no less than 8% in 2011; no less than 10% in 2012  
4 and thereafter.

5 (v) Board approval. The portfolio design shall  
6 be subject to Board approval on a quarterly basis.

7 (B) Procurement of electric supply for residential  
8 and small commercial customers. The Procurement  
9 Officer shall conduct a rolling solicitation of sealed  
10 bids from electric generators for supply contracts  
11 identified in these portfolios.

12 (i) Bids will be assessed against benchmarks  
13 established by the Board. The benchmarks shall  
14 include prices in spot and forward electricity  
15 markets, production costs, and electricity rates  
16 in the states surrounding Illinois. If other  
17 benchmarks are adopted, the Board, in consultation  
18 with the Procurement Officer shall determine  
19 which, if any, of these benchmarks shall be  
20 disclosed to bidders. Separate benchmarks shall be  
21 established for purchases of electricity generated  
22 from renewable resources.

23 (ii) The Procurement Officer may reject any  
24 and all bids.

25 (iii) The Procurement Officer may enter into  
26 price negotiations with bidders.

1 (C) Procurement of energy efficiency and demand  
2 response measures for residential and small commercial  
3 customers. The Procurement Officer shall contract with  
4 energy services companies to provide cost-effective  
5 energy efficiency and demand-response measures to the  
6 residential and small commercial customers of the  
7 utilities. The Authority may also directly implement  
8 energy efficiency and demand-response measures for  
9 residential and small customers.

10 (D) Procurement for large commercial and  
11 industrial customers. The Procurement Officer shall  
12 solicit sealed bids from electricity suppliers on an  
13 annual basis to meet each utility's full requirements  
14 to serve the utility's large commercial and industrial  
15 customers.

16 (i) The Procurement Officer shall solicit bids  
17 to supply one or more 100 MW vertical tranches of  
18 load for each utility. Bid prices shall include all  
19 energy, capacity, transmission, ancillary services  
20 and line losses.

21 (ii) Bids will be assessed against benchmarks  
22 established by the Board. The benchmarks shall  
23 include prices in spot and forward electricity  
24 markets, production costs, and electricity rates  
25 in the states surrounding Illinois. If other  
26 benchmarks are adopted, the Board, in consultation

1 with the Procurement Officer shall determine  
2 which, if any, of these benchmarks shall be  
3 disclosed to bidders.

4 (iii) The Procurement Officer may reject any  
5 and all bids.

6 (iv) The Procurement Officer may enter into  
7 price negotiations with bidders.

8 (v) The price that results from this  
9 procurement process shall be published no later  
10 than the first day of May each year. Thereafter,  
11 there will be a 30-day enrollment period for  
12 customers with peak demands from 400 kW to 3 MW.

13 (c) Acquisition and operation of electric generating  
14 units. The Illinois Power Authority shall have the power to  
15 acquire, construct, improve, rehabilitate, maintain and  
16 operate electric generation and cogeneration facilities that  
17 use indigenous coal or renewable resources, or both, financed  
18 with bonds issued by the Illinois Power Authority or the  
19 Illinois Finance Authority. The Authority, with Board  
20 approval, shall have the power:

21 (1) To acquire, construct, complete, improve,  
22 rehabilitate, maintain, and operate such facilities as the  
23 Authority deems necessary or desirable to maintain an  
24 adequate, dependable, and low-cost supply of electric  
25 power.

26 (A) The Authority shall ensure that these

1 facilities are constructed and operated in accordance  
2 with practices, methods, and acts that, in the exercise  
3 of reasonable judgment in light of the facts known at  
4 the time the decision was made, including, but not  
5 limited to, the practices, methods, and acts engaged in  
6 or approved by the electric industry.

7 (B) The Authority shall ensure that all of the  
8 Authority's projects achieve the expected result at  
9 the lowest reasonable cost.

10 (2) To determine the location, type, size, form of  
11 ownership, use, and operation of any generating facility,  
12 consistent with the provisions of this Act. The Authority  
13 shall give primary consideration to the construction of  
14 cogeneration and other high-efficiency facilities and  
15 facilities that use renewable resources. The Authority  
16 shall hold at least one public hearing before entering into  
17 a decision to acquire, construct, complete, improve or  
18 rehabilitate a facility. At least 30-days' notice of the  
19 hearing shall be given by publication once in each week  
20 during such period in each of 6 newspapers within the State  
21 to be selected by the Authority.

22 (A) The first generating facility that the  
23 Authority constructs, acquires, or completes shall be  
24 a coal-fired facility which uses coal from the State of  
25 Illinois.

26 (B) All coal-fired generating facilities that are

1 owned or maintained by the Authority shall use coal  
2 from the State of Illinois.

3 (3) To apply to the appropriate agencies and officials  
4 of the federal and State governments for such licenses,  
5 permits, or approval of its plans or projects as it may  
6 deem necessary or advisable, and to accept such licenses,  
7 permits, or approvals as may be tendered to it by such  
8 agencies or officials, upon such terms and conditions as it  
9 may deem appropriate.

10 (4) To institute suit, or to apply to any legislative  
11 body for legislation, or to take such other action as it  
12 may deem necessary or advisable in the furtherance of the  
13 purposes of this Act and for the protection of its rights,  
14 if for any reason the Authority shall fail to secure any  
15 such license, permit, or approval as it may deem necessary  
16 or advisable.

17 (5) To cooperate with and to enter into contractual  
18 arrangements with private companies, public entities,  
19 schools and universities, and municipal electric systems  
20 and rural electric cooperatives:

21 (A) with respect to the construction, acquisition,  
22 ownership, operation and use of facilities by the  
23 Authority;

24 (B) with respect to the construction, completion,  
25 acquisition, ownership, and operation of generating  
26 facilities.

1           (6) To cooperate with and to enter into contractual  
2 arrangements with local governments with respect to the  
3 construction, improvement, rehabilitation, ownership, and  
4 operation of generating facilities.

5           (7) To cooperate with and to enter into contractual  
6 arrangements, in the discretion of the Authority, with the  
7 Capital Development Board in connection with the planning,  
8 siting, development, construction, operation, and  
9 maintenance of generating facilities of the Authority.

10          (d) Use of electricity from the Authority's facilities. The  
11 Authority shall supply, at cost, electricity produced by the  
12 Authority's facilities to municipal electric systems,  
13 municipal aggregators and rural electric cooperatives in  
14 Illinois.

15           (1) Contracts to supply power and energy from the  
16 Authority's facilities shall provide for the effectuation  
17 of the policies set forth in this Act and shall ensure  
18 recovery of:

19           (A) All operating and maintenance expenses of the  
20 Authority's facilities and projects, and

21           (B) Interest on and amortization and reserve  
22 charges sufficient within 50 years after the date of  
23 issuance to retire the bonds of the Authority issued  
24 for the projects.

25           (2) The contracts shall also provide that:

26           (A) Notwithstanding any provisions in the Public

1 Utilities Act, entities supplied with power and energy  
2 from an Authority facility shall supply the power and  
3 energy to retail customers at the same price paid to  
4 purchase power and energy from the Authority.

5 (B) The entity shall make timely payment on all  
6 bills rendered by the Authority.

7 (C) Violation of these contract terms, as well as  
8 such other terms as the Authority may specify, shall  
9 result in cancellation and termination of the  
10 contract.

11 (D) Such other terms not inconsistent with the  
12 provisions and policy of this Act, as the Authority may  
13 deem advisable.

14 (3) Contracts negotiated by the Authority as provided  
15 in subsections (1) and (2) of this Section shall be entered  
16 into and executed as follows:

17 (A) After the parties have agreed to the terms of  
18 the contract, the Authority shall promptly transmit a  
19 copy of the proposed contract to the Governor, the  
20 Secretary of State, the Attorney General, the  
21 Treasurer, the Comptroller, and the legislative  
22 leaders of the General Assembly and shall hold a public  
23 hearing or hearings upon the terms thereof. At least  
24 30-days' notice of the hearing shall be given by  
25 publication once in each week during such period in  
26 each of 6 newspapers within the State to be selected by

1 the Authority. Copies of proposed contracts shall be  
2 available for public inspection during that period of  
3 30 days at the office or offices of the Authority and  
4 at such other places throughout the State as it may  
5 designate.

6 (B) Following the public hearing, the Authority  
7 shall reconsider the terms of the proposed contract or  
8 contracts and shall negotiate such changes and  
9 modifications in the contract or contracts as the  
10 Authority deems necessary or advisable.

11 (C) When the contract or contracts are finally  
12 agreed upon in terms satisfactory to the Authority and  
13 its co-party or co-parties, and the Authority decides  
14 that the contract is in the public interest, the  
15 Authority shall report the proposed contract or  
16 contracts, together with its recommendations and the  
17 record of the public hearings to the Governor, the  
18 Secretary of State, the Attorney General, the  
19 Treasurer, the Comptroller, and the General Assembly.

20 (i) The Attorney General shall review the  
21 contract to ensure that it complies with all  
22 applicable laws. If the Attorney General  
23 determines that the contract meets all applicable  
24 laws, then the trustees shall approve the  
25 contract.

26 (ii) The contract, after receiving the

1           required number of votes by the trustees, shall be  
2           executed by the chairperson and secretary of the  
3           Authority and shall come into full force and effect  
4           and be binding upon the Authority and all other  
5           parties in accordance with its terms.

6           (e) Planning and procurement under subsections (a) and (b)  
7           of this Section are not subject to the Illinois Procurement  
8           Code.

9           Section 4-40. Notes of the Authority. The Authority is  
10          authorized from time to time to issue its negotiable notes in  
11          conformity with applicable provisions of the Uniform  
12          Commercial Code for any corporate purpose and to refund from  
13          time to time any notes by the issuance of new notes, whether  
14          the notes to be refunded have or have not matured. The  
15          Authority may issue notes partly to refund notes or to  
16          discharge other obligations then outstanding and partly for any  
17          other corporate purpose of the Authority. The notes may be  
18          authorized, sold, executed, and delivered in the same manner as  
19          bonds. Any resolution authorizing notes of the Authority or any  
20          issue thereof may contain any provisions that the Authority is  
21          authorized to include in any resolution authorizing bonds of  
22          the Authority or any issue thereof, and the Authority may  
23          include in any notes any terms, covenants, or conditions that  
24          it is authorized to include in any bonds.

1 Section 4-60. Revenue bonds.

2 (a) The Authority shall have the continuing power to issue  
3 revenue bonds, notes, or other evidences of indebtedness in an  
4 aggregate amount not to exceed \$4,000,000,000 for the purpose  
5 of developing, constructing, acquiring, or improving projects  
6 for acquiring and improving any property necessary and useful  
7 in connection therewith, and for the purposes of the Employee  
8 Ownership Assistance Act. The bonds must be issued under the  
9 supervision of the Illinois Finance Authority, as set forth  
10 under Section 825-13 of the Illinois Finance Authority Act. For  
11 the purpose of evidencing the obligations of the Authority to  
12 repay any money borrowed, the Authority may, pursuant to  
13 resolution, from time to time issue and dispose of its interest  
14 bearing revenue bonds, notes, or other evidences of  
15 indebtedness and may also from time to time issue and dispose  
16 of such bonds, notes, or other evidences of indebtedness to  
17 refund, at maturity, at a redemption date or in advance of  
18 either, any revenue bonds, notes, or other evidences of  
19 indebtedness pursuant to redemption provisions or at any time  
20 before maturity. All such revenue bonds, notes, or other  
21 evidences of indebtedness shall be payable solely from the  
22 revenues or income to be derived from loans made with respect  
23 to projects, from the leasing or sale of the projects, or from  
24 any other funds available to the Authority for such purposes,  
25 including, when so provided by ordinance of the Authority  
26 authorizing the issuance of revenue bonds or notes. The revenue

1 bonds, notes, or other evidences of indebtedness may bear such  
2 date or dates, may mature at such time or times not exceeding  
3 40 years from their respective dates, may bear interest at such  
4 rate or rates not exceeding the maximum rate permitted by the  
5 Bond Authorization Act, may be in such form, may carry such  
6 registration privileges, may be executed in such manner, may be  
7 payable at such place or places, may be made subject to  
8 redemption in such manner and upon such terms, with or without  
9 premium as is stated on the face thereof, may be authenticated  
10 in such manner, and may contain such terms and covenants as may  
11 be provided by an applicable resolution.

12 (b) The holder or holders of any revenue bonds, notes, or  
13 other evidences of indebtedness issued by the Authority may  
14 bring suits at law or proceedings in equity to compel the  
15 performance and observance by any corporation or person or by  
16 the Authority or any of its agents or employees of any contract  
17 or covenant made with the holders of such revenue bonds, notes,  
18 or other evidences of indebtedness, to compel such corporation,  
19 person, the Authority, and any of its agents or employees to  
20 perform any duties required to be performed for the benefit of  
21 the holders of any such revenue bonds, notes, or other  
22 evidences of indebtedness by the provision of the resolution  
23 authorizing their issuance and to enjoin such corporation,  
24 person, the Authority, and any of its agents or employees from  
25 taking any action in conflict with any such contract or  
26 covenant.

1           (c) If the Authority fails to pay the principal of or  
2 interest on any of the revenue bonds or premium, if any, as the  
3 same become due, a civil action to compel payment may be  
4 instituted in the appropriate circuit court by the holder or  
5 holders of the revenue bonds on which such default of payment  
6 exists or by an indenture trustee acting on behalf of such  
7 holders. Delivery of a summons and a copy of the complaint to  
8 the Chairperson of the Board shall constitute sufficient  
9 service to give the circuit court jurisdiction of the subject  
10 matter of such a suit and jurisdiction over the Authority and  
11 its officers named as defendants for the purpose of compelling  
12 such payment. Any case, controversy, or cause of action  
13 concerning the validity of this Act relates to the revenue of  
14 the State of Illinois.

15           (d) Notwithstanding the form and tenor of any such revenue  
16 bonds, notes, or other evidences of indebtedness and in the  
17 absence of any express recital on the face of any such revenue  
18 bond, note, or other evidence of indebtedness that it is  
19 nonnegotiable, all such revenue bonds, notes, and other  
20 evidences of indebtedness shall be negotiable instruments.  
21 Pending the preparation and execution of any such revenue  
22 bonds, notes, or other evidences of indebtedness, temporary  
23 revenue bonds, notes, or evidences of indebtedness may be  
24 issued as provided by ordinance.

25           (e) To secure the payment of any or all of such revenue  
26 bonds, notes, or other evidences of indebtedness, the revenues

1 to be received by the Authority from a lease agreement or loan  
2 agreement shall be pledged, and, for the purpose of setting  
3 forth the covenants and undertakings of the Authority in  
4 connection with the issuance thereof and the issuance of any  
5 additional revenue bonds, notes, or other evidences of  
6 indebtedness payable from such revenues, income, or other funds  
7 to be derived from projects, the Authority may execute and  
8 deliver a mortgage or trust agreement. A remedy for any breach  
9 or default of the terms of any such mortgage or trust agreement  
10 by the Authority may be by mandamus proceedings in the  
11 appropriate circuit court to compel the performance and  
12 compliance therewith, but the trust agreement may prescribe by  
13 whom or on whose behalf the action may be instituted.

14 (f) The revenue bonds or notes shall be secured as provided  
15 in the authorizing ordinance which may, notwithstanding any  
16 other provision of this Act, include in addition to any other  
17 security a specific pledge or assignment of and lien on or  
18 security interest in any or all revenues or money of the  
19 Authority from whatever source which may by law be used for  
20 debt service purposes and a specific pledge or assignment of  
21 and lien on or security interest in any funds or accounts  
22 established or provided for by ordinance of the Authority  
23 authorizing the issuance of such revenue bonds or notes.

24 (g) The State of Illinois pledges to and agrees with the  
25 holders of the revenue bonds and notes of the Authority issued  
26 pursuant to this Section that the State will not limit or alter

1 the rights and powers vested in the Authority by this Act so as  
2 to impair the terms of any contract made by the Authority with  
3 such holders or in any way impair the rights and remedies of  
4 such holders until such revenue bonds and notes, together with  
5 interest thereon, with interest on any unpaid installments of  
6 interest, and all costs and expenses in connection with any  
7 action or proceedings by or on behalf of such holders, are  
8 fully met and discharged. The Authority is authorized to  
9 include these pledges and agreements of the State in any  
10 contract with the holders of revenue bonds or notes issued  
11 pursuant to this Section.

12 (h) In the event that the Authority determines that monies  
13 of the Authority will not be sufficient for the payment of the  
14 principal of and interest on its bonds during the next State  
15 fiscal year, the Chairperson, as soon as practicable, shall  
16 certify to the Governor the amount required by the Authority to  
17 enable it to pay such principal of and interest on the bonds.  
18 The Governor shall submit the amount so certified to the  
19 General Assembly as soon as practicable, but no later than the  
20 end of the current State fiscal year. This subsection (h) shall  
21 apply only to any bonds or notes as to which the Authority  
22 shall have determined, in the resolution authorizing the  
23 issuance of the bonds or notes, that this subsection shall  
24 apply. Whenever the Authority makes such a determination, that  
25 fact shall be plainly stated on the face of the bonds or notes  
26 and that fact shall also be reported to the Governor. In the

1 event of a withdrawal of moneys from a reserve fund established  
2 with respect to any issue or issues of bonds of the Authority  
3 to pay principal or interest on those bonds, the Chairperson of  
4 the Authority, as soon as practicable, shall certify to the  
5 Governor the amount required to restore the reserve fund to the  
6 level required in the resolution or indenture securing those  
7 bonds. The Governor shall submit the amount so certified to the  
8 General Assembly as soon as practicable, but no later than the  
9 end of the current State fiscal year. The Authority shall  
10 obtain written approval from the Governor for any bonds and  
11 notes to be issued under this Section.

12 Section 4-65. State and local governments not liable on  
13 bonds or notes. The bonds, notes, and other obligations of the  
14 Authority shall not be a debt of the State or of any local  
15 government, and neither the State nor any local government  
16 shall be liable thereon. The Authority shall not have the power  
17 to pledge the credit, the revenues, or the taxing power of the  
18 State or of any local government, and neither the credit, the  
19 revenues, nor the taxing power of the State or of any local  
20 government shall be, or shall be deemed to be, pledged to the  
21 payment of any bonds, notes, or other obligations of the  
22 Authority. Each evidence of indebtedness of the Authority,  
23 including the bonds and notes of the Authority, shall contain a  
24 clear and explicit statement of the provisions of this Section.

1           Section 4-70. Deposit and investment of moneys of the  
2 Authority.

3           (a) All moneys of the Authority from whatever source  
4 derived, except as otherwise authorized or provided in this  
5 Act, shall be paid to the treasurer of the Authority and shall  
6 be deposited forthwith in a bank or banks designated by the  
7 Authority. The moneys in such accounts shall be withdrawn on  
8 the order of such person or persons as the Authority may  
9 authorize.

10           (b) The Authority may contract with holders of any of its  
11 bonds or notes, or any trustee therefor, as to the custody,  
12 collection, securing, investment, and payment of any moneys of  
13 the Authority and of any moneys held in trust or otherwise for  
14 the payment of bonds or notes, and to carry out any such  
15 contract. Moneys held in trust or otherwise for the payment of  
16 bonds or notes or in any way to secure bonds or notes and  
17 deposits of such moneys and all banks and trust companies in  
18 the State are authorized to give such security for such  
19 deposits.

20           (c) Subject to agreements with noteholders and bondholders  
21 or any trustee therefor, the Authority shall prescribe a  
22 uniform system of accounts in accordance with generally  
23 accepted accounting principles.

24           Section 4-75. Agreement of the State.

25           (a) The State of Illinois pledges and agrees with the

1 holders of any obligations issued under this Act and the  
2 parties to any contracts with the Authority that the State will  
3 not limit or alter the rights vested in the Authority until  
4 those obligations together with the interest thereon are fully  
5 met and discharged and those contracts are fully performed on  
6 the part of the Authority, except that nothing in this Act  
7 precludes such limitation or alteration if adequate provision  
8 is made by law for the protection of the holders of the  
9 obligations of the Authority, or those entering into such  
10 contracts with the Authority. The Authority as agent for the  
11 State is authorized to include this pledge and agreement by the  
12 State in all agreements with the holders of such obligations  
13 and in all such contracts.

14 (b) Nothing in this Act shall be construed as diminishing  
15 or enlarging any valid existing rights under any license  
16 heretofore issued pursuant to the provisions of the Federal  
17 Power Act.

18 Section 4-80. Exemption from taxation.

19 (a) It is hereby found and declared that the operation of  
20 the Authority is primarily for the benefit of the people of the  
21 State of Illinois, for the improvement of their health,  
22 welfare, and prosperity, and has a public purpose, and the  
23 Authority shall be regarded as performing an essential  
24 governmental function in carrying out the provisions of this  
25 Act.

1           (b) The Authority shall not be required to pay taxes or  
2 assessments upon any of the property acquired or controlled by  
3 it or upon its activities in the operation and maintenance  
4 thereof or upon income derived therefrom, except that nothing  
5 in this Act shall prevent the Authority from entering into  
6 agreements to make payments in lieu of taxes with the governing  
7 bodies of local governments with respect to property acquired  
8 for any project when those payments are based solely on the  
9 value of real property without regard to any improvement  
10 thereof by the Authority.

11           (c) The securities and other obligations issued by the  
12 Authority, their transfer, and the income therefrom shall, at  
13 all times, be free from taxation by the State or any local  
14 government, except for estate and gift taxes.

15           (d) The securities and other obligations issued by the  
16 Authority, their transfer, and the income therefrom shall, at  
17 all times, be free from taxation within this State. It is  
18 furthermore declared that the object and purpose of this Act is  
19 that such projects shall be in all respects self-supporting.

20           (e) The Authority is not subject to the Electric Generator  
21 Tax.

22           Section 4-85. Repayment of State appropriations. All  
23 appropriations made by the State to the Authority shall be  
24 treated as advances by the State to the Authority, and shall be  
25 repaid to the State without interest either out of the proceeds

1 of bonds issued by the Authority pursuant to this Act, or by  
2 the delivery of non-interest bearing bonds of the Authority to  
3 the State for all or any part of such advances, or out of  
4 excess revenues of the Authority, at such times and on such  
5 conditions as the State and the Authority mutually may agree  
6 upon.

7 Section 4-90. ICC lacks jurisdiction. The activities of the  
8 Authority authorized by this Act and any other function or duty  
9 of the Authority are not subject to the Public Utilities Act or  
10 to the jurisdiction of the Illinois Commerce Commission.

11 Section 4-95. Equal employment opportunity and  
12 minority-owned and women-owned business enterprise programs.

13 (a) All contracts entered into by the Authority pursuant to  
14 this Act of whatever nature and all documents soliciting bids  
15 or proposals therefor shall contain or make reference to the  
16 following provisions:

17 (1) The contractor will not discriminate against  
18 employees or applicants for employment because of race,  
19 creed, color, national origin, sex, age, disability, or  
20 marital status, and will undertake or continue existing  
21 programs of affirmative action to ensure that minority  
22 group persons and women are afforded equal opportunity  
23 without discrimination. Such programs shall include, but  
24 not be limited to, recruitment, employment, job

1 assignment, promotion, upgrading, demotion, transfer,  
2 layoff, termination, rates of pay or other forms of  
3 compensation, and selection for training and retraining,  
4 including apprenticeship and on-the-job training.

5 (2) At the request of the Authority, the contractor  
6 shall request each employment agency, labor union, or  
7 authorized representative of workers with which it has a  
8 collective bargaining or other agreement or understanding  
9 and that is involved in the performance of the contract  
10 with the Authority to furnish a written statement that such  
11 employment agency, labor union, or representative shall  
12 not discriminate because of race, creed, color, national  
13 origin, sex, age, disability, or marital status and that  
14 such union or representative will cooperate in the  
15 implementation of the contractor's obligations under this  
16 Act.

17 (3) The contractor shall state, in all solicitations or  
18 advertisements for employees placed by or on behalf of the  
19 contractor in the performance of the contract with the  
20 Authority, that all qualified applicants will be afforded  
21 equal employment opportunity without discrimination  
22 because of race, creed, color, national origin, sex, age,  
23 disability, or marital status.

24 (4) The contractor will include the provisions of  
25 paragraphs (1) through (3) of this subsection in every  
26 subcontract or purchase order in such a manner that the

1 provisions will be binding upon each subcontractor or  
2 vendor as to its work in connection with the contract with  
3 the Authority.

4 (b) The Authority shall establish measures, procedures,  
5 and guidelines to ensure that contractors and subcontractors  
6 undertake meaningful programs to employ and promote qualified  
7 minority group members and women. The procedures may require,  
8 after notice in a bid solicitation, the submission of a  
9 minority and women workforce utilization program prior to the  
10 award of any contract, or at any time thereafter, and may  
11 require the submission of compliance reports relating to the  
12 operation and implementation of any workforce utilization  
13 program. The Authority may take appropriate action, including  
14 the imposition of sanctions for non-compliance, to effectuate  
15 the provisions of this Section and shall be responsible for  
16 monitoring compliance with this Act.

17 (c) In the performance of projects pursuant to this Act,  
18 minority-owned and women-owned business enterprises shall be  
19 given the opportunity for meaningful participation. The  
20 Authority shall establish quantifiable standards and measures  
21 and procedures to secure meaningful participation and identify  
22 those contracts and items of work for which minority-owned and  
23 women-owned business enterprises may best bid to actively and  
24 affirmatively promote and assist their participation in  
25 projects, so as to facilitate the award of a fair share of  
26 contracts to such enterprises; except that nothing in this Act

1 shall be construed to limit the ability of the Authority to  
2 assure that qualified minority-owned and women-owned business  
3 enterprises may participate in the program. The provisions of  
4 this subsection shall not be construed to limit the ability of  
5 any minority business enterprise to bid on any contract.

6 (d) In order to implement the requirements and objectives  
7 of this Section, the Authority shall establish procedures to  
8 monitor contractors compliance with provisions hereof, provide  
9 assistance in obtaining competing qualified minority-owned and  
10 women-owned business enterprises to perform contracts proposed  
11 to be awarded, impose contractual sanctions for  
12 non-compliance, and take other appropriate measures to improve  
13 the access of minority-owned and women-owned business  
14 enterprises to these contracts

15 Section 4-100. Authority subject to other Acts. The  
16 Authority is subject to the provisions of the Open Meetings Act  
17 and the Freedom of Information Act.

18 Section 4-105. Court proceedings; venue.

19 (a) The venue of any action or proceeding questioning the  
20 validity of this Act shall be in the county in which the  
21 principal office of the Authority is located.

22 (b) If any party appeals an award of compensation for the  
23 taking by the Authority of stock or assets, that party shall  
24 post a bond in such amount, if any, as the court of competent

1 jurisdiction shall deem appropriate to adequately protect the  
2 interests of the other party under all the circumstances.

3 (c) All tort claims are subject to the Court of Claims Act.

4 Section 4-900. The Illinois Procurement Code is amended by  
5 changing Section 50-70 as follows:

6 (30 ILCS 500/50-70)

7 Sec. 50-70. Additional provisions. This Code is subject to  
8 applicable provisions of the following Acts:

9 (1) Article 33E of the Criminal Code of 1961;

10 (2) the Illinois Human Rights Act;

11 (3) the Discriminatory Club Act;

12 (4) the Illinois Governmental Ethics Act;

13 (5) the State Prompt Payment Act;

14 (6) the Public Officer Prohibited Activities Act; ~~and~~

15 (7) the Drug Free Workplace Act; and

16 (8) the Illinois Power Authority Act.

17 (Source: P.A. 90-572, eff. 2-6-98.)

18 Section 4-905. The Illinois Pension Code is amended by  
19 changing Section 1-109.1 as follows:

20 (40 ILCS 5/1-109.1) (from Ch. 108 1/2, par. 1-109.1)

21 Sec. 1-109.1. Allocation and Delegation of Fiduciary  
22 Duties.

1           (1) Subject to the provisions of Section 22A-113 of this  
2 Code and subsections (2) and (3) of this Section, the board of  
3 trustees of a retirement system or pension fund established  
4 under this Code may:

5           (a) Appoint one or more investment managers as  
6 fiduciaries to manage (including the power to acquire and  
7 dispose of) any assets of the retirement system or pension  
8 fund; and

9           (b) Allocate duties among themselves and designate  
10 others as fiduciaries to carry out specific fiduciary  
11 activities other than the management of the assets of the  
12 retirement system or pension fund.

13           (2) The board of trustees of a pension fund established  
14 under Article 5, 6, 8, 9, 10, 11, 12 or 17 of this Code may not  
15 transfer its investment authority, nor transfer the assets of  
16 the fund to any other person or entity for the purpose of  
17 consolidating or merging its assets and management with any  
18 other pension fund or public investment authority, unless the  
19 board resolution authorizing such transfer is submitted for  
20 approval to the contributors and pensioners of the fund at  
21 elections held not less than 30 days after the adoption of such  
22 resolution by the board, and such resolution is approved by a  
23 majority of the votes cast on the question in both the  
24 contributors election and the pensioners election. The  
25 election procedures and qualifications governing the election  
26 of trustees shall govern the submission of resolutions for

1 approval under this paragraph, insofar as they may be made  
2 applicable.

3 (3) Pursuant to subsections (h) and (i) of Section 6 of  
4 Article VII of the Illinois Constitution, the investment  
5 authority of boards of trustees of retirement systems and  
6 pension funds established under this Code is declared to be a  
7 subject of exclusive State jurisdiction, and the concurrent  
8 exercise by a home rule unit of any power affecting such  
9 investment authority is hereby specifically denied and  
10 preempted.

11 (4) For the purposes of this Code, "emerging investment  
12 manager" means a qualified investment adviser that manages an  
13 investment portfolio of at least \$10,000,000 but less than  
14 \$2,000,000,000 and is a "minority owned business" or "female  
15 owned business" as those terms are defined in the Business  
16 Enterprise for Minorities, Females, and Persons with  
17 Disabilities Act.

18 It is hereby declared to be the public policy of the State  
19 of Illinois to encourage the trustees of public employee  
20 retirement systems to use emerging investment managers in  
21 managing their system's assets to the greatest extent feasible  
22 within the bounds of financial and fiduciary prudence, and to  
23 take affirmative steps to remove any barriers to the full  
24 participation of emerging investment managers in investment  
25 opportunities afforded by those retirement systems.

26 Each retirement system subject to this Code shall prepare a

1 report to be submitted to the Governor and the General Assembly  
2 by September 1 of each year. The report shall identify the  
3 emerging investment managers used by the system, the percentage  
4 of the system's assets under the investment control of emerging  
5 investment managers, and the actions it has undertaken to  
6 increase the use of emerging investment managers, including  
7 encouraging other investment managers to use emerging  
8 investment managers as subcontractors when the opportunity  
9 arises.

10 The use of an emerging investment manager does not  
11 constitute a transfer of investment authority for the purposes  
12 of subsection (2) of this Section.

13 (5) For the purposes of this Code, "Illinois Power  
14 Authority" means the Authority created under the Illinois Power  
15 Authority Act.

16 It is hereby declared to be the public policy of the State  
17 of Illinois to encourage the trustees of public employee  
18 retirement systems to invest their system's assets to the  
19 greatest extent feasible within the bounds of financial and  
20 fiduciary prudence in the Illinois Power Authority.

21 Each retirement system subject to this Code shall prepare a  
22 report to be submitted to the Governor and the General Assembly  
23 by September 1 of each year. The report shall identify  
24 investments in the Illinois Power Authority, the percentage of  
25 the system's assets invested in the Illinois Power Authority,  
26 and the actions it has undertaken to increase investments in

1 the Illinois Power Authority.

2 (Source: P.A. 94-471, eff. 8-4-05.)

3 Section 4-910. The Public Utilities Act is amended by  
4 changing Section 3-105 as follows:

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

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

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

20 b. the disposal of sewerage; or

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

22 "Public utility" does not include, however:

23 1. public utilities that are owned and operated by any  
24 political subdivision, public institution of higher

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

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

10 3. electric cooperatives as defined in Section 3-119;

11 4. the following natural gas cooperatives:

12 (A) residential natural gas cooperatives that are  
13 not-for-profit corporations established for the  
14 purpose of administering and operating, on a  
15 cooperative basis, the furnishing of natural gas to  
16 residences for the benefit of their members who are  
17 residential consumers of natural gas. For entities  
18 qualifying as residential natural gas cooperatives and  
19 recognized by the Illinois Commerce Commission as  
20 such, the State shall guarantee legally binding  
21 contracts entered into by residential natural gas  
22 cooperatives for the express purpose of acquiring  
23 natural gas supplies for their members. The Illinois  
24 Commerce Commission shall establish rules and  
25 regulations providing for such guarantees. The total  
26 liability of the State in providing all such guarantees

1 shall not at any time exceed \$1,000,000, nor shall the  
2 State provide such a guarantee to a residential natural  
3 gas cooperative for more than 3 consecutive years; and

4 (B) natural gas cooperatives that are  
5 not-for-profit corporations operated for the purpose  
6 of administering, on a cooperative basis, the  
7 furnishing of natural gas for the benefit of their  
8 members and that, prior to 90 days after the effective  
9 date of this amendatory Act of the 94th General  
10 Assembly, either had acquired or had entered into an  
11 asset purchase agreement to acquire all or  
12 substantially all of the operating assets of a public  
13 utility or natural gas cooperative with the intention  
14 of operating those assets as a natural gas cooperative;

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

20 6. the Illinois Power Authority and its subsidiaries as  
21 provided in Section 4-90 of the Illinois Power Authority  
22 Act ~~(Blank)~~;

23 7. cogeneration facilities, small power production  
24 facilities, and other qualifying facilities, as defined in  
25 the Public Utility Regulatory Policies Act and regulations  
26 promulgated thereunder, except to the extent State

1 regulatory jurisdiction and action is required or  
2 authorized by federal law, regulations, regulatory  
3 decisions or the decisions of federal or State courts of  
4 competent jurisdiction;

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

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

12 (Source: P.A. 94-738, eff. 5-4-06.)

13 Section 4-915. The Public Utilities Act is amended by  
14 changing Sections 2-101, 2-102, 2-103, 2-106, 9-225, 9-227,  
15 10-101, 10-103, 10-111, 16-124, and 16-126 and by adding  
16 Sections 7-101A, 16-124A, 16-131, and 16-132 as follows:

17 (220 ILCS 5/2-101) (from Ch. 111 2/3, par. 2-101)

18 Sec. 2-101. Commerce Commission created. There is created  
19 an Illinois Commerce Commission consisting of 5 members not  
20 more than 3 of whom shall be members of the same political  
21 party at the time of appointment. Three Commissioners shall be  
22 attorneys, certified public accountants, or professional  
23 engineers and shall each have at least 10 years of experience  
24 in their respective professions. Two Commissioners must have at

1 least 10 years of experience in one of the following fields:  
2 (i) economics, (ii) finance, (iii) energy policy, or (iv)  
3 environmental studies. The Governor shall appoint the members  
4 of such Commission by and with the advice and consent of the  
5 Senate and House of Representatives. In case of a vacancy in  
6 such office during the recess of the Senate or House, the  
7 Governor shall make a temporary appointment until the next  
8 meeting of the Senate and House of Representatives, when he  
9 shall nominate some person to fill such office; and any person  
10 so nominated who is confirmed by the Senate and House of  
11 Representatives, shall hold his office during the remainder of  
12 the term and until his successor shall be appointed and  
13 qualified. No person rejected by the Senate or House of  
14 Representatives for appointment shall, except at the request of  
15 both the Senate and House, be again nominated for appointment  
16 at the same session or be appointed to the office during a  
17 recess of the Senate or House. Each member of the Commission  
18 shall hold office for a term of 5 years from the third Monday  
19 in January of the year in which his predecessor's term expires.

20 Notwithstanding any provision of this Section to the  
21 contrary, the term of office of each member of the Illinois  
22 Commerce Commission serving on the effective date of this  
23 amendatory Act of the 95th General Assembly is abolished, and  
24 those members no longer hold office. No Commissioner serving on  
25 January 2, 2007 is eligible for reappointment to a term on the  
26 Commission or as a temporary appointee. The Illinois Commerce

1 Commission shall be appointed by the Governor, with the advice  
2 and consent of both the Senate and House of Representatives.

3 Notwithstanding any provision of this Section to the  
4 contrary, the term of office of each member of the Commission  
5 is terminated on the effective date of this amendatory Act of  
6 1995, but the incumbent members shall continue to exercise all  
7 of the powers and be subject to all of the duties of members of  
8 the Commission until their respective successors are appointed  
9 and qualified. Of the members initially appointed under the  
10 provisions of this amendatory Act of 1995, one member shall be  
11 appointed for a term of office which shall expire on the third  
12 Monday of January, 1997; 2 members shall be appointed for terms  
13 of office which shall expire on the third Monday of January,  
14 1998; one member shall be appointed for a term of office which  
15 shall expire on the third Monday of January, 1999; and one  
16 member shall be appointed for a term of office which shall  
17 expire on the third Monday of January, 2000. Each respective  
18 successor shall be appointed for a term of 5 years from the  
19 third Monday of January of the year in which his predecessor's  
20 term expires in accordance with the provisions of the first  
21 paragraph of this Section.

22 Each member shall serve until his successor is appointed  
23 and qualified, except that if the Senate refuses to consent to  
24 the appointment of any member, such office shall be deemed  
25 vacant, and within 2 weeks of the date the Senate refuses to  
26 consent to the reappointment of any member, such member shall

1 vacate such office. The Governor shall from time to time  
2 designate the member of the Commission who shall be its  
3 chairman. Consistent with the provisions of this Act, the  
4 Chairman shall be the chief executive officer of the Commission  
5 for the purpose of ensuring that the Commission's policies are  
6 properly executed.

7 If there is no vacancy on the Commission, 4 members of the  
8 Commission shall constitute a quorum to transact business;  
9 otherwise, a majority of the Commission shall constitute a  
10 quorum to transact business, and no vacancy shall impair the  
11 right of the remaining commissioners to exercise all of the  
12 powers of the Commission. Every finding, order, or decision  
13 approved by a majority of the members of the Commission shall  
14 be deemed to be the finding, order, or decision of the  
15 Commission.

16 (Source: P.A. 92-22, eff. 6-30-01.)

17 (220 ILCS 5/2-102) (from Ch. 111 2/3, par. 2-102)

18 Sec. 2-102. (a) Each commissioner and each person appointed  
19 to office by the Commission shall before entering upon the  
20 duties of his office take and subscribe the constitutional oath  
21 of office.

22 Before entering upon the duties of his office each  
23 commissioner shall give bond, with security to be approved by  
24 the Governor, in the sum of \$20,000, conditioned for the  
25 faithful performance of his duty as such commissioner. Every

1 person appointed or employed by the Commission, may, in the  
2 discretion of the Commission, before entering upon the duties  
3 of his office, be required to give bond for the faithful  
4 discharge of his duties, in such sum as the Commission may  
5 designate, which bond shall be approved by the Commission.

6 All bonds required to be filed pursuant to this section  
7 shall be filed in the office of the Secretary of State.

8 (b) No person in the employ of or holding any official  
9 relation to any corporation or person subject in whole or in  
10 part to regulation by the Commission, and no person holding  
11 stock or bonds in any such corporation, or who is in any other  
12 manner pecuniarily interested therein, directly or indirectly,  
13 shall be appointed to or hold the office of commissioner or be  
14 appointed or employed by the Commission; and if any such person  
15 shall voluntarily become so interested his office or employment  
16 shall ipso facto become vacant. If any person become so  
17 interested otherwise than voluntarily he shall within a  
18 reasonable time divest himself of such interest, and if he  
19 fails to do so his office or employment shall become vacant.

20 No commissioner or person appointed or employed by the  
21 Commission shall solicit or accept any gift, gratuity,  
22 emolument or employment from any person or corporation subject  
23 to the supervision of the Commission, or from any officer,  
24 agent or employee thereof; nor solicit, request from or  
25 recommend, directly or indirectly, to any such person or  
26 corporation, or to any officer, agent or employee thereof the

1 appointment of any person to any place or position. Every such  
2 corporation and person, and every officer, agent or employee  
3 thereof, is hereby forbidden to offer to any commissioner or to  
4 any person appointed or employed by the Commission any gift,  
5 gratuity, emolument or employment. If any commissioner or any  
6 person appointed or employed by the Commission shall violate  
7 any provisions of this paragraph he shall be removed from the  
8 office or employment held by him. Every person violating the  
9 provisions of this paragraph shall be guilty of a Class A  
10 misdemeanor.

11 The provisions of this subsection (b) are applicable for  
12 the time period beginning 2 years prior to appointment to or  
13 employment by the Commission, during service as a Commissioner  
14 or employment by the Commission, and for 2 years thereafter.

15 (c) Each commissioner shall devote his entire time to the  
16 duties of his office, and shall hold no other office or  
17 position of profit, or engage in any other business, employment  
18 or vocation.

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

20 (220 ILCS 5/2-103) (from Ch. 111 2/3, par. 2-103)

21 Sec. 2-103. (a) No former member or employee of the  
22 Commission may, for a period of one year following the  
23 termination of his services with the Commission, represent any  
24 person before the Commission in a professional capacity with  
25 respect to any particular Commission matter in which he

1 participated personally and substantially as a member or  
2 employee of the Commission.

3 (b) No former member or employee of the Commission may act  
4 as agent or attorney for any one other than the State of  
5 Illinois in connection with any particular Commission matter in  
6 which he participated personally and substantially as a member  
7 or employee of the Commission, through decision, approval,  
8 disapproval, recommendation, the rendering of service,  
9 investigation, or otherwise.

10 (c) No former member or employee of the Commission may  
11 accept any employment with any public utility or other  
12 corporation or person subject to Commission regulations for one  
13 year following the termination of his services with the  
14 Commission.

15 (d) No public utility or other corporation or person  
16 subject to Commission regulation shall offer a former member or  
17 employee of the Commission employment for a period of 2 years  
18 ~~one year~~ following the termination of the former Commission  
19 member's or former employee's service with the Commission, ~~or~~  
20 ~~otherwise hire such person as an agent or attorney where such~~  
21 ~~employment or contractual relation would be in violation of~~  
22 ~~this Section.~~

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

24 (220 ILCS 5/2-106) (from Ch. 111 2/3, par. 2-106)

25 Sec. 2-106. (a) The executive director shall employ hearing

1 examiners to make valuations of public utility properties, or  
2 to estimate proper rates of service of public utilities, or to  
3 examine other questions coming before the Commission, by taking  
4 testimony or by independent investigation. The executive  
5 director shall designate one hearing examiner to serve as chief  
6 hearing examiner who shall be responsible for supervising and  
7 directing the activities of all hearing examiners, subject to  
8 the approval of the executive director. Hearing examiners  
9 shall, under the direction of the chief hearing examiner, take  
10 testimony of witnesses, examine accounts, records, books,  
11 papers and physical properties, either by holding hearings or  
12 making independent investigations, in any matter referred to  
13 them by the chief hearing examiner; and make report thereof to  
14 the chief hearing examiner, and attend at hearings before the  
15 Commission when so directed by the chief hearing examiner, for  
16 the purpose of explaining their investigations and the result  
17 thereof to the Commission and the parties interested; and  
18 perform such other duties as the chief hearing examiner may  
19 direct. All hearing examiners shall be attorneys licensed to  
20 practice in the State of Illinois. The chief hearing examiner  
21 shall have at least 10 years of litigation experience as a  
22 licensed attorney. Each hearing examiner shall have at least 5  
23 years of litigation experience as a licensed attorney.

24 (b) All hearing examiners employed by the Commission shall  
25 be thoroughly familiar with applicable rules of evidence,  
26 procedure and administrative law. At least every two years

1 after a hearing examiner is employed by the Commission, the  
2 executive director and chief hearing examiner shall review the  
3 performance of such hearing examiner based on whether the  
4 examiner:

5 (i) is, and is perceived to be, fair to all parties;

6 (ii) has a judicious and considerate temperament;

7 (iii) is capable of comprehending and properly conducting  
8 proceedings and other duties to which he is assigned;

9 (iv) is capable of understanding and rendering rulings on  
10 legal and evidentiary issues;

11 (v) is capable of independently evaluating the evidentiary  
12 record and drafting a proposed final order which reflects  
13 careful, impartial and competent analysis; and

14 (vi) meets any other qualifications deemed relevant or  
15 necessary by the executive director or chief hearing examiner.

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

17 (220 ILCS 5/7-101A new)

18 Sec. 7-101A. Restrictions on directors and corporate  
19 officers of electric utilities.

20 (a) An electric utility shall have a board of directors  
21 that is independent of all utility affiliates.

22 (b) An electric utility's board of directors shall not  
23 include any members that serve on the board of any of the  
24 utility's affiliates.

25 (c) No director or corporate officer of an electric utility

1 may own stock in any of the utility's affiliates.

2 (d) No corporate officer or employee may have any formal or  
3 informal position or role in any affiliate of the electric  
4 utility.

5 (e) This Section applies only to electric utilities that on  
6 January 2, 2007 served over 100,000 customers.

7 (220 ILCS 5/9-225) (from Ch. 111 2/3, par. 9-225)

8 Sec. 9-225. (1) For the purposes of this Section:

9 (a) "Advertising" means the commercial use, by an electric  
10 or gas utility, of any media, including newspapers, printed  
11 matter, radio and television, in order to transmit a message to  
12 a substantial number of members of the public or to such  
13 utility's consumers;

14 (b) "Political advertising" means any advertising for the  
15 purpose of influencing public opinion with respect to  
16 legislative, administrative or electoral matters, or with  
17 respect to any controversial issue of public importance;

18 (c) "Promotional advertising" means any advertising for  
19 the purpose of encouraging any person to select or use the  
20 service or additional service of a utility or the selection or  
21 installation of any appliance or equipment designed to use such  
22 utility's service; and

23 (d) "Goodwill or institutional advertising" means any  
24 advertising either on a local or national basis designed  
25 primarily to bring the utility's name before the general public

1 in such a way as to improve the image of the utility or to  
2 promote controversial issues for the utility or the industry.

3 (2) In any general rate increase requested by any gas or  
4 electric utility company under the provisions of this Act, the  
5 Commission shall not consider, for the purpose of determining  
6 any rate, charge or classification of costs, any direct or  
7 indirect expenditures for promotional, political,  
8 institutional or goodwill advertising, unless the Commission  
9 finds the advertising to be in the best interest of the  
10 Consumer or authorized as provided pursuant to subsection 3 of  
11 this Section. No cost incurred by a utility for advertising  
12 directed primarily outside of a utility's service territory may  
13 be considered an allowable operating expense.

14 (3) The following categories of advertising shall be  
15 considered allowable operating expenses for gas or electric  
16 utilities:

17 (a) Advertising which informs consumers how they can  
18 conserve energy or can reduce peak demand for electric or gas  
19 energy;

20 (b) Advertising required by law or regulations, including  
21 advertising required under Part I of Title II of the National  
22 Energy Conservation Policy Act;

23 (c) Advertising regarding service interruptions, safety  
24 measures or emergency conditions;

25 (d) Advertising concerning employment opportunities with  
26 such utility;

1 (e) Advertising which promotes the use of energy efficient  
2 appliances, equipment or services;

3 (f) Explanations of existing or proposed rate schedules or  
4 notifications of hearings thereon;

5 (g) Advertising that identifies the location and operating  
6 hours of company business offices;

7 (h) Advertising which promotes the shifting of demand from  
8 peak to off-peak hours or which encourages the off-peak usage  
9 of the service; and

10 (i) "Other" categories of advertisements not includable in  
11 paragraphs (a) through (h), but which are not political,  
12 promotional, institutional or goodwill advertisements.

13 (4) All advertising, including without limitation print,  
14 radio, television, internet and any other advertising medium  
15 using video, that relates to the positions, proposals, or  
16 conduct of a utility, shall prominently include the name of the  
17 utility in all cases where the utility pays for the  
18 advertising.

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

20 (220 ILCS 5/9-227) (from Ch. 111 2/3, par. 9-227)

21 Sec. 9-227. Political contributions and ~~It shall be proper~~  
22 ~~for the Commission to consider as an operating expense, for the~~  
23 ~~purpose of determining whether a rate or other charge or~~  
24 ~~classification is sufficient,~~ donations made by a public  
25 utility for the public welfare or for charitable scientific,

1 religious or educational purposes shall not be considered by  
2 the Commission as an operating expense, for the purpose of  
3 determining whether a rate or other charge or classification is  
4 sufficient. ~~, provided that such donations are reasonable in~~  
5 ~~amount. In determining the reasonableness of such donations,~~  
6 ~~the Commission may not establish, by rule, a presumption that~~  
7 ~~any particular portion of an otherwise reasonable amount may~~  
8 ~~not be considered as an operating expense. The Commission shall~~  
9 ~~be prohibited from disallowing by rule, as an operating~~  
10 ~~expense, any portion of a reasonable donation for public~~  
11 ~~welfare or charitable purposes.~~

12 (Source: P.A. 85-122.)

13 (220 ILCS 5/10-101) (from Ch. 111 2/3, par. 10-101)

14 Sec. 10-101. The Commission, or any commissioner or hearing  
15 examiner designated by the Commission, shall have power to hold  
16 investigations, inquiries and hearings concerning any matters  
17 covered by the provisions of this Act, or by any other Acts  
18 relating to public utilities subject to such rules and  
19 regulations as the Commission may establish. In the conduct of  
20 any investigation, inquiry or hearing the provisions of the  
21 Illinois Administrative Procedure Act, including but not  
22 limited to Sections 10-25 and 10-35 of that Act, shall be  
23 applicable and the Commission's rules shall be consistent  
24 therewith. Complaint cases initiated pursuant to any Section of  
25 this Act, investigative proceedings and ratemaking cases shall

1 be considered "contested cases" as defined in Section 1-30 of  
2 the Illinois Administrative Procedure Act, any contrary  
3 provision therein notwithstanding. Any proceeding intended to  
4 lead to the establishment of policies, practices, rules or  
5 programs applicable to more than one utility may, in the  
6 Commission's discretion, be conducted pursuant to either  
7 rulemaking or contested case provisions, provided such choice  
8 is clearly indicated at the beginning of such proceeding and  
9 subsequently adhered to. No violation of this Section or the  
10 Illinois Administrative Procedure Act and no informality in any  
11 proceeding or in the manner of taking testimony before the  
12 Commission, any commissioner or hearing examiner of the  
13 Commission shall invalidate any order, decision, rule or  
14 regulation made, approved, or confirmed by the Commission in  
15 the absence of prejudice. All hearings conducted by the  
16 Commission shall be open to the public.

17 Each commissioner and every hearing examiner of the  
18 Commission designated by it to hold any inquiry, investigation  
19 or hearing, shall have the power to administer oaths and  
20 affirmations, certify to all official acts, issue subpoenas,  
21 compel the attendance and testimony of witnesses, and the  
22 production of papers, books, accounts and documents.

23 Hearings shall be held either by the Commission or by one  
24 or more commissioners or hearing examiners. In cases where a  
25 hearing examiner presides over the hearing, petitions for  
26 interlocutory review of the hearing examiner's rulings must be

1 independently reviewed by the Commission without advice or  
2 recommendations, written or oral, from the hearing examiner  
3 whose ruling is being challenged or from any other hearing  
4 examiner or employee of the Commission, with the exception of a  
5 Commissioner's assistant.

6 When any counselor or attorney at law, licensed in any  
7 other state or territory, may desire to appear before the  
8 Commission, such counselor or attorney shall be allowed to  
9 appear before the Commission upon the same terms and in the  
10 same manner that counselors and attorneys at law licensed in  
11 this State now are or hereafter may be admitted to appear in  
12 such other state or territory before its Commission or  
13 equivalent body.

14 All evidence presented at hearings held by the Commission  
15 or under its authority shall become a part of the records of  
16 the Commission. In all cases in which the Commission bases any  
17 action on reports of investigation or inquiries not conducted  
18 as hearings, such reports shall be made a part of the records  
19 of the Commission. All proceedings of the Commission and all  
20 documents and records in its possession shall be public  
21 records, except as in this Act otherwise provided.

22 To the extent consistent with this Section and the Illinois  
23 Administrative Procedure Act, the Commission may adopt  
24 reasonable and proper rules and regulations relative to the  
25 exercise of its powers, and proper rules to govern its  
26 proceedings, and regulate the mode and manner of all

1 investigations and hearings, and alter and amend the same.

2 (Source: P.A. 88-45.)

3 (220 ILCS 5/10-103) (from Ch. 111 2/3, par. 10-103)

4 Sec. 10-103. (a) In all proceedings, investigations or  
5 hearings conducted by the Commission, except in the disposition  
6 of matters which the Commission is authorized to entertain or  
7 dispose of on an ex parte basis, any finding, decision or order  
8 made by the Commission shall be based exclusively on the record  
9 for decision in the case, which shall include only the  
10 transcript of testimony and exhibits together with all papers  
11 and requests filed in the proceeding, including, in contested  
12 cases, the documents and information described in Section 10-35  
13 of the Illinois Administrative Procedure Act.

14 (b) For purposes of this Section:

15 "Ex parte communication" means a communication between a  
16 person who is not a commissioner, commissioner's assistant,  
17 hearing examiner, or other person involved in the decisional  
18 process of the proceeding and a commissioner, commissioner's  
19 assistant, hearing examiner, or other person involved in the  
20 decisional process of the proceeding that relates to the  
21 substance of a pending Commission proceeding or that relates to  
22 the substance of a Commission proceeding that the party has  
23 reason to believe will be commenced, and that communication  
24 takes place outside the record of the proceeding.  
25 Communications directed to a hearing examiner regarding

1 matters of procedure and practice, such as the format of a  
2 pleading, number of copies required, manner of service, and  
3 status of proceedings, are not considered ex parte  
4 communications.

5 "Party" means a public utility, telecommunications  
6 carrier, motor carrier, or any affiliated interest of a public  
7 utility, telecommunications carrier, or motor carrier who is  
8 named in the title of the matter or has intervened in the  
9 matter; any individual or organization or governmental  
10 representative that has intervened in the proceeding; and any  
11 person actively engaged in the development or advocacy of the  
12 Commission staff position in the contested proceeding.

13 (c) No commissioner, commissioner's assistant, hearing  
14 officer, or any other person who is or may reasonably be  
15 expected to be involved in the decisional process of a pending  
16 or impending proceeding shall engage in an ex parte  
17 communication in connection with the substance of any pending  
18 matter or matter that the person or party, or commissioner,  
19 commissioner's assistant, hearing officer, or any other person  
20 who is or may reasonably be expected to be involved in the  
21 decisional process has reason to believe will be commenced  
22 before the Commission pursuant to the contested case provisions  
23 of Article X of the Public Utilities Act with any party or the  
24 representative of any party to said matter or any other person  
25 who is not or may not reasonably be expected to be involved in  
26 the decisional process. This subsection (c) applies to any

1 party, commissioner, commissioner's assistant, hearing  
2 examiner, or other person who is or may reasonably be expected  
3 to be involved in the decisional process of the proceeding or  
4 who knows, or should know upon reasonable inquiry, that the  
5 matter is pending or will be commenced before the Commission.

6 (d) The provisions of Section 10-60 of the Illinois  
7 Administrative Procedure Act shall apply in full to Commission  
8 proceedings, including ratemaking cases, any provision of the  
9 Illinois Administrative Procedure Act to the contrary  
10 notwithstanding. Commission staff who are engaged in  
11 investigatory, prosecutorial, or advocacy functions and other  
12 parties to the proceeding are specifically prohibited from  
13 communicating on an ex parte basis, directly or indirectly,  
14 with members of the Commission, commissioner's assistants, any  
15 hearing examiner in the proceeding, or any other person who is  
16 or may reasonably be expected to be involved in the decisional  
17 process of the proceeding. In addition, Commission staff are  
18 required to report, on the record, the substance of any  
19 communication with parties or other interested persons,  
20 consistent with Section 5-50 of the State Officials and  
21 Employees Ethics Act, along with any written material presented  
22 in connection with the ex parte communication. The provisions  
23 of Section 10-60 shall not apply, however, to communications  
24 between Commission employees who are engaged in investigatory,  
25 prosecutorial or advocacy functions and other parties to the  
26 proceeding, provided that such Commission employees are still

1 ~~prohibited from communicating on an ex parte basis, as~~  
2 ~~designated in Section 10-60, directly or indirectly, with~~  
3 ~~members of the Commission, any hearing examiner in the~~  
4 ~~proceeding, or any Commission employee who is or may reasonably~~  
5 ~~be expected to be involved in the decisional process of the~~  
6 ~~proceeding.~~

7 (e) If a commissioner, commissioner's assistant, hearing  
8 examiner, or other person involved in the decisional process of  
9 the proceeding communicates with any person on any issue under  
10 review in a pending matter or a matter which any person or  
11 party to the communication has reason to believe will be  
12 commenced, the names of any such person or party shall be made  
13 a part of the record of the pending matter as soon as  
14 practicable after the prehearing conference. If any Any  
15 commissioner, hearing examiner, or other person Commission  
16 employee who is or may reasonably be expected to be involved in  
17 the decisional process of a proceeding, who receives, or who  
18 makes or knowingly causes to be made, a communication  
19 prohibited by this Section or Section 10-60 of the Illinois  
20 Administrative Procedure Act as modified by this Section, then  
21 he or she shall place on the public record of the proceeding  
22 (1) any and all such written communications; (2) memoranda  
23 stating the substance of any and all such oral communications;  
24 and (3) any and all written responses and memoranda stating the  
25 substance of any and all oral responses to the materials  
26 described in clauses (1) and (2).

1        (f) The Commission, or any commissioner or hearing examiner  
2        presiding over the proceeding, shall in the event of a  
3        violation of this Section, take whatever action is necessary to  
4        ensure that such violation does not prejudice any party or  
5        adversely affect the fairness of the proceedings, including  
6        dismissing the affected matter.

7        (Source: P.A. 88-45.)

8        (220 ILCS 5/10-111) (from Ch. 111 2/3, par. 10-111)

9        Sec. 10-111. In any hearing, proceeding, investigation or  
10       rulemaking conducted by the Commission, the Commission,  
11       commissioner or hearing examiner presiding, shall, after the  
12       close of evidentiary hearings, prepare a recommended or  
13       tentative decision, finding or order including a statement of  
14       findings and conclusions and the reasons or basis therefor, on  
15       all the material issues of fact, law or discretion presented on  
16       the record. Such recommended or tentative decision, finding or  
17       order shall be served on all parties who shall be entitled to a  
18       reasonable opportunity to respond thereto, either in briefs or  
19       comments otherwise to be filed or separately. The recommended  
20       or tentative decision, finding or order and any responses  
21       thereto, shall be included in the record for decision. The  
22       hearing examiner's proposed order and the parties' briefs on  
23       exception shall be forwarded directly to the Commission for the  
24       Commission's review, without further written or oral input from  
25       the hearing examiner. The Commission may hold oral argument

1 prior to issuing a final order. The Commission may not request,  
2 and the hearing examiner shall not prepare, a post-exceptions  
3 proposed order nor shall the examiner play any role in drafting  
4 the Commission's final order. This Section shall not apply to  
5 any hearing, proceeding, or investigation conducted under  
6 Section 13-515.

7 (Source: P.A. 90-185, eff. 7-23-97.)

8 (220 ILCS 5/16-124)

9 Sec. 16-124. Metering for residential and small commercial  
10 retail customers. An electric utility that on January 2, 2007,  
11 served at least 100,000 customers shall install interval meters  
12 for all ~~An electric utility shall not require a residential or~~  
13 ~~small commercial retail~~ customers by no later than 2010. The  
14 cost of installing these interval meters shall not be recovered  
15 from ratepayers, but the utility may apply for reimbursement of  
16 reasonable expenses incurred to comply with this requirement  
17 from the Consumers Overbilled and Reimbursed for Electricity  
18 Fund ~~customer to take additional metering or metering~~  
19 ~~capability as a condition of taking delivery services unless~~  
20 ~~the Commission finds, after notice and hearing, that additional~~  
21 ~~metering or metering capability is required to meet reliability~~  
22 ~~requirements.~~ Alternative retail electric suppliers serving  
23 such customers may provide such additional metering or metering  
24 capability at their own expense or take such additional  
25 metering or metering capability from the utility as a tariffed

1 service. Any additional metering requirements shall be imposed  
2 in a nondiscriminatory manner. Nothing in this subsection shall  
3 be construed to prevent the normal maintenance, replacement or  
4 upgrade of meters as required to comply with Commission rules.

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

6 (220 ILCS 5/16-124A new)

7 Sec. 16-124A. Direct load control devices for residential  
8 and small commercial retail customers. Electric utilities that  
9 on January 2, 2007, served at least 100,000 customers shall, by  
10 2010, install direct load control devices on the central air  
11 conditioning systems of all residential and small commercial  
12 customers. Installation of direct load control devices shall be  
13 a condition of service to all customers that have central air  
14 conditioning in their homes, residential dwelling units or  
15 businesses. The utilities shall be required to dispatch the  
16 devices to minimize peak demand for electricity, in order to  
17 reduce costs for customers, reduce stress on the transmission  
18 system, and reduce power plant emissions. The cost of  
19 installing these direct load control devices shall not be  
20 recovered from ratepayers, but the utility may apply for  
21 reimbursement of reasonable expenses incurred to comply with  
22 this requirement from the Consumers Overbilled and Reimbursed  
23 for Electricity Fund.

24 (220 ILCS 5/16-126)

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

2           (a) The General Assembly finds that the electric utilities  
3 that have joined establishment of one or more independent  
4 system operators are passing through escalating costs  
5 associated with their membership in those organizations,  
6 without a commensurate increase in benefits to customers. The  
7 utilities' membership in independent system operators has also  
8 eroded State control over key aspects of the utilities'  
9 operations.

10          (b) In order to reduce costs for utilities and customers in  
11 this State and maintain state control over the operations of  
12 state jurisdictional utilities, no public utility in the state  
13 of Illinois shall be a member of an independent system operator  
14 or regional transmission organization after December 31, 2007.

15          (c) The Commission shall allow utilities that were members  
16 of independent system operators on the effective date of this  
17 amendatory Act of the 95th General Assembly to recover  
18 reasonable costs associated with withdrawal from membership  
19 from the Consumers Overbilled and Reimbursed for Electricity  
20 Fund, but not from ratepayers. ~~or their functional equivalents~~  
21 is required to facilitate the development of an open and  
22 efficient marketplace for electric power and energy to the  
23 benefit of Illinois consumers. Therefore, each Illinois  
24 electric utility owning or controlling transmission facilities  
25 or providing transmission services in Illinois and that is a  
26 member of the Mid American Interconnected Network as of the

1 ~~effective date of this amendatory Act of 1997 shall submit for~~  
2 ~~approval to the Federal Energy Regulatory Commission an~~  
3 ~~application for establishing or joining an independent system~~  
4 ~~operator that shall:~~

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

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

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

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

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

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

20 ~~These standards shall be consistent with reliability~~  
21 ~~criteria no less stringent than those established by the~~  
22 ~~Mid-American Interconnected Network and the North American~~  
23 ~~Electric Reliability Council or their successors.~~

24 ~~(b) The requirements of this Section may be met by joining~~  
25 ~~or establishing a regional independent system operator that~~  
26 ~~meets the criteria enumerated in subsections (a), (c), and (d)~~

1 ~~of this Section, as determined by the Commission. To achieve~~  
2 ~~the objectives set forth in subsection (a), the State of~~  
3 ~~Illinois, through the appropriate officers, departments, and~~  
4 ~~agencies, shall work cooperatively with the appropriate~~  
5 ~~officials and agencies of those States contiguous to this State~~  
6 ~~and the Federal Energy Regulatory Commission towards the~~  
7 ~~formation of one or more regional independent system operators.~~

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

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

24 ~~(e) If a spot market, exchange market, or other~~  
25 ~~market based mechanism providing transparent real time market~~  
26 ~~prices for electric power has not been developed, the~~

1 ~~independent system operator or a closely cooperating agent of~~  
2 ~~the independent system operator may provide an efficient~~  
3 ~~competitive power exchange auction for electric power and~~  
4 ~~energy, open on a nondiscriminatory basis to all suppliers,~~  
5 ~~which meets the loads of all auction customers at efficient~~  
6 ~~prices.~~

7 ~~(f) For those electric utilities referred to in subsection~~  
8 ~~(a) which have not filed with the Federal Energy Regulatory~~  
9 ~~Commission by June 30, 1998 an application for establishment or~~  
10 ~~participation in an independent system operator or if such~~  
11 ~~application has not been approved by the Federal Energy~~  
12 ~~Regulatory Commission by March 31, 1999, a 5 member Oversight~~  
13 ~~Board shall be formed. The Oversight Board shall (1) oversee~~  
14 ~~the creation of an Illinois independent system operator and (2)~~  
15 ~~determine the composition and initial terms of service of, and~~  
16 ~~appoint the initial members of, the Illinois independent system~~  
17 ~~operator board of directors. The Oversight Board shall consist~~  
18 ~~of the following: (1) 3 persons appointed by the Governor; (2)~~  
19 ~~one person appointed by the Speaker of the House of~~  
20 ~~Representatives; and (3) one person appointed by the President~~  
21 ~~of the Senate. The Oversight Board shall take the steps that~~  
22 ~~are necessary to ensure the earliest possible incorporation of~~  
23 ~~an Illinois independent system operator under the Business~~  
24 ~~Corporation Act of 1983, and shall serve until the Illinois~~  
25 ~~independent system operator is incorporated.~~

26 ~~(g) After notice and hearing, the Commission shall require~~

1 ~~each electric utility referred to in subsection (a), that is~~  
2 ~~not participating in an independent system operator meeting the~~  
3 ~~requirements of subsections (a) and (c), to seek authority from~~  
4 ~~the Federal Energy Regulatory Commission to transfer~~  
5 ~~functional control of transmission facilities to the Illinois~~  
6 ~~independent system operator for control by the Illinois~~  
7 ~~independent system operator consistent with the requirements~~  
8 ~~of subsection (a). Upon approval by the Federal Energy~~  
9 ~~Regulatory Commission, electric utilities may also elect to~~  
10 ~~transfer ownership of transmission facilities to the Illinois~~  
11 ~~independent system operator. Nothing in this Act shall be~~  
12 ~~deemed to preclude the Illinois independent system operator~~  
13 ~~from (1) seeking authority, as necessary, to merge with or~~  
14 ~~otherwise combine its operations with those of one or more~~  
15 ~~other entities authorized to provide transmission services,~~  
16 ~~(2) purchasing or leasing transmission assets from~~  
17 ~~transmission owning entities not required by this Section to~~  
18 ~~lease transmission facilities to the Illinois independent~~  
19 ~~system operator, or (3) operating as a transmission public~~  
20 ~~utility under the Federal Power Act.~~

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

25 ~~(i) The Illinois independent system operator created under~~  
26 ~~this Section, and any other independent system operator~~

1 ~~authorized by the Federal Energy Regulatory Commission to~~  
2 ~~provide transmission services as a public utility under the~~  
3 ~~Federal Power Act within the State of Illinois, shall be deemed~~  
4 ~~to be a public utility for purposes of Section 8-503 and 8-509~~  
5 ~~of this Act. An independent system operator or regional~~  
6 ~~transmission organization that is the subject of an order~~  
7 ~~entered by the Commission under Section 8-503 need not possess~~  
8 ~~a certificate of service authority under Section 8-406 in order~~  
9 ~~to be authorized to take the actions set forth in Section~~  
10 ~~8-509.~~

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

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

22 ~~(l) A regional transmission organization created under the~~  
23 ~~rules of the Federal Energy Regulatory Commission shall be~~  
24 ~~considered to be the functional equivalent of an independent~~  
25 ~~system operator for purposes of this Section, and an electric~~  
26 ~~utility shall be deemed to meet its obligations under this~~

1 ~~Section through membership in a regional transmission~~  
2 ~~organization that fulfills the requirements of an independent~~  
3 ~~system operator under this Section.~~

4 (Source: P.A. 92-12, eff. 7-1-01.)

5 (220 ILCS 5/16-131 new)

6 Sec. 16-131. Interconnection standards for small  
7 generators.

8 I. Each electric utility shall permit small generators to  
9 interconnect facilities to those owned by the utility provided  
10 they meet the standards for such interconnection set forth in  
11 this Section, and must provide standby or other services to  
12 such generators.

13 II. Definitions. The following words, when used in this  
14 section, have the following meanings:

15 "Adverse system impact" means a negative effect, due to  
16 technical or operational limits on conductors or equipment  
17 being exceeded, that compromises the safety or reliability of  
18 the electric distribution system.

19 "Affected system" means an electric system not owned or  
20 operated by the electric distribution company reviewing the  
21 interconnection request that may suffer an adverse system  
22 impact from the proposed interconnection.

23 "Applicant" means a person who has submitted an  
24 interconnection request to interconnect a small generator

1 facility to an electric utility's distribution system.

2 "Area network" means a type of electric distribution system  
3 served by multiple transformers interconnected in an  
4 electrical network circuit, which is generally used in large  
5 metropolitan areas that are densely populated.

6 "Certificate of completion" means a certificate in a form  
7 approved by the Commission containing information about the  
8 interconnection equipment to be used, its installation and  
9 local inspections.

10 "Commissioning test" means a test applied to a small  
11 generator facility by the applicant after construction is  
12 completed to verify that the facility does not create adverse  
13 system impacts. At a minimum, the scope of the commissioning  
14 tests performed shall include the commissioning test specified  
15 in IEEE standard 1547 section 5.4 "Commissioning tests".

16 "Distribution upgrade" means a required addition or  
17 modification to the electric utility's distribution system to  
18 accommodate the interconnection of a small generator facility.  
19 Distribution upgrades do not include interconnection  
20 facilities.

21 "Draw-out type circuit breaker" means a switching device  
22 capable of making, carrying and breaking currents under normal  
23 and abnormal circuit conditions such as those of a short  
24 circuit. A draw-out circuit breaker can be physically removed  
25 from its enclosure creating a visible break in the circuit. The  
26 draw-out circuit breaker must be capable of being locked in the

1 open, draw-out position.

2 "Electric distribution system" means:

3 (i) The facilities and equipment used to transmit  
4 electricity to ultimate usage points, such as homes,  
5 residential dwelling units and industries, from  
6 interchanges with higher voltage transmission networks  
7 that transport bulk power over longer distances. The  
8 voltage levels at which electric distribution systems  
9 operate differ among areas but generally carry less than  
10 100 kilovolts of electricity.

11 (ii) Electric distribution system has the same meaning  
12 as the term "Area EPS", as used in 3.1.6.1 of IEEE  
13 Standard 1547.

14 "Fault current" means the electrical current that flows  
15 through a circuit during an electrical fault condition. A fault  
16 condition occurs when one or more electrical conductors contact  
17 ground or each other. Types of faults include phase to ground,  
18 double-phase to ground, three-phase to ground, phase-to-phase,  
19 and three-phase. Often, a fault current is several times larger  
20 in magnitude than the current that normally flows through a  
21 circuit.

22 "IEEE standard 1547" means the Institute of Electrical and  
23 Electronics Engineers, Inc. (IEEE) Standard 1547 (2003)  
24 'Standard for Interconnecting Distributed Resources with  
25 Electric Power Systems', as amended and supplemented, at the  
26 time the interconnection request is submitted.

1       "IEEE standard 1547.1" means the IEEE Standard 1547.1  
2       (2005) "'Conformance Test Procedures for Equipment  
3       Interconnecting Distributed Resources with Electric Power  
4       Systems'", as amended and supplemented, at the time the  
5       interconnection request is submitted.

6       "Interconnection customer" means an entity that proposes  
7       to interconnect a small generator facility to an electric  
8       distribution system.

9       "Interconnection equipment" means a group of components or  
10       integrated system connecting an electric generator with a local  
11       electric power system or an electric distribution system that  
12       includes all interface equipment including switchgear,  
13       protective devices, inverters or other interface devices.  
14       Interconnection equipment may be installed as part of an  
15       integrated equipment package that includes a generator or other  
16       electric source.

17       "Interconnection facilities" means "facilities and  
18       equipment required by the electric utility to accommodate the  
19       interconnection of a small generator facility. Collectively,  
20       interconnection facilities include all facilities, and  
21       equipment between the small generator facility and the point of  
22       interconnection, including modification, additions, or  
23       upgrades that are necessary to physically and electrically  
24       interconnect the small generator facility to the electric  
25       distribution system. Interconnection facilities are sole use  
26       facilities and do not include distribution upgrades.

1       "Interconnection request" means an applicant's request for  
2 the interconnection of a new small generator facility or to  
3 increase the capacity or operating characteristics of an  
4 existing small generator facility that is interconnected with  
5 the electric utility's distribution system.

6       "Interconnection study" means any of the following  
7 studies:

8           (i) The interconnection feasibility study as described  
9 in XIV (5) (i).

10          (ii) The interconnection system impact study as  
11 described in XIV (5) (ii).

12          (iii) The interconnection facilities study as  
13 described in XIV (5) (iii).

14       "Line section" means that portion of an electric utility's  
15 distribution system connected to an interconnection customer,  
16 bounded by automatic sectionalizing devices or the end of the  
17 distribution line.

18       "Local electric power system" means facilities that  
19 deliver electric power to a load that are contained entirely  
20 within a single premises or group of premises. Local electric  
21 power system has the same meaning as the term local electric  
22 power system defined in 3.1.6.2 of IEEE Standard 1547.

23       "Minor equipment modification" means changes to the  
24 proposed small generator facility that do not have a  
25 significant impact on safety or reliability of the electric  
26 distribution system.

1       "Nameplate capacity" means the maximum rated output of a  
2 generator or other electric power production equipment under  
3 specific conditions designated by the manufacturer and is  
4 usually indicated on a nameplate physically attached to the  
5 power production equipment.

6       "NRTL" means "nationally recognized testing laboratory-A  
7 qualified private organization that meets the requirements of  
8 the Occupational Safety and Health Administration's (OSHA)  
9 regulations. NRTLs perform independent safety testing and  
10 product certification. Each NRTL must meet the requirements as  
11 set forth by OSHA in the NRTL program.

12       "Parallel operation-parallel" means the sustained state of  
13 operation over 100 milliseconds which occurs when a small  
14 generator facility is connected electrically to the electric  
15 distribution system and thus has the ability for electricity to  
16 flow from the small generator facility to the electric  
17 distribution system.

18       "Point of interconnection" means the point where the small  
19 generator facility is electrically connected to the electric  
20 distribution system. Point of interconnection has the same  
21 meaning as the term point of common coupling defined in 3.1.13  
22 of IEEE Standard 1547.

23       "Primary line" means a distribution line rated at greater  
24 than 600 volts.

25       "Queue position" means the order of a completed  
26 interconnection request, relative to all other pending

1 completed interconnection requests, that is established based  
2 upon the date and time of receipt of the completed  
3 interconnection request by the electric utility.

4 "Radial distribution circuit" means a circuit  
5 configuration in which independent feeders branch out radially  
6 from a common source of supply. From the standpoint of a  
7 utility system, the area described is between the generating  
8 source or intervening substations and the customer's electric  
9 service entrance equipment. A radial distribution system is the  
10 most common type of connection between a utility and load in  
11 which power flows in one direction from the utility to the  
12 load.

13 "Scoping meeting" means a meeting between representatives  
14 of the applicant and electric utility conducted for the purpose  
15 of discussing alternative interconnection options, exchanging  
16 information including any electric distribution system data  
17 and earlier study evaluations that would be reasonably expected  
18 to impact interconnection options, analyzing information, and  
19 determining the potential feasible points of interconnection.

20 "Secondary line" means a service line subsequent to the  
21 primary line that is rated for 600 volts or less, also referred  
22 to as the customer's service line.

23 "Shared transformer" a transformer that supplies secondary  
24 source voltage to more than one customer.

25 "Small generator facility" the equipment used by an  
26 interconnection customer to generate, or store electricity

1 that operates in parallel with the electric distribution  
2 system. A small generator facility typically includes an  
3 electric generator and the interconnection equipment required  
4 to safely interconnect with the electric distribution system or  
5 local electric power system.

6 "Spot network" means a type of electric distribution system  
7 that uses two or more inter-tied transformers to supply an  
8 electrical network circuit. A spot network is generally used to  
9 supply power to a single customer or a small group of  
10 customers. Spot network has the same meaning as the term spot  
11 network defined in 4.1.4 of IEEE Standard 1547.

12 "Small generator interconnection agreement" means a set of  
13 forms of interconnection agreements which are applicable to  
14 interconnection requests pertaining to small generating  
15 facilities.

16 "UL Standard 1741" means Underwriters Laboratories'  
17 standard titled "'Inverters Converters, and Controllers for  
18 Use in Independent Power Systems", November 7, 2005 edition, as  
19 amended and supplemented.

20 "Witness test" means for lab certified or field approved  
21 equipment, verification (either by an on-site observation or  
22 review of documents) by the electric utility that the  
23 interconnection installation evaluation required by IEEE  
24 Standard 1547 Section 5.3 and the commissioning test required  
25 by IEEE Standard 1547 Section 5.4 have been adequately  
26 performed. For interconnection equipment that has not been lab

1 certified or field approved, the witness test shall also  
2 include the verification by the electric utility of the on-site  
3 design tests as required by IEEE Standard 1547 Section 5.1 and  
4 verification by the electric utility of production tests  
5 required by IEEE Standard 1547 Section 5.2. All tests verified  
6 by the electric utility are to be performed in accordance with  
7 the test procedures specified by IEEE Standard 1547.1.

8 III. Applicability. These interconnection procedures apply to  
9 applicants proposing to install and interconnect a small  
10 generator facility that satisfies the following criteria:

11 (1) The small generator facility is subject to state  
12 jurisdictional interconnection requirements and not the  
13 interconnection requirements of FERC or any RTO.

14 (2) The small generator facility is designed to operate  
15 in parallel with the electric distribution system.

16 IV. Interconnection requests. Applicants seeking to  
17 interconnect a small generator facility shall submit an  
18 interconnection request to the electric utility that owns the  
19 electric distribution system to which interconnection is  
20 sought. The request shall be on a standard form approved by the  
21 Commission in accordance with this Section. Electric utilities  
22 shall establish processes for accepting interconnection  
23 requests electronically, within one month of the effective date  
24 of this Amendatory Act.

1 V. Fees and forms. The Commission shall determine the  
2 appropriate interconnection application fees for levels 1  
3 through 4 of the application process, as described herein,  
4 within one month of the effective date of this Amendatory Act.  
5 If standard forms and agreements are used for the  
6 interconnection process, electronic versions of those forms  
7 shall be approved by the Commission and posted on its website  
8 within one month of the effective date of this Amendatory Act.

9 VI. Lab certified or field approved equipment. An  
10 interconnection request may be eligible for expedited  
11 interconnection review under VII (expedited review procedures)  
12 if the small generator facility uses lab certified or field  
13 approved interconnection equipment. To qualify for expedited  
14 review, the interconnection equipment must be either lab  
15 certified as provided for in subsection (1) or field approved  
16 as provided for in subsection (2)

17 (1) Interconnection equipment shall be deemed to be lab  
18 certified upon establishment of the following:

19 (i) The interconnection equipment has been tested in  
20 accordance IEEE 1547.1 in compliance with the appropriate  
21 codes and standards referenced below in paragraph (vii) by  
22 any nationally recognized testing laboratory (NRTL)  
23 recognized by the United States Occupational Safety and  
24 Health Administration to test and certify interconnection

1 equipment pursuant to the relevant codes and standards  
2 listed in paragraph (vii).

3 (ii) The interconnection equipment has been labeled  
4 and is publicly listed by such NRTL at the time of the  
5 interconnection application.

6 (iii) The NRTL testing the interconnection equipment  
7 makes readily available for verification all test  
8 standards and procedures it utilized in performing such  
9 equipment certification, and, with consumer approval, the  
10 test data itself. The NRTL may make such information  
11 available on its web site and by encouraging such  
12 information to be included in the manufacturer's  
13 literature accompanying the equipment.

14 (iv) The applicant verifies that the intended use of  
15 the interconnection equipment falls within the use or uses  
16 for which the interconnection equipment was labeled, and  
17 listed by the NRTL.

18 (v) If the interconnection equipment is an integrated  
19 equipment package such as an inverter, then the applicant  
20 must show that the generator or other electric source being  
21 utilized is compatible with the interconnection equipment  
22 and is consistent with the testing and listing specified  
23 for this type of interconnection equipment.

24 (vi) If the interconnection equipment includes only  
25 interface components (switchgear, multi-function relays,  
26 or other interface devices), then the applicant must show

1       that the generator or other electric source being utilized  
2       is compatible with the interconnection equipment and is  
3       consistent with the testing and listing specified for this  
4       type of interconnection equipment.

5       (vii) To meet the requirements for lab certification,  
6       interconnection equipment must be evaluated by a NRTL in  
7       accordance with the following codes and standards:

8               (a) IEEE 1547 Standard for Interconnecting  
9               Distributed Resources with Electric Power Systems  
10              (including use of IEEE 1547.1 testing protocols to  
11              establish conformity).

12              (b) UL 1741 Inverters, Converters, and Controllers  
13              for Use in Independent Power Systems.

14              (c) IEEE Std 929-2000 IEEE Recommended Practice  
15              for Utility Interface of Photovoltaic (PV) Systems.

16              (d) NFPA 70 National Electrical Code.

17              (e) IEEE Std C37.90.1-1989 (R1944) IEEE Standard  
18              Surge Withstand Capability (SWC) Tests for Protective  
19              Relays and Relay Systems.

20              (f) IEEE Std C37.90.2 (1995) IEEE Standard  
21              Withstand Capability of Relay Systems to Radiated  
22              Electromagnetic Interference from Transceivers.

23              (g) IEEE Std C37.108-1989 (R2002) IEEE Guide for  
24              the Protection of Network Transformers.

25              (h) IEEE Std C57.12.44-2000, IEEE Standard  
26              Requirements for Secondary Network Protectors.

1           (i) IEEE Std C62.41.2-2002, IEEE Recommended  
2           Practice on Characterization of Surges in Low Voltage  
3           (1000V and Less) AC Power Circuits.

4           (j) IEEE Std C62.45-1992 (R2002) IEEE Recommended  
5           Practice on Surge Testing for Equipment Connected to  
6           Low-Voltage (1000V) and Less) Power Circuits.

7           (k) ANSI C84.1-1995 Electric Power Systems and  
8           Equipment-Voltage Ratings (60 Hertz).

9           (l) IEEE Std 100-2000, IEEE Standard Dictionary of  
10           Electrical and Electronic.

11           (m) NEMA MG 1-1998, Motors and Small Resources,  
12           Revision 3.

13           (n) IEEE Std 519-1992, IEEE Recommended Practices  
14           and Requirements for Harmonic Control in Electrical  
15           Power Systems.

16           (o) NEMA MG 1-2003 (Rev 2004), Motors and  
17           Generators, Revision 1.

18           Lab certified interconnection equipment shall not require  
19           further design testing or production testing, as specified by  
20           IEEE standard 1547 Sections 5.1 and 5.2, or additional  
21           interconnection equipment modification to meet the  
22           requirements for expedited review; however, nothing herein  
23           shall preclude the need for an interconnection installation  
24           evaluation, commissioning tests or periodic testing as  
25           specified by IEEE standard 1547 Sections 5.3, 5.4 and 5.5 or  
26           for a witness test that may be conducted by an electric

1 utility.

2 (2) Interconnection equipment shall be deemed to be field  
3 approved if within the previous 36 months of the date of the  
4 interconnection request, it has been previously approved for  
5 use with the proposed small generator facility and the  
6 following criteria are met:

7 (i) The electric utility has previously approved  
8 interconnection equipment identical to that being proposed  
9 under the Level 4 study review process described in XIV in  
10 a materially identical system application; or, the  
11 electric utility has agreed to accept a Level 4 study  
12 review conducted for identical interconnection equipment  
13 and system application by another electric utility.

14 (ii) The prior approval process included a successful  
15 witness test.

16 (iii) The applicant provides as part of its  
17 interconnection request the following information:

18 (a) A copy of the final certificate of completion  
19 from the prior approval process.

20 (b) A written statement that the proposed  
21 interconnection equipment is identical to what was  
22 previously approved.

23 (c) Documentation (or drawings) indicating the  
24 system interconnection details.

25 (3) Each electric utility shall retain copies of studies it  
26 performs to determine the feasibility of, system impacts of, or

1 facilities required by the interconnection of any small  
2 generator facility, and shall avoid duplicating such studies to  
3 the extent possible. If requested by the applicant, the  
4 electric utility shall provide the applicant copies of any  
5 studies performed in analyzing an interconnection request,  
6 provided that information is not deemed confidential by the  
7 applicant or does not breach any defined security requirements.  
8 Any applicant can elect to provide any other applicant with  
9 copies of its own studies in the desire to streamline a future  
10 electric utility review; provided, however, that an electric  
11 utility has no obligation to provide any future applicants any  
12 information regarding prior interconnection requests,  
13 including but not limited to a prior applicant's name, copies  
14 of prior studies performed by the electric utility, or any  
15 other information surrounding the prior applicant's request.

16 VII. Expedited review procedures. An electric utility shall  
17 review interconnection requests on an expedited basis using one  
18 or more of the following three review procedures and associated  
19 screens:

20 (1) An electric utility shall use Level 1 procedures  
21 for evaluation of all interconnection requests to connect  
22 inverter-based small generation facilities when:

23 (i) The small generator facility has a nameplate  
24 capacity of 10 kW or less; and

25 (ii) The customer interconnection equipment

1           proposed for the small generator facility is lab  
2           certified.

3           (2) An electric utility shall use Level 2 procedures  
4           for evaluating interconnection requests when:

5                   (i) the nameplate capacity rating is 2 MW or less;  
6           and

7                   (ii) the interconnection equipment proposed for  
8           the small generator facility is lab certified or field  
9           approved; and

10                   (iii) either the proposed interconnection is to a  
11           radial distribution circuit, or a spot network or the  
12           small generator facility was reviewed under Level 1  
13           review procedures but not approved and the applicant  
14           has submitted a new interconnection request for  
15           consideration.

16           (3) An electric utility shall use Level 3 review  
17           procedures for evaluating interconnection requests to area  
18           networks and radial distribution circuits where power will  
19           not be exported based on the following criteria:

20                   (i) For interconnection requests to the load side  
21           of an area network the following criteria must be  
22           satisfied to qualify for a Level 3 expedited review:

23                           (a) The nameplate capacity of the small  
24           generator facility is less than or equal to 50kW.

25                           (b) The proposed small generator facility  
26           utilizes a lab certified inverter-based equipment

1 package.

2 (c) The small generator facility utilizes  
3 reverse power relays or other protection  
4 functions, or both, that prevent the export of  
5 power into the area network.

6 (d) The aggregate of all generation on the area  
7 network does not exceed the smaller of 5% of an  
8 area network's maximum load or 50kW.

9 (e) No construction of facilities by the  
10 electric distribution company shall be required to  
11 accommodate the small generator facility.

12 (ii) For interconnection requests to a radial  
13 distribution circuit, the following criteria must be  
14 satisfied to qualify for a Level 3 expedited review:

15 (a) The small generator facility has a  
16 nameplate capacity of 10 MW or less.

17 (b) The aggregated total of the nameplate  
18 capacity of all of the generators on the circuit,  
19 including the proposed small generator facility,  
20 is 10 MW or less.

21 (c) The small generator will use reverse power  
22 relays or other protection functions that prevent  
23 power flow onto the electric distribution system.

24 (d) The small generator is not served by a  
25 shared transformer.

26 (e) No construction of facilities by the

1           electric distribution company on its own system  
2           shall be required to accommodate the small  
3           generator facility.

4       VIII. Study review procedures. An electric utility shall use  
5       the Level 4 study review procedures for evaluating  
6       interconnection requests when:

7           (1) the small generator facility is subject to state  
8           jurisdictional interconnection requirements and not the  
9           interconnect requirements of FERC or any RTO; and

10          (2) the interconnection request was not approved under  
11          a Level 1, Level 2, or Level 3 expedited review and the  
12          applicant has submitted an interconnection request for  
13          consideration under a Level 4 study review or the  
14          interconnection request does not meet the criteria in  
15          Section VII for qualifying for an expedited review under  
16          Level 1, Level 2 or Level 3 review procedures.

17          (3) The interconnection request does not meet the  
18          criteria in Section VII for qualifying for an expedited  
19          review under Level 1, Level 2 or Level 3 review procedures.

20       IX. Technical standards. The technical standard to be used in  
21       evaluating all interconnection requests under Level 1, Level 2,  
22       Level 3 and Level 4 reviews, unless otherwise provided for in  
23       these procedures, is IEEE standard 1547.

1 X. Additional requirements. Additional requirements include:

2 (1) When an interconnection request is for a small  
3 generator facility that includes multiple energy  
4 production devices at a site for which the applicant seeks  
5 a single point of interconnection, the interconnection  
6 request shall be evaluated on the basis of the aggregate  
7 nameplate capacity of multiple devices.

8 (2) When an interconnection request is for an increase  
9 in capacity for an existing small generator facility, the  
10 interconnection request shall be evaluated on the basis of  
11 the new total nameplate capacity of the small generator  
12 facility.

13 (3) An electric utility shall maintain records of the  
14 following which it shall keep on file for a minimum of  
15 three years:

16 (i) The total number of and the nameplate capacity  
17 of the interconnection requests received, approved and  
18 denied under Level 1, Level 2, Level 3 and Level 4  
19 reviews;

20 (ii) The fuel type, total number and the nameplate  
21 capacity of small generator facilities approved in  
22 each of the following categories, net metering, behind  
23 the meter load offset, combined heat and power, other;

24 (iii) The number of interconnection requests that  
25 were not processed within the timelines established in  
26 this rule;

1           (iv) The number of scoping meetings held and the  
2           number of feasibility studies, impact studies, and  
3           facility studies performed and the fees charged for  
4           these studies;

5           (v) The justifications for actions taken to deny  
6           interconnection requests; and

7           (4) An electric utility shall provide a report to the  
8           Commission in a format acceptable to the Commission  
9           containing the information required in paragraph (3) (i) -  
10           (iii) within 90 calendar days of the close of each calendar  
11           year.

12           (5) An electric utility shall designate a contact  
13           person, and contact information on its website and the  
14           commission's website for submission of all interconnection  
15           requests and from whom information on the interconnection  
16           request process and the electric utility's distribution  
17           system can be obtained through informal requests regarding  
18           a proposed project. The information may include studies and  
19           other materials useful to an understanding of the  
20           feasibility of interconnecting a small generator facility  
21           at a particular point on the electric utility's  
22           distribution system, except to the extent providing the  
23           materials would violate security requirements or  
24           confidentiality agreements, or be contrary to law or State  
25           or Federal regulations.

26           (6) When an interconnection request is deemed

1 complete, a modification other than a minor equipment  
2 modification that is not agreed to in writing by the  
3 electric utility, shall require submission of a new  
4 interconnection request.

5 (7) When an applicant is not currently a customer of  
6 the electric utility at the proposed site, upon request  
7 from the electric utility, the applicant shall provide  
8 proof of site control evidenced by a property tax bill,  
9 deed, lease agreement or other legally binding contract.

10 (8) To minimize the cost of interconnecting multiple  
11 small generator facilities, the electric utility or the  
12 customer may propose a single point of interconnection for  
13 multiple small generator facilities located at a single  
14 site. If the applicant rejects the electric utility's  
15 proposal for a single point of interconnection, the  
16 applicant shall pay the additional cost, if any, of  
17 providing a separate point of interconnection for each  
18 small generator facility. If the electric utility  
19 unreasonably rejects the customer's proposal for a single  
20 point of interconnection without providing a written  
21 technical explanation, the electric utility shall pay the  
22 additional cost, if any, of providing a separate point of  
23 interconnection for each small generator facility.

24 (9) Small generator facilities over 10kW in total  
25 capacity shall be capable of being isolated from the  
26 electric utility. For small generator facilities

1 interconnecting to a primary line, the isolation shall be  
2 by means of a lockable, visible-break isolation device  
3 accessible by the electric utility. For small generator  
4 facilities interconnecting to a secondary line, the  
5 isolation shall be by means of a lockable isolation device  
6 whose status is clearly indicated and is accessible by the  
7 electric utility. The isolation device shall be installed,  
8 owned and maintained by the owner of the small generation  
9 facility and located between the small generation facility  
10 and the point of interconnection. An accessible draw-out  
11 type circuit breaker with a provision for padlocking at the  
12 draw-out position can be considered an isolation device for  
13 purposes of this requirement.

14 (10) An interconnection customer may elect to provide  
15 the electric utility access to an isolation device that is  
16 contained in a building or area that may be unoccupied and  
17 locked or not otherwise readily accessible to the electric  
18 utility, by installing a lockbox provided by the electric  
19 utility that shall provide ready access to the isolation  
20 device. The interconnection customer shall install the  
21 lockbox in a location that is readily accessible by the  
22 electric utility and the interconnection customer shall  
23 permit the electric utility to affix a placard in a  
24 location of its choosing that provides clear instructions  
25 to electric utility operating personnel on access to the  
26 isolation device. In the event the interconnection

1       customer fails to comply with the terms of this paragraph  
2       and the electric utility needs to gain access to the  
3       isolation device, the electric utility shall not be held  
4       liable for any damages resulting from any necessary  
5       electric utility action to isolate the interconnection  
6       customer.

7       (11) Any metering necessitated by a small generator  
8       interconnection shall be installed, operated and  
9       maintained in accordance with applicable tariffs. Any such  
10       metering requirements must be clearly identified as part of  
11       the standard small generator interconnection agreement  
12       executed by the interconnection customer and the electric  
13       utility.

14       (12) Electric utility monitoring and control of small  
15       generator facilities shall be permitted only if the  
16       nameplate rating is greater than 2 MW. Any monitoring and  
17       control requirements shall be consistent with the electric  
18       utility's written and published requirements and must be  
19       clearly identified as part of an interconnection agreement  
20       executed by the interconnection customer and the electric  
21       utility.

22       (13) The electric utility shall have the option of  
23       performing a witness test after construction of the small  
24       generator facility is completed. If the electric utility  
25       elects to perform a witness test, it shall contact the  
26       applicant to schedule the witness test at a mutually

1 agreeable time within 10 business days of the scheduled  
2 commissioning test. For all interconnection requests  
3 evaluated under Level 2, Level 3 or Level 4 review  
4 procedures, the applicant shall provide the electric  
5 utility at least 30 business days notice of the planned  
6 commissioning test for the small generator facility unless  
7 the electric utility and the applicant agree to an  
8 alternative mutually acceptable notice period for the  
9 witness test. If the applicant changes the final scheduled  
10 commissioning test date from the planned commissioning  
11 test date, the electric utility shall use reasonable  
12 efforts to adjust the date for its witness test to  
13 accommodate the change; however, the electric utility may  
14 not schedule the witness test more than 20 business days  
15 from the final scheduled commissioning date unless agreed  
16 to by the applicant. If the electric utility does not  
17 perform the witness test within 10 business days of the  
18 commissioning test, the witness test is deemed waived  
19 unless the parties mutually agree to extend the date for  
20 scheduling the witness test or the electric utility  
21 provides written documentation describing an emergency  
22 condition that made it impossible to complete the witness  
23 test within the 10 business day period. If the witness test  
24 is not acceptable to the electric utility, the applicant  
25 shall be granted a period of 30 business days to address  
26 and resolve any deficiencies. The time period for

1 addressing and resolving any deficiencies may be extended  
2 upon the mutual agreement of the electric utility and the  
3 applicant. If the applicant fails to address and resolve  
4 the deficiencies to the satisfaction of the electric  
5 utility, the interconnection request shall be deemed  
6 withdrawn and the applicant will cease all parallel  
7 operation of the small generator facility. If a witness  
8 test is not performed by the electric utility or an entity  
9 approved by the electric utility, the applicant must still  
10 satisfy the interconnection test specifications and  
11 requirements set forth in IEEE Standard 1547 Section 5. The  
12 applicant shall, if requested by the electric utility,  
13 provide a copy of all documentation in its possession  
14 regarding testing conducted pursuant to IEEE Standard  
15 1547.1.

16 XI. Level 1 expedited review.

17 (1) An electric utility shall use the Level 1  
18 interconnection review procedure for an interconnection  
19 request that meets the criteria in VII(1) (relating to review  
20 procedures). An electric utility may not impose additional  
21 requirements for Level 1 reviews not specifically authorized  
22 under this section unless the electric utility and the  
23 Applicant mutually agree to do so.

24 (2) The electric utility shall evaluate the potential for  
25 adverse system impacts using the following screens which must

1 be satisfied:

2 (i) For interconnection of a proposed small generator  
3 facility to a radial distribution circuit, the aggregated  
4 generation on the circuit, including the proposed small  
5 generator facility, may not exceed 15% of the line section  
6 annual peak load as most recently measured at the sub  
7 station or calculated for the line section.

8 (ii) For interconnection of a proposed small generator  
9 facility to the load side of spot network protectors, the  
10 proposed small generator facility shall utilize an  
11 inverter-based equipment package. The customer  
12 interconnection equipment proposed for the small generator  
13 facility must be lab certified, and when aggregated with  
14 other generation, may not exceed 5% of the spot network's  
15 maximum load.

16 (iii) When a proposed small generator facility is to be  
17 interconnected on a single-phase shared secondary line,  
18 the aggregate generation capacity on the shared secondary  
19 line, including the proposed small generator facility, may  
20 not exceed 20 kW.

21 (iv) When a proposed small generator facility is  
22 single-phase and is to be interconnected on a center tap  
23 neutral of a 240 volt service, its addition may not create  
24 an imbalance between the two sides of the 240 volt service  
25 of more than 20% of the nameplate rating of the service  
26 transformer.

1           (v) Construction of facilities by the electric utility  
2           on its own system is not required to accommodate the small  
3           generator facility.

4           (3) The Level 1 interconnection review must be conducted in  
5           accordance with the following procedures:

6           (i) An electric utility shall, within 10 business days  
7           after receipt of the interconnection request, inform the  
8           applicant that the interconnection request is complete or  
9           incomplete and what materials are missing.

10           (ii) The electric utility shall, within 15 business  
11           days after the end of the 10 business days noted in  
12           paragraph (i), verify that the small generator facility  
13           equipment can be interconnected safely and reliably using  
14           Level 1 screens.

15           (iii) Unless the electric utility determines and  
16           demonstrates that a small generator facility cannot be  
17           interconnected safely or reliably to its system and  
18           provides a letter to the applicant explaining its reasons  
19           for denying an interconnection request, the electric  
20           utility shall approve the interconnection request subject  
21           to the following conditions:

22           (a) The small generator facility has been approved  
23           by local or municipal electric code officials with  
24           jurisdiction over the interconnection; and

25           (b) A certificate of completion has been returned  
26           to the electric utility. Completion of local

1 inspections may be designated on inspection forms used  
2 by local inspecting authorities; and

3 (c) The witness test has been successfully  
4 completed or waived; and

5 (d) The applicant has signed a standard small  
6 generator interconnection agreement. When an applicant  
7 does not sign the agreement within 30 business days  
8 after receipt from the electric utility, the  
9 interconnection request be deemed withdrawn unless the  
10 applicant requests to have the deadline extended. The  
11 request for extension shall not be unreasonably denied  
12 by the electric utility.

13 (iv) When a small generator facility is not approved  
14 under a Level 1 review, the applicant may submit a new  
15 interconnection request for consideration under Level 2,  
16 Level 3 or Level 4 procedures.

17 XII. Level 2 expedited review.

18 (1) An electric utility shall use the Level 2 review  
19 procedure for an interconnection request that meets the  
20 criteria in VII (2) (relating to expedited review procedures).  
21 An electric utility shall not impose additional requirements  
22 for Level 2 reviews not specifically authorized under this  
23 subchapter unless otherwise mutually agreed to.

24 (2) The electric utility shall evaluate the potential for  
25 adverse system impacts using the following screens which must

1 be satisfied:

2 (i) For interconnection of a proposed small generator  
3 facility to a radial distribution circuit, the aggregated  
4 generation on the circuit, including the proposed small  
5 generator facility, may not exceed 15% of the line section  
6 annual peak load most recently measured at the sub-station  
7 or calculated for the line section.

8 (ii) For interconnection of a proposed small generator  
9 facility to the load side of spot network protectors, the  
10 proposed small generator facility shall utilize an  
11 inverter-based equipment package. The customer  
12 interconnection equipment proposed for the small generator  
13 facility must be lab certified or field approved and, when  
14 aggregated with other generation, may not exceed 5% of a  
15 spot network's maximum load.

16 (iii) The proposed small generator facility, in  
17 aggregation with other generation on the distribution  
18 circuit, may not contribute more than 10 % to the  
19 distribution circuit's maximum fault current at the point  
20 on the primary line nearest the point of interconnection.

21 (iv) The proposed small generator facility, in  
22 aggregate with other generation on the distribution  
23 circuit, may not cause any distribution protective devices  
24 and equipment (including substation breakers, fuse  
25 cutouts, and line reclosers), or other customer equipment  
26 on the electric distribution system to be exposed to fault

1 currents exceeding 90% of the short circuit interrupting  
2 capability. The interconnection request may not request  
3 interconnection on a circuit that already exceeds 90% of  
4 the short circuit interrupting capability.

5 (v) The proposed small generator facility's point of  
6 interconnection may not be on a transmission line.

7 (vi) When a customer-generator facility is to be  
8 connected to 3 phase, 3 wire primary electric utility  
9 distribution lines, a 3 phase or single-phase generator  
10 shall be connected phase-to-phase.

11 (vii) When a customer-generator facility is to be  
12 connected to 3 phase, 4 wire primary electric utility  
13 distribution lines, a 3 phase or single phase generator  
14 will be connected line-to-neutral and will be effectively  
15 grounded.

16 (viii) When the proposed small generator facility is to  
17 be interconnected on single-phase shared secondary line,  
18 the aggregate generation capacity on the shared secondary  
19 line, including the proposed small generator facility,  
20 shall not exceed 20 kW.

21 (ix) When a proposed small generator facility is  
22 single-phase and is to be interconnected on a center tap  
23 neutral of a 240 volt service, its addition may not create  
24 an imbalance between the two sides of the 240 volt service  
25 of more than 20% of the nameplate rating of the service  
26 transformer.

1           (x) A small generator facility, in aggregate with other  
2           generation interconnected to the distribution side of a  
3           substation transformer feeding the circuit where the small  
4           generator facility proposes to interconnect, may not  
5           exceed 10 MW in an area where there are known or posted  
6           transient stability limitations to generating units  
7           located in the general electrical vicinity (for example,  
8           three or four distribution busses from the point of  
9           interconnection).

10           (xi) Except as permitted by an additional review in VII  
11           (5), no construction of facilities by an electric utility  
12           on its own system shall be required to accommodate the  
13           small generator facility.

14           (3) The Level 2 interconnection review must be conducted in  
15           accordance with the following procedures:

16           (i) An electric utility shall, within 10 business days  
17           after receipt of the interconnection request, inform the  
18           interconnection that the interconnection request is  
19           complete or incomplete and what materials are missing.

20           (ii) When an interconnection request is complete, the  
21           electric utility shall assign a queue position. The queue  
22           position of the interconnection request shall be used to  
23           determine the potential adverse system impact of the small  
24           generator facility based on the relevant screening  
25           criteria. The electric utility shall notify the applicant  
26           about other higher-queued applicants on the same

1       substation bus or spot network for which interconnection is  
2       sought.

3       (iii) When an electric utility determines additional  
4       information is required to complete an evaluation, the  
5       electric utility shall request the information. The time  
6       necessary to complete the evaluation may be extended, but  
7       only to the extent of the delay required for receipt of the  
8       additional information. The electric utility may not  
9       revert to the start of the review process or alter the  
10      applicant's queue position.

11      (iv) Within 20 business days after the electric utility  
12      notifies the applicant it has received a completed  
13      interconnection request, the electric utility shall:

14           (a) Evaluate the interconnection request using the  
15           Level 2 screening criteria.

16           (b) Review the applicant's analysis, if provided  
17           by applicant, using the same criteria.

18           (c) Provide the applicant with the electric  
19           utility's evaluation, including a comparison of the  
20           results of its own analyses with those of applicant, if  
21           applicable. When an electric utility does not have a  
22           record of receipt of the interconnection request and  
23           the applicant can demonstrate that the original  
24           interconnection request was delivered, the electric  
25           utility shall expedite its review to complete the  
26           evaluation of the interconnection request within 20

1           business days of the applicant's resubmittal.

2           (d) However, the electric utility shall not be  
3           obligated to meet the timeline for reviewing the  
4           interconnection request as provided for in this  
5           section (iv) until such time as the electric utility  
6           has completed the review of all other interconnection  
7           requests that have a higher queue position.

8           (4) When an electric utility determines that the  
9           interconnection request passes the Level 2 screening criteria,  
10           or fails one or more of the Level 2 screening criteria but  
11           determines that the small generator facility can be  
12           interconnected safely and reliably, it shall provide the  
13           applicant a standard small generator interconnection agreement  
14           within 5 business days after the determination.

15           (5) Additional review may be appropriate when a small  
16           generator facility has failed to meet one or more of the Level  
17           2 screens. An electric utility shall offer to perform  
18           additional review to determine whether minor modifications to  
19           the electric distribution system would enable the  
20           interconnection to be made consistent with safety, reliability  
21           and power quality criteria. The electric utility shall provide  
22           the applicant with a nonbinding, good faith estimate of the  
23           costs of additional review and minor modifications. The  
24           electric utility shall undertake the additional review or  
25           modifications only after the applicant consents to pay for the  
26           review.

1       (6) An applicant shall have 30 business days or another  
2 mutually agreeable time after receipt of the standard small  
3 generator interconnection agreement to sign and return the  
4 agreement. When an applicant does not sign the agreement within  
5 30 business days, the interconnection request shall be deemed  
6 withdrawn unless the applicant requests to have the deadline  
7 extended prior to the expiration of the 30 business day period.  
8 The request for extension may not be unreasonably denied by the  
9 electric utility. When construction is required under the  
10 provisions of paragraph (5), the interconnection of the small  
11 generator facility shall proceed according to any milestones  
12 agreed to by the parties in the standard small generator  
13 interconnection agreement. The standard small generator  
14 interconnection agreement may not become final until:

15           (i) The milestones agreed to in the standard small  
16 generator interconnection agreement are satisfied; and

17           (ii) The small generator facility is approved by  
18 electric code officials with jurisdiction over the  
19 interconnection; and

20           (iii) The applicant provides a certificate of  
21 completion to the electric utility. Completion of local  
22 inspections may be designated on inspection forms used by  
23 local inspecting authorities; and

24           (iv) There is a successful completion of the witness  
25 test, unless waived.

26       (7) If the small generator facility is not approved under a

1 Level 2 review the electric utility shall provide the applicant  
2 a letter explaining its reasons for denying the interconnection  
3 request. The applicant may submit a new interconnection request  
4 for consideration under a Level 3 or Level 4 interconnection  
5 review; however, the queue position assigned to the Level 2  
6 interconnection request shall be retained provided the request  
7 is made within 15 business days of notification that the  
8 current interconnection request is denied.

9 XIII. Level 3 expedited review.

10 (1) An electric utility shall use the Level 3 expedited  
11 review procedure for an interconnection request that meets the  
12 criteria in VII (3) (relating to expedited review procedures).  
13 An electric utility may not impose additional requirements for  
14 Level 3 reviews not specifically authorized under this section  
15 unless otherwise mutually agreed to.

16 (2) Once the interconnection request is deemed complete by  
17 the electric utility, the electric utility shall assign a queue  
18 position based upon the date and time the interconnection  
19 request is determined to be complete. The queue position of  
20 each interconnection request shall be used to determine the  
21 potential adverse system impact of the small generator facility  
22 based on the relevant screening criteria. The applicant will  
23 proceed under the timeframes of this section. The electric  
24 utility shall notify the applicant about other higher-queued  
25 applicants on the same radial line or area network that the

1 applicant is seeking to interconnect to.

2 (3) Interconnection requests meeting the requirements set  
3 forth in VII (3)(i) for non-exporting small generator  
4 facilities interconnecting to an area network shall be presumed  
5 to be appropriate for interconnection. The electric utility  
6 shall process the interconnection request to area networks  
7 using the following procedures:

8 (i) The electric utility shall evaluate the  
9 interconnection request under Level 2 interconnection  
10 review procedures as set forth in XII (3) except that the  
11 electric utility may have 25 business days to conduct an  
12 area network impact study to determine any potential  
13 adverse system impacts of interconnecting to the electric  
14 utility's area network; however, the electric utility  
15 shall not be obligated to meet the timeline for reviewing  
16 the interconnection request as provided for herein until  
17 such time as the electric utility has completed the review  
18 of all other interconnection requests that have a higher  
19 queue position.

20 (ii) In the event the area network impact study  
21 identifies potential adverse system impacts, the electric  
22 utility may determine at its sole discretion that it is  
23 inappropriate for the small generator facility to  
24 interconnect to the area network in which case the  
25 interconnection request shall be denied; however, the  
26 applicant may elect to submit a new interconnection request

1       for consideration under Level 4 procedures in which case  
2       the queue position assigned to the Level 3 interconnection  
3       request will be retained provided the request is made  
4       within 15 business days of notification that the current  
5       application is denied.

6       (iii) The electric utility will conduct the area  
7       network impact study at its own expense.

8       (iv) In the event the electric utility denies the  
9       interconnection request, the electric utility shall  
10       provide the applicant with a copy of its area network  
11       impact study and written justification for denying the  
12       interconnection request.

13       (4) Interconnection request meeting the requirements set  
14       forth in VII (3)(ii) for non-exporting small generator  
15       facilities interconnecting to a radial distribution circuit  
16       shall be presumed to be appropriate for interconnection and  
17       shall be evaluated under the following Level 2 expedited review  
18       screens (Section XII (2) (i thru xi), Section XII (3) (i thru  
19       iv), and Sections (4) and (5).

20       (5) For a small generator facility that satisfies the  
21       criteria in paragraph (3) or paragraph (4), the electric  
22       utility shall approve the interconnection request and provide a  
23       standard interconnection agreement for the applicant to sign.

24       (6) The applicant shall have either 30 calendar days, or  
25       another mutually agreeable timeframe after receipt of the  
26       standard small generator interconnection agreement, to sign

1 and return the standard small generator interconnection  
2 agreement. If the applicant does not sign the standard small  
3 generator interconnection agreement within 30 calendar days,  
4 the request shall be deemed withdrawn unless the parties  
5 mutually agree to extend the time period for executing the  
6 standard small generator interconnection agreement prior to  
7 the expiration of the 30 business day period. After the  
8 standard small generator interconnection agreement is signed  
9 by the parties, interconnection of the small generator facility  
10 shall proceed according to any milestones agreed to by the  
11 parties in the standard small generator interconnection  
12 agreement.

13 (7) The interconnection agreement will not be final until:

14 (i) Any milestones agreed to in the standard small  
15 generator interconnection agreement are satisfied; and

16 (ii) The small generator facility is approved by  
17 electric code officials with jurisdiction over the  
18 interconnection; and

19 (iii) The applicant provides a certificate of  
20 completion to the electric utility; and

21 (iv) There is a successful completion of the witness  
22 test, if conducted by the electric utility.

23 (8) If the small generator facility is not approved under a  
24 Level 3 review, the applicant may submit a new interconnection  
25 request for consideration under the Level 4 procedures  
26 specified in XIV without sacrificing the original queue

1 position provided the revised interconnection request is  
2 submitted within 15 business days of notice that the current  
3 request has not been approved.

4 XIV Level 4 study review.

5 (1) An electric utility shall use the Level 4 study review  
6 procedure for an interconnection request that meets the  
7 criteria in VIII (relating to study review procedures).

8 (2) Within 10 business days from receipt of an  
9 interconnection request, the electric utility shall notify the  
10 applicant whether the request is complete. When the  
11 interconnection request is not complete, the electric utility  
12 shall provide the applicant a written list detailing  
13 information that shall be provided to complete the  
14 interconnection request. The applicant shall have 10 business  
15 days to provide appropriate data in order to complete the  
16 interconnection request or the interconnection request shall  
17 be considered withdrawn. The parties may agree to extend the  
18 time for receipt of the additional information. The  
19 interconnection request shall be deemed complete when the  
20 required information has been provided by the applicant, or the  
21 parties have agreed that the applicant may provide additional  
22 information at a later time.

23 (3) When an interconnection request is complete, the  
24 electric utility shall assign a queue position. The queue  
25 position of an interconnection request shall be used to

1 determine the cost responsibility necessary for the facilities  
2 to accommodate the interconnection. The electric utility shall  
3 notify the applicant about other higher-queued applicants. Any  
4 required interconnection studies shall not begin until the  
5 electric utility has completed its review of all other  
6 interconnection requests that have a higher queue position.

7 (4) The following procedures shall be followed in  
8 performing a Level 4 study review:

9 (i) By mutual agreement of the parties, the scoping  
10 meeting, interconnection feasibility study,  
11 interconnection impact study, or interconnection  
12 facilities studies provided for in a Level 4 review and  
13 discussed in this paragraph may be waived.

14 (ii) If agreed to by the parties, a scoping meeting  
15 will be held within 10 business days, or other mutually  
16 agreed to time, after the electric utility has notified the  
17 applicant that the interconnection request is deemed  
18 complete, or the applicant has requested that its  
19 interconnection request proceed after failing the  
20 requirements of a Level 2 review or Level 3 review. The  
21 purpose of the meeting must be to review the  
22 interconnection request, existing studies relevant to the  
23 interconnection request, and the results of the Level 1,  
24 Level 2 or Level 3 screening criteria.

25 (iii) When the parties agree at a scoping meeting that  
26 an interconnection feasibility study shall be performed,

1 the electric utility shall provide to the applicant, no  
2 later than 5 business days after the scoping meeting, an  
3 interconnection feasibility study agreement, including an  
4 outline of the scope of the study and a nonbinding good  
5 faith estimate of the cost to perform the study.

6 (iv) When the parties agree at a scoping meeting that  
7 an interconnection feasibility study is not required, the  
8 electric utility shall provide to the applicant, no later  
9 than 5 business days after the scoping meeting, an  
10 interconnection system impact study agreement, including  
11 an outline of the scope of the study and a nonbinding good  
12 faith estimate of the cost to perform the study.

13 (v) When the parties agree at the scoping meeting that  
14 an interconnection feasibility study and system impact  
15 study are not required, the electric utility shall provide  
16 to the applicant, no later than 5 business days after the  
17 scoping meeting, an interconnection facilities study  
18 agreement including an outline of the scope of the study  
19 and a nonbinding good faith estimate of the cost to perform  
20 the study.

21 (5) The following guidelines shall be followed in  
22 conducting all required interconnection studies:

23 (i) An interconnection feasibility study shall include  
24 any necessary analyses for the purpose of identifying a  
25 potential adverse system impact to the electric utility's  
26 electric distribution system that would result from the

1 interconnection from among the following:

2 (a) Initial identification of any circuit breaker  
3 short circuit capability limits exceeded as a result of  
4 the interconnection.

5 (b) Initial identification of any thermal overload  
6 or voltage limit violations resulting from the  
7 interconnection.

8 (c) Initial review of grounding requirements and  
9 system protection.

10 (d) Description and nonbinding estimated cost of  
11 facilities required to interconnect the small  
12 generator facility to the electric utility's electric  
13 distribution system in a safe and reliable manner.

14 (e) When an applicant requests that the  
15 interconnection feasibility study evaluate multiple  
16 potential points of interconnection, additional  
17 evaluations may be required. Additional evaluations  
18 shall be paid by the applicant.

19 (f) An interconnection system impact study is not  
20 required when the interconnection feasibility study  
21 concludes there is no adverse system impact, or when  
22 the study identifies an adverse system impact, but the  
23 electric utility is able to identify a remedy without  
24 the need for an interconnection system impact study.

25 (g) The parties shall use a form of interconnection  
26 feasibility study agreement approved by the

1           Commission.

2           (ii) An interconnection system impact study shall  
3 evaluate the impact of the proposed interconnection on both  
4 the safety and reliability of the electric utility's  
5 electric distribution system. The study shall identify and  
6 detail the system impacts that result when a small  
7 generator facility is interconnected without project or  
8 system modifications, focusing on the adverse system  
9 impacts identified in the interconnection feasibility  
10 study, or potential impacts including those identified in  
11 the scoping meeting. The study shall consider all  
12 generating facilities that, on the date the  
13 interconnection system impact study is commenced, are  
14 directly interconnected with the electric utility's  
15 system, have a pending higher queue position to  
16 interconnect to the system, or have a signed a standard  
17 small generator interconnection agreement. As part of its  
18 impact study, the electric utility shall agree to evaluate  
19 and consider any separate studies prepared by the applicant  
20 that evaluate alternatives for interconnecting the small  
21 generator facility including the applicant's assessment of  
22 potential impacts of the small generator facility on the  
23 electric distribution system. The electric utility shall  
24 provide the applicant with the electric utility's final  
25 impact study evaluation including a comparison of the  
26 results of its own analyses with those provided by the

1       applicant.

2               (a) A distribution interconnection system impact  
3       study shall be performed when a potential distribution  
4       system adverse system impact is identified in the  
5       interconnection feasibility study. The electric  
6       utility shall send the applicant an interconnection  
7       system impact study agreement within 5 business days of  
8       transmittal of the interconnection feasibility study  
9       report. The agreement will include an outline of the  
10       scope of the study and a good faith estimate of the  
11       cost to perform the study. The impact study shall  
12       include any necessary elements from among the  
13       following:

14               1. A load flow study.

15               2. Identification of affected systems.

16               3. An analysis of equipment interrupting  
17       ratings.

18               4. A protection coordination study.

19               5. Voltage drop and flicker studies.

20               6. Protection and set point coordination  
21       studies.

22               7. Grounding reviews.

23               8. Impact on system operation.

24               (b) An interconnection system impact study must  
25       consider any necessary criteria from among the  
26       following:

1                   1. A short circuit analysis.

2                   2. A stability analysis.

3                   3. Alternatives for mitigating adverse system  
4                   impacts on affected systems.

5                   4. Voltage drop and flicker studies.

6                   5. Protection and set point coordination  
7                   studies.

8                   6. Grounding reviews.

9                   (c) The final interconnection system impact study  
10                   must provide the following:

11                   1. The underlying assumptions of the study.

12                   2. The results of the analyses.

13                   3. A list of any potential impediments to  
14                   providing the requested interconnection service.

15                   4. Required distribution upgrades.

16                   5. A nonbinding good faith estimate of cost and  
17                   time to construct any required distribution  
18                   upgrades.

19                   (d) The parties shall use an interconnection  
20                   impact study agreement as approved by the Commission.

21                   (iii) The interconnection facilities study shall be  
22                   conducted as follows:

23                   (a) Within 5 business days of completion of the  
24                   interconnection system impact study, a report shall be  
25                   transmitted to the applicant with an interconnection  
26                   facilities study agreement, which includes an outline

1           of the scope of the study and a nonbinding good faith  
2           estimate of the cost to perform the study.

3           (b) The interconnection facilities study shall  
4           estimate the cost of the equipment, engineering,  
5           procurement and construction work, including  
6           overheads, needed to implement the conclusions of the  
7           interconnection feasibility study and the  
8           interconnection system impact study to interconnect  
9           the small generator facility. The interconnection  
10          facilities study shall identify:

11                   1. The electrical switching configuration of  
12                   the equipment, including transformer, switchgear,  
13                   meters and other station equipment.

14                   2. The nature and estimated cost of the  
15                   electric utility's interconnection facilities and  
16                   distribution upgrades necessary to accomplish the  
17                   interconnection.

18                   3. An estimate of the time required to complete  
19                   the construction and installation of the  
20                   facilities.

21           (c) The parties may agree to permit an applicant to  
22           separately arrange for a third party to design and  
23           construct the required interconnection facilities. The  
24           electric utility may review the design of the  
25           facilities under the interconnection facilities study  
26           agreement. When the parties agree to separately

1 arrange for design and construction, and to comply with  
2 security and confidentiality requirements, the  
3 electric utility shall make all relevant information  
4 and required specifications available to the applicant  
5 to permit the applicant to obtain an independent design  
6 and cost estimate for the facilities, which must be  
7 built in accordance with the specifications.

8 (d) Upon completion of the interconnection  
9 facilities study, and with the agreement of the  
10 applicant to pay for the interconnection facilities  
11 and distribution upgrades identified in the  
12 interconnection facilities study, the electric utility  
13 shall provide the applicant with a standard small  
14 generator interconnection agreement within 5 business  
15 days.

16 (e) In the event that distribution upgrades are  
17 identified in the impact study that must be added only  
18 in the event that higher-queued customers not yet  
19 interconnected eventually complete and interconnect  
20 their generation facilities, an applicant may elect to  
21 interconnect without paying for such upgrades at the  
22 time of the interconnection under the condition that  
23 the customer shall pay for such upgrades at the time  
24 the higher-queued customer is ready to interconnect.  
25 If the customer does not pay for such upgrades at that  
26 time, the electric utility will require the customer to

1           immediately disconnect its generating facility so that  
2           the higher-queued customer can be accommodated.

3           (f) The parties shall use an interconnection  
4           facility study agreement approved by the Commission.

5           (6) When an electric utility determines, as a result of the  
6           studies conducted under a Level 4 review, that it is  
7           appropriate to interconnect the small generator facility, the  
8           electric utility shall provide the applicant with a standard  
9           small generator interconnection agreement. If the  
10           interconnection request is denied, the electric utility shall  
11           provide the applicant a written explanation.

12           (7) An applicant shall have 30 business days, or another  
13           mutually agreeable time frame after receipt of the standard  
14           small generator interconnection agreement to sign and return  
15           the agreement. When an applicant does not sign the agreement  
16           within 30 business days, the interconnection request shall be  
17           deemed withdrawn unless the applicant requests to have the  
18           deadline extended. The request for extension may not be  
19           unreasonably denied by the electric utility. When construction  
20           is required, the interconnection of the small generator  
21           facility shall proceed according to milestones agreed to by the  
22           parties in the standard small generator interconnection  
23           agreement. The standard small generator interconnection  
24           agreement may not be final until:

25           (i) The milestones agreed to in the standard small  
26           generator interconnection agreement are satisfied.

1           (ii) The small generator facility is approved by  
2           electric code officials with jurisdiction over the  
3           interconnection.

4           (iii) The applicant provides a certificate of  
5           completion to the electric utility. Completion of local  
6           inspections may be designated on inspection forms used by  
7           local inspecting authorities.

8           (iv) There is a successful completion of the witness  
9           test, unless waived.

10       XV. Dispute Resolution.

11           (1) A party shall attempt to resolve all disputes regarding  
12           interconnection as provided in this section promptly,  
13           equitably, and in a good faith manner.

14           (2) When a dispute arises, a party may seek immediate  
15           resolution through complaint procedures available through the  
16           Commission, or an alternative dispute resolution process  
17           approved by the Commission, by providing written notice to the  
18           Commission and the other party stating the issues in dispute.  
19           Dispute resolution shall be conducted in an informal,  
20           expeditious manner to reach resolution with minimal costs and  
21           delay. When available, dispute resolution may be conducted by  
22           phone.

23           (3) When disputes relate to the technical application of  
24           this section, the Commission may designate a technical master  
25           to resolve the dispute. The Commission may designate a

1 Department of Energy National Laboratory or a college or  
2 university with distribution system engineering expertise as  
3 the technical master. When the Federal Energy Regulatory  
4 Commission identifies a National technical dispute resolution  
5 team, the Commission may designate the team as its technical  
6 master. Upon Commission designation, the parties shall use the  
7 technical master to resolve disputes related to  
8 interconnection. Costs for a dispute resolution conducted by  
9 the technical master shall be established by the technical  
10 master, subject to review by the Commission. Pursuit of dispute  
11 resolution may not affect an applicant with regard to  
12 consideration of an interconnection request or an applicant's  
13 queue position.

14 (220 ILCS 5/16-132 new)

15 Sec. 16-132. Ownership of electric utilities. After 2009,  
16 no electric utility that served at least 100,000 customers on  
17 January 2, 2007 shall be owned, in whole or in part, by or  
18 affiliated with a company that is an independent power  
19 producer, a power marketer, or an alternative retail electric  
20 supplier.

21 Section 4-930. The Eminent Domain Act is amended by adding  
22 Sections 15-5-45 and 25-5-5 and by changing the heading of Part  
23 5 of Article 25 as follows:

1 (735 ILCS 30/15-5-45 new)

2 Sec. 15-5-45. Eminent domain powers in new Acts. The  
3 following provisions of law may include express grants of the  
4 power to acquire property by condemnation or eminent domain:

5 Illinois Power Authority Act.

6 (735 ILCS 30/Art. 25, Pt. 5 heading)

7 Part 5. New Quick-take Powers

8 ~~(Reserved)~~

9 (Source: P.A. 94-1055, eff. 1-1-07.)

10 (735 ILCS 30/25-5-5 new)

11 Sec. 25-5-5. Quick-take; Illinois Power Authority.  
12 Quick-take proceedings under Article 20 may be used by the  
13 Illinois Power Authority for the purposes specified in the  
14 Illinois Power Authority Act.

15 ARTICLE 5. ELECTRICITY GENERATOR TAX ACT

16 Section 5-1. Short title. This Article may be cited as the  
17 Electricity Generator Tax Act. References in this Article to  
18 "this Act" mean this Article.

19 Section 5-3. Definitions. As used in this Act:

20 "Capacity factor" means the ratio of the electric energy  
21 produced by a generating unit during a taxable year compared to

1 the electric energy that could have been produced at  
2 continuous, full-power operation during the entire taxable  
3 year.

4 "Department" means the Department of Revenue.

5 "Generating unit" means a nuclear reactor, coal-fired  
6 boiler, coal-fired combustion turbine, or natural gas-fired  
7 turbine that produces electricity.

8 "Nameplate capacity" means the maximum rated output of a  
9 generating unit under specific conditions, as designated by the  
10 manufacturer on a nameplate that is physically attached to the  
11 generating unit.

12 "Taxable year" means a calendar year. For 2007, however,  
13 taxable year means the effective date of this Act through and  
14 including December 31, 2007.

15 "Taxpayer" means a person who operates a generating unit in  
16 this State at any time during the taxable year.

17 "Vertically integrated utility" means a public utility  
18 that owns generating units, a transmission system, and  
19 distribution lines to provide all aspects of electric service  
20 in the utility's service territory.

21 Section 5-5. Tax imposed.

22 (a) A tax is imposed on the privilege of operating, at any  
23 time during the taxable year, a generating unit within this  
24 State.

25 (b) The tax imposed under this Act applies to taxable years

1 beginning on or after the effective date of this Act and  
2 through and including the taxable year in which the State  
3 Comptroller, State Treasurer, and Director of Revenue jointly  
4 certify that the tax no longer need be imposed to meet any  
5 liabilities for payments under Sections 16-124, 16-124A,  
6 16-126, and 16-135 of the Public Utilities Act.

7 (c) No tax under this Act is imposed on any of the  
8 following:

9 (1) a generating unit owned by a municipal corporation,  
10 a unit of local government, or an electric cooperative;

11 (2) a generating unit that generates electricity from a  
12 renewable energy resource, as defined in the Renewable  
13 Energy, Energy Efficiency, and Coal Resources Development  
14 Law of 1997;

15 (3) a generating unit designed to produce both heat and  
16 electricity from a single heat source;

17 (4) a generating unit that has a nameplate capacity of  
18 less than 100 megawatts;

19 (5) a generating unit operated fewer than 876 hours  
20 during the taxable year (or fewer than 438 hours during  
21 taxable year 2007); or

22 (6) any portion of the nameplate capacity of a  
23 generating unit that is owned by a vertically integrated  
24 utility.

25 Section 5-10. Rate. For each generating unit that is not

1 exempt under subsection (c) of Section 5-5, the tax under this  
2 Act is imposed annually in the amount equal to \$70,000 per  
3 megawatt of nameplate capacity of the generating unit  
4 multiplied by the average capacity factor for the taxable year.

5 Section 5-15. Returns and notices.

6 (a) Each taxpayer subject to the tax imposed under this Act  
7 shall make a return under this Act for that taxable year.

8 (b) Each taxpayer shall keep any record, render any  
9 statement, make any return and notice, and comply with any rule  
10 that the Department may, from time to time, adopt. If, in the  
11 judgment of the Director of Revenue it is necessary, he or she  
12 may require any person, by notice served upon that person or by  
13 rule, to make any return and notice, render any statement, or  
14 keep any record that the Director deems sufficient to show  
15 whether or not that person is liable for tax under this Act.

16 Section 5-20. Time and place for filing returns.

17 (a) Returns required by this Act must be filed at the place  
18 that the Department may require by rule.

19 (b) A return due under this Act for any taxable year must  
20 be filed on or before the 15th day of the third month following  
21 the close of the taxable year.

22 (c) The fact that an individual's name is signed to a  
23 return or notice is prima facie evidence for all purposes that  
24 the document was actually signed by that individual. If a

1 return is prepared by an income tax return preparer for a  
2 taxpayer, then that preparer shall sign the return as the  
3 preparer of that return. If a return is transmitted to the  
4 Department electronically, then the Department may presume  
5 that the electronic return originator has obtained and is  
6 transmitting a valid signature document pursuant to the rules  
7 adopted by the Department for the electronic filing of tax  
8 returns, or the Department may authorize electronic return  
9 originators to maintain the signature documents and associated  
10 documentation, subject to the Department's right of inspection  
11 at any time without notice, rather than transmitting those  
12 documents to the Department, and the Department may process the  
13 return.

14 A return or notice required of a corporation must be signed  
15 by the president, vice-president, treasurer, or any other  
16 officer duly authorized so to act or, in the case of a limited  
17 liability company, by a manager or member. In the case of a  
18 return or notice made for a corporation by a fiduciary, the  
19 fiduciary shall sign the document. The fact that an  
20 individual's name is signed to a return or notice is prima  
21 facie evidence that the individual is authorized to sign the  
22 document on behalf of the taxpayer.

23 A return or notice of a partnership must be signed by any  
24 one of the partners or, in the case of a limited liability  
25 company, by a manager or member. The fact that a person's name  
26 is signed to a return or notice is prima facie evidence that

1 the individual is authorized to sign the document on behalf of  
2 the partnership or limited liability company.

3 (d) If a taxpayer fails to sign a return within 30 days  
4 after proper notice and demand for signature by the Department,  
5 the return is considered valid, and any amount shown to be due  
6 on the return is deemed assessed. Any overpayment of tax shown  
7 on the face of an unsigned return is considered forfeited if,  
8 after notice and demand for signature by the Department, the  
9 taxpayer fails to provide a signature and 3 years have passed  
10 from the date the return was filed.

11 (e) Each return required to be filed under this Act must  
12 contain or be verified by a written declaration that it is made  
13 under the penalties of perjury. A taxpayer's signing a  
14 fraudulent return under this Act is perjury, as defined in  
15 Section 32-2 of the Criminal Code of 1961.

16 (f) The Department may require electronic filing of any  
17 return due under this Act.

18 Section 5-25. Payment on due date of return.

19 (a) Each taxpayer required to file a return under this Act  
20 shall, without assessment, notice, or demand, pay any tax due  
21 thereon to the Department at the place fixed by rules adopted  
22 by the Department for filing on or before the date fixed for  
23 filing the return (determined without regard to any extension  
24 of time for filing the return). In making payment as provided  
25 in this Section, there remains payable only the balance of the

1 tax remaining due after giving effect to payments of estimated  
2 tax made by the taxpayer under Section 5-30 of this Act for the  
3 taxable year and to tentative payments under subsection (b) of  
4 this Section for the taxable year.

5 (b) The taxpayer shall file a tentative tax return and pay,  
6 on or before the date required by law for the filing of the  
7 return the amount properly estimated as his or her tax for the  
8 taxable year.

9 (c) Interest and penalty on any amount of tax due and  
10 unpaid for the period of any extension is payable as provided  
11 by the Uniform Penalty and Interest Act.

12 (d) The Department may, by rule, require any taxpayer to  
13 make payments due under this Act by electronic funds transfer.

14 Section 5-30. Payment of estimated tax.

15 (a) Beginning July 1, 2007, each taxpayer is required to  
16 pay estimated tax for the taxable year in the form and manner  
17 that the Department requires by rule. Each installment of  
18 estimated tax must be paid on or before the 10th day of each  
19 calendar month.

20 (b) The amount of each required installment is an amount  
21 equal to:

22 (1) the total amount of the tax that is estimated to be  
23 due for the taxable year under Section 5-10 less the amount  
24 of all estimated payments previously paid by the taxpayer  
25 for that taxable year; divided by

1           (2) the number of calendar months remaining in the  
2 taxable year, including the current calendar month.

3           (c) In case of any underpayment of estimated tax by a  
4 taxpayer, the taxpayer is liable to a penalty in an amount  
5 determined at the rate set forth under Section 3-3 of the  
6 Uniform Penalty and Interest Act upon the amount of the  
7 underpayment, determined under subsection (b), for each  
8 required installment. For the purposes of this subsection (c),  
9 the amount of the underpayment is the excess of:

10           (1) the amount of the installment that would be  
11 required to be paid under subsection (b); less

12           (2) the amount, if any, of the installment paid on or  
13 before the last date prescribed for payment.

14           Section 5-35. Collection authority. The Department shall  
15 collect the taxes imposed by this Act and shall deposit the  
16 amounts collected under this Act into the Consumers Overbilled  
17 and Reimbursed for Electricity Fund in the State treasury. To  
18 the extent that the State Comptroller, State Treasurer, and  
19 Director of Revenue jointly certify that any of the balance in  
20 the Fund is not needed to meet any liabilities for payments  
21 under Section 16-135 of the Public Utilities Act, the State  
22 Comptroller shall order and the State Treasurer shall transfer  
23 that excess balance to the General Revenue Fund.

24           Section 5-40. Notice and demand.

1           (a) Except as provided in subsection (b), the Director of  
2 Revenue shall, as soon as practical after an amount payable  
3 under this Act is deemed assessed (as provided in Section 5-45  
4 of this Act), give notice to each person liable for any unpaid  
5 portion of that assessment, stating the amount unpaid and  
6 demanding payment thereof. In the case of tax deemed assessed  
7 with the filing of a return, the Director shall give notice no  
8 later than 3 years after the date the return was filed. Upon  
9 receipt of any notice and demand, there must be paid, at the  
10 place and time stated in the notice, the amount stated in the  
11 notice. The notice must be left at the dwelling or usual place  
12 of business of the person or shall be sent by mail to the  
13 person's last known address.

14           (b) In the case of a deficiency deemed assessed under  
15 Section 5-45 of this Act, after the filing of a protest, notice  
16 and demand may not be made with respect to the assessment until  
17 all proceedings in court for the review of the assessment have  
18 terminated or the time for the taking thereof has expired  
19 without the proceedings being instituted.

20           (c) The Department may bring an action in any court of  
21 competent jurisdiction within or without this State in the name  
22 of the people of this State to recover the amount of any taxes,  
23 penalties, and interest due and unpaid under this Act. In that  
24 action, the certificate of the Department showing the amount of  
25 the delinquency is prima facie evidence of the correctness of  
26 the amount, its assessment, and of the compliance by the

1 Department with all the provisions of this Act.

2 Section 5-45. Assessment.

3 (a) The amount of tax that is shown to be due on the return  
4 is deemed to be assessed on the date of filing of the return  
5 (including any amended returns showing an increase of tax). If  
6 the amount of tax is understated on the taxpayer's return due  
7 to a mathematical error, the Department shall notify the  
8 taxpayer that the amount of tax in excess of that shown on the  
9 return is due and has been assessed. The notice of additional  
10 tax due must be issued no later than 3 years after the date the  
11 return was filed. The notice of additional tax due is not  
12 considered to be a notice of deficiency nor does the taxpayer  
13 have any right of protest. In the case of a return properly  
14 filed without the computation of the tax, the tax computed by  
15 the Department is deemed to be assessed on the date when  
16 payment is due.

17 (b) If a notice of deficiency has been issued, the amount  
18 of the deficiency is deemed assessed on the date provided in  
19 Section 5-50 if no protest is filed or, if a protest is filed,  
20 then upon the date when the decision of the Department becomes  
21 final.

22 (c) Any amount paid as tax or in respect of tax paid under  
23 this Act, other than amounts paid as estimated tax under  
24 Section 5-30, are deemed to be assessed upon the date of  
25 receipt of payment, notwithstanding any other provisions of

1 this Act.

2 (d) No deficiency may be assessed with respect to a taxable  
3 year for which a return was filed unless a notice of deficiency  
4 for that year was issued not later than the date prescribed in  
5 Section 5-55.

6 Section 5-50. Deficiencies and overpayments.

7 (a) As soon as practical after a return is filed, the  
8 Department shall examine it to determine the correct amount of  
9 tax. If the Department finds that the amount of tax shown on  
10 the return is less than the correct amount, it shall issue a  
11 notice of deficiency to the taxpayer that sets forth the amount  
12 of tax and penalties proposed to be assessed. If the Department  
13 finds that the tax paid is more than the correct amount, it  
14 shall credit or refund the overpayment as provided by Section  
15 5-65. The findings of the Department under this subsection are  
16 prima facie correct and are prima facie evidence of the  
17 correctness of the amount of tax and penalties due.

18 (b) If the taxpayer fails to file a tax return, the  
19 Department shall determine the amount of tax due according to  
20 its best judgment and information, and the amount so fixed by  
21 the Department is prima facie correct and is prima facie  
22 evidence of the correctness of the amount of tax due. The  
23 Department shall issue a notice of deficiency to the taxpayer  
24 that sets forth the amount of tax and penalties proposed to be  
25 assessed.

1           (c) A notice of deficiency issued under this Act must set  
2           forth the adjustments giving rise to the proposed assessment  
3           and the reasons therefor.

4           (d) Assessment when no protest. Upon the expiration of 60  
5           days after the date on which it was issued, a notice of  
6           deficiency constitutes an assessment of the amount of tax and  
7           penalties specified therein, except only for such amounts as to  
8           which the taxpayer has filed a protest with the Department.

9           Section 5-55. Limitations on notices of deficiency and  
10          assessments.

11          (a) A notice of deficiency must be issued not later than 3  
12          years after the date that the return was filed. No deficiency  
13          may be assessed or collected with respect to the year for which  
14          the return was filed unless the notice is issued within that  
15          period.

16          (b) If no return is filed or a false and fraudulent return  
17          is filed with intent to evade the tax imposed by this Act, a  
18          notice of deficiency may be issued at any time.

19          (c) In any case in which there has been an erroneous refund  
20          of tax payable under this Act, a notice of deficiency may be  
21          issued at any time within 2 years from the making of the  
22          refund, or within 5 years from the making of the refund if it  
23          appears that any part of the refund was induced by fraud or the  
24          misrepresentation of a material fact, but the amount of any  
25          proposed assessment set forth in the notice is limited to the

1 amount of the erroneous refund.

2 (d) If a protest has been filed with respect to a notice of  
3 deficiency issued by the Department with respect to a taxable  
4 year and the decision of the Department on the protest has  
5 become final, the Department is barred from issuing a further  
6 or additional notice of deficiency for that taxable year,  
7 except in the case of fraud, mathematical error, or a return  
8 that is not considered processable, as the term is defined in  
9 Section 3-2 of the Uniform Penalty and Interest Act.

10 (e) The taxpayer at any time, whether or not a notice of  
11 deficiency has been issued, has the right to waive the  
12 restrictions on assessment and collection of the whole or any  
13 part of any proposed assessment under this Act by a signed  
14 notice in writing filed with the Department in the form and  
15 manner that the Department may provide by rule.

16 Section 5-60. Procedure on protest.

17 (a) Within 60 days after the issuance of a notice of  
18 deficiency, the taxpayer may file with the Department of  
19 Revenue a written protest against the proposed assessment, in  
20 the form and manner that the Department may provide by rule,  
21 setting forth the grounds on which the protest is based. If a  
22 protest is filed, the Department shall reconsider the proposed  
23 assessment and, if the taxpayer has so requested, shall grant  
24 the taxpayer or his or her authorized representative a hearing.

25 (b) As soon as practical after the reconsideration and

1 hearing, if any, the Department shall issue a notice of  
2 decision by mailing the notice by certified or registered mail.  
3 The notice must set forth briefly the Department's findings of  
4 fact and the basis of decision in each case decided in whole or  
5 in part adversely to the taxpayer.

6 (c) Within 30 days after the mailing of a notice of  
7 decision, the taxpayer may file with a Department a written  
8 request for rehearing in the form and manner that the  
9 Department may provide by rule, setting forth the grounds on  
10 which the rehearing is requested. In any such case, the  
11 Department shall, in its discretion, grant either a rehearing  
12 or Departmental review unless, within 10 days after receipt of  
13 the request, it issues a denial of the request by mailing the  
14 denial to the taxpayer by certified or registered mail. If  
15 rehearing or Departmental review is granted, as soon as  
16 practical after the rehearing or Departmental review, the  
17 Department shall issue a notice of final decision as provided  
18 in subsection (b).

19 (d) The action of the Department on the taxpayer's protest  
20 becomes final:

21 (1) 30 days after the issuance of a notice of decision  
22 as provided in subsection (b); or

23 (2) if a timely request for rehearing was made, upon  
24 the issuance of a denial of the request or the issuance of  
25 a notice of final decision, as provided in subsection (c).

1 Section 5-65. Credits and refunds.

2 (a) In the case of any overpayment, the Department of  
3 Revenue may credit the amount of the overpayment, including any  
4 interest allowed thereon, against any liability in respect of  
5 the tax imposed by this Act or any other act administered by  
6 the Department or against any liability of the taxpayer  
7 collectible by the Department, regardless of whether other  
8 collection remedies are closed to the Department on the part of  
9 the person who made the overpayment and shall refund any  
10 balance to that person.

11 (b) The Department may adopt rules providing for the  
12 crediting against the estimated tax for any taxable year of the  
13 amount determined by the taxpayer or the Department to be an  
14 overpayment of the tax imposed by this Act for a preceding  
15 taxable year.

16 (c) Interest is allowed and paid at the rate and in the  
17 manner set forth under Section 3-2 of the Uniform Penalty and  
18 Interest Act upon any overpayment in respect of the tax imposed  
19 by this Act. For purposes of this subsection, no amount of tax,  
20 for any taxable year, may be treated as having been paid before  
21 the date on which the tax return for that year was due under  
22 Section 5-20.

23 (d) Every claim for refund must be filed with the  
24 Department in writing in the form and manner that the  
25 Department may provide by rule, and must state the specific  
26 grounds upon which it is founded.

1           (e) As soon as practical after a claim for refund is filed,  
2 the Department shall examine it and either issue a notice of  
3 refund, abatement, or credit to the claimant or issue a notice  
4 of denial. If the Department has failed to approve or deny the  
5 claim before the expiration of 6 months after the date the  
6 claim was filed, then the claimant may nevertheless thereafter  
7 file with the Department a written protest in the form and  
8 manner that the Department may provide by rule. If a protest is  
9 filed, the Department shall consider the claim and, if the  
10 taxpayer has so requested, shall grant the taxpayer or the  
11 taxpayer's authorized representative a hearing within 6 months  
12 after the date the request is filed.

13           A denial of a claim for refund becomes final 60 days after  
14 the date of issuance of the notice of the denial except for  
15 those amounts denied as to which the claimant has filed a  
16 protest with the Department under Section 5-70.

17           (f) An overpayment of tax shown on the face of an unsigned  
18 return is considered forfeited to the State if, after notice  
19 and demand for signature by the Department, the taxpayer fails  
20 to provide a signature and 3 years have passed after the date  
21 the return was filed. An overpayment of tax refunded to a  
22 taxpayer whose return was filed electronically is considered an  
23 erroneous refund if, after proper notice and demand by the  
24 Department, the taxpayer fails to provide a required signature  
25 document. A notice and demand for signature in the case of a  
26 return reflecting an overpayment may be made by first class

1 mail.

2 (g) The Department shall pay refunds from the Consumers  
3 Overbilled and Reimbursed for Electricity Fund.

4 Section 5-70. Procedure on denial of claim for refund.

5 (a) Within 60 days after the denial of the claim, the  
6 claimant may file with the Department a written protest against  
7 the denial in the form and manner that the Department may  
8 provide by rule, setting forth the grounds on which the protest  
9 is based. If a protest is filed, the Department shall  
10 reconsider the denial and, if the taxpayer has so requested,  
11 shall grant the taxpayer or the taxpayer's authorized  
12 representative a hearing.

13 (b) As soon as practical after the reconsideration and  
14 hearing, if any, the Department shall issue a notice of  
15 decision by mailing the notice by certified or registered mail.  
16 The notice must set forth briefly the Department's findings of  
17 fact and the basis of decision in each case decided in whole or  
18 in part adversely to the claimant.

19 (c) Within 30 days after the mailing of a notice of  
20 decision, the claimant may file with the Department a written  
21 request for rehearing in the form and manner that the  
22 Department may provide by rule, setting forth the grounds on  
23 which rehearing is requested. In any such case, the Department  
24 shall, in its discretion, grant either a rehearing or  
25 Departmental review unless, within 10 days after the receipt of

1 the request, it issues a denial of the request by mailing the  
2 denial to the claimant by certified or registered mail. If  
3 rehearing or Departmental review is granted, as soon as  
4 practical after the rehearing or Departmental review, the  
5 Department shall issue a notice of final decision as provided  
6 in subsection (b).

7 (d) The action of the Department on the claimant's protest  
8 becomes final:

9 (1) 30 days after issuance of a notice of decision as  
10 provided in subsection (b); or

11 (2) if a timely request for rehearing was made, upon  
12 the issuance of a denial of the request or the issuance of  
13 a notice of final decision as provided in subsection (c).

14 Section 5-75. Limitations on claims for refund.

15 (a) A claim for refund must be filed no later than 3 years  
16 after the date that the return was filed or one year after the  
17 date that the tax was paid, whichever is the later. No credit  
18 or refund is allowed or made with respect to the year for which  
19 the claim was filed unless the claim is filed within that  
20 period.

21 (b) If the claim was filed by the claimant during the  
22 3-year period set forth in subsection (a), then the amount of  
23 the credit or refund may not exceed the portion of the tax paid  
24 within the period, immediately preceding the filing of the  
25 claim, equal to 3 years plus the period of any extension of

1 time for filing the return. If the claim was not filed within  
2 that 3-year period, then the amount of the credit or refund may  
3 not exceed the portion of the tax paid during the one year  
4 immediately preceding the filing of the claim.

5 Section 5-80. Recovery of erroneous refund. An erroneous  
6 refund is considered to be a deficiency of tax on the date made  
7 and is deemed to be assessed and must be collected as provided  
8 in Sections 5-45 and 5-50.

9 Section 5-85. Lien for tax.

10 (a) If any taxpayer neglects or refuses to pay the tax due  
11 under this Act after demand, then the amount (including any  
12 interest, additional amount, addition to tax, or assessable  
13 penalty, together with any costs that may accrue in addition  
14 thereto) is a lien in favor of the State of Illinois upon all  
15 property and rights to property, whether real or personal,  
16 belonging to that person.

17 (b) Unless another date is specifically fixed by law, the  
18 lien imposed by subsection (a) of this Section arises at the  
19 time the assessment is made and continues until the liability  
20 for the amount so assessed (or a judgment against the taxpayer  
21 arising out of such liability) is satisfied or becomes  
22 unenforceable by reason of lapse of time.

23 (c) If the lien arises from an assessment pursuant to a  
24 notice of deficiency, then the lien does not attach and the

1 notice referred to in this Section may not be filed until all  
2 proceedings in court for review of the assessment have  
3 terminated or the time for the taking thereof has expired  
4 without the proceedings being instituted.

5 (d) Notice of lien. The lien created by assessment  
6 terminates unless a notice of lien is filed, as provided in  
7 Section 5-95, within 3 years after the date all proceedings in  
8 court for the review of the assessment have terminated or the  
9 time for the taking thereof has expired without the proceedings  
10 being instituted. If the lien results from the filing of a  
11 return without payment of the tax or penalty shown therein to  
12 be due, then the lien terminates unless a notice of lien is  
13 filed within 3 years after the date the return was filed with  
14 the Department. For the purposes of this subsection (c), a tax  
15 return filed before the last day prescribed by law, including  
16 any extension thereof, is deemed to have been filed on that  
17 last day.

18 Section 5-90. Jeopardy assessment and lien.

19 (a) Assessment. If the Department finds that a taxpayer is  
20 about to conceal property or to do any other act tending to  
21 prejudice or to render wholly or partly ineffectual proceedings  
22 to collect any amount of tax or penalties imposed under this  
23 Act unless court proceedings are brought without delay or if  
24 the Department finds that the collection of that amount will be  
25 jeopardized by delay, the Department shall give the taxpayer

1 notice of those findings and shall make demand for immediate  
2 return and payment of that amount, whereupon that amount is  
3 deemed to be assessed and becomes immediately due and payable.

4 (b) If the taxpayer, within 5 days after the notice under  
5 subsection (a) does not comply with the notice or show to the  
6 Department that the findings in such notice are erroneous, then  
7 the Department may file a notice of jeopardy assessment lien in  
8 the office of the recorder of the county in which any property  
9 of the taxpayer may be located and shall notify the taxpayer of  
10 the filing. The jeopardy assessment lien has the same scope and  
11 effect as a statutory lien under this Act. The taxpayer is  
12 liable for the filing fee incurred by the Department for filing  
13 the lien and the filing fee incurred by the Department to file  
14 the release of that lien. The filing fees must be paid to the  
15 Department in addition to payment of the tax, penalty, and  
16 interest included in the amount of the lien.

17 (c) In the case of a tax for a current taxable year, the  
18 Director shall declare the taxable period of the taxpayer  
19 immediately terminated and his or her notice and demand for a  
20 return and immediate payment of the tax relates to the period  
21 declared terminated.

22 (d) If the taxpayer believes that he or she does not owe  
23 some or all of the amount for which the jeopardy assessment  
24 lien against him or her has been filed or that no jeopardy to  
25 the revenue in fact exists, he or she may protest within 20  
26 days after being notified by the Department of the filing of

1 the jeopardy assessment lien and request a hearing, whereupon  
2 the Department shall hold a hearing in conformity with the  
3 provisions of Section 5-120 and, pursuant thereto, shall notify  
4 the taxpayer of its decision as to whether the jeopardy  
5 assessment lien will be released.

6 Section 5-95. Filing and priority of liens.

7 (a) Nothing in this Act may be construed to give the  
8 Department a preference over the rights of any bona fide  
9 purchaser, holder of a security interest, mechanics lienor,  
10 mortgagee, or judgment lien creditor arising prior to the  
11 filing of a regular notice of lien or a notice of jeopardy  
12 assessment lien in the office of the recorder in the county in  
13 which the property subject to the lien is located. For purposes  
14 of this Section, the term "bona fide" does not include any  
15 mortgage of real or personal property or any other credit  
16 transaction that results in the mortgagee or the holder of the  
17 security acting as trustee for unsecured creditors of the  
18 taxpayer mentioned in the notice of lien who executed the  
19 chattel or real property mortgage or the document evidencing  
20 the credit transaction. The lien is inferior to the lien of  
21 general taxes, special assessments, and special taxes  
22 heretofore or hereafter levied by any political subdivision of  
23 this State.

24 (b) If title to land to be affected by the notice of lien  
25 or notice of jeopardy assessment lien is registered under the

1 provisions of the Registered Titles (Torrens) Act, then the  
2 notice must be filed in the office of the registrar of titles  
3 of the county within which the property subject to the lien is  
4 situated and must be entered upon the register of titles as a  
5 memorial of charge upon each folium of the register of titles  
6 affected by such notice, and the Department does not have a  
7 preference over the rights of any bona fide purchaser,  
8 mortgagee, judgment creditor, or other lien holder arising  
9 prior to the registration of the notice.

10 (c) The recorder of each county shall procure a file  
11 labeled "State Tax Lien Notices" and an index book labeled  
12 "State Tax Lien Index". When notice of any lien or jeopardy  
13 assessment lien is presented to him or her for filing, he or  
14 she shall file it in numerical order in the file and shall  
15 enter it alphabetically in the index. The entry must show the  
16 name and last known address of the person named in the notice,  
17 the serial number of the notice, the date and hour of filing,  
18 whether it is a regular lien or a jeopardy assessment lien, and  
19 the amount of tax and penalty due and unpaid, plus the amount  
20 of interest due at the time when the notice of lien or jeopardy  
21 assessment is filed.

22 (d) No recorder or registrar of titles of any county may  
23 require that the Department pay any costs or fees in connection  
24 with recordation of any notice or other document filed by the  
25 Department under this Act at the time the notice or other  
26 document is presented for recordation. The recorder or

1 registrar of each county, in order to receive payment for fees  
2 or costs incurred by the Department, may present the Department  
3 with monthly statements indicating the amount of fees and costs  
4 incurred by the Department and for which no payment has been  
5 received.

6 (e) The taxpayer is liable for the filing fee incurred by  
7 the Department for filing the lien and the filing fee incurred  
8 by the Department to file the release of that lien. The filing  
9 fees must be paid to the Department in addition to payment of  
10 the tax, penalty, and interest included in the amount of the  
11 lien.

12 Section 5-100. Duration of lien. The lien provided under  
13 this Act continues for 20 years from the date of filing the  
14 notice of lien under the provisions of Section 5-95 unless  
15 sooner released or otherwise discharged.

16 Section 5-105. Release of liens.

17 (a) In general. Upon payment by the taxpayer to the  
18 Department in cash or by guaranteed remittance of an amount  
19 representing the filing fees and charges for the lien and the  
20 filing fees and charges for the release of that lien, the  
21 Department shall release all or any portion of the property  
22 subject to any lien provided for in this Act and file that  
23 complete or partial release of lien with the recorder of the  
24 county where that lien was filed if it determines that the

1 release will not endanger or jeopardize the collection of the  
2 amount secured thereby.

3 (b) If, on judicial review, the final judgment of the court  
4 is that the taxpayer does not owe some or all of the amount  
5 secured by the lien against him or her, or that no jeopardy to  
6 the revenue exists, then the Department shall release its lien  
7 to the extent of that finding of nonliability or to the extent  
8 of that finding of no jeopardy to the revenue. The taxpayer is,  
9 however, liable for the filing fee paid by the Department to  
10 file the lien and the filing fee required to file a release of  
11 the lien. The filing fees must be paid to the Department.

12 (c) The Department shall also release its jeopardy  
13 assessment lien against the taxpayer if the tax and penalty  
14 covered by the lien, plus any interest that may be due and an  
15 amount representing the filing fee to file the lien and the  
16 filing fee required to file a release of that lien, are paid by  
17 the taxpayer to the Department in cash or by guaranteed  
18 remittance.

19 (d) The Department shall issue a certificate of complete or  
20 partial release of the lien upon payment by the taxpayer to the  
21 Department in cash or by guaranteed remittance of an amount  
22 representing the filing fee paid by the Department to file the  
23 lien and the filing fee required to file the release of that  
24 lien:

25 (1) to the extent that the fair market value of any  
26 property subject to the lien exceeds the amount of the lien

1 plus the amount of all prior liens upon the property;

2 (2) to the extent that the lien becomes unenforceable;

3 (3) to the extent that the amount of the lien is paid  
4 by the person whose property is subject to the lien,  
5 together with any interest and penalty which may become due  
6 under this Act between the date when the notice of lien is  
7 filed and the date when the amount of the lien is paid;

8 (4) to the extent that there is furnished to the  
9 Department, on a form to be approved and with a surety or  
10 sureties satisfactory to the Department, a bond that is  
11 conditioned upon the payment of the amount of the lien,  
12 together with any interest which may become due under this  
13 Act after the notice of lien is filed, but before the  
14 amount thereof is fully paid; and

15 (5) to the extent and under the circumstances specified  
16 in this Section.

17 A certificate of complete or partial release of any lien is  
18 held to be conclusive that the lien upon the property covered  
19 by the certificate is extinguished to the extent indicated by  
20 the certificate. The release of lien must be issued to the  
21 person, or his or her agent, against whom the lien was obtained  
22 and must contain in legible letters a statement as follows:

23 FOR THE PROTECTION OF THE OWNER, THIS RELEASE SHALL BE  
24 FILED WITH THE RECORDER OR THE REGISTRAR OF TITLES IN WHOSE  
25 OFFICE THE LIEN WAS FILED.

26 (e) If a certificate of complete or partial release of lien

1 issued by the Department is presented for filing in the office  
2 of the recorder or registrar of titles where a notice of lien  
3 or notice of jeopardy assessment lien was filed, then:

4 (1) the recorder, in the case of nonregistered  
5 property, shall permanently attach the certificate of  
6 release to the notice of lien or notice of jeopardy  
7 assessment lien and shall enter the certificate of release  
8 and the date in the "State Tax Lien Index" on the line  
9 where the notice of lien or notice of jeopardy assessment  
10 lien is entered; and

11 (2) in the case of registered property, the registrar  
12 of titles shall file and enter upon each folium of the  
13 register of titles affected thereby a memorial of the  
14 certificate of release, which when so entered, acts as a  
15 release pro tanto of any memorial of the notice of lien or  
16 notice of jeopardy assessment lien previously filed and  
17 registered.

18 Section 5-110. Nonliability for costs of legal  
19 proceedings. The Department is not be required to furnish any  
20 bond nor to make a deposit for or pay any costs or fees of any  
21 court or officer thereof in any legal proceedings pursuant to  
22 the provisions of this Act.

23 Section 5-115. Claim to property. If any process issued  
24 from any court for the enforcement or collection of any

1 liability created by this Act is levied by any sheriff or other  
2 authorized person upon any personal property and the property  
3 is claimed by any person other than the defendant as exempt  
4 from enforcement of a judgment thereon by virtue of the  
5 exemption laws of this State, then it is the duty of the person  
6 making the claim to give notice in writing of his or her claim  
7 and of his or her intention to prosecute the same to the  
8 sheriff or other person within 10 days after the making of the  
9 levy. On receiving such a notice, the sheriff or other person  
10 shall proceed in accordance with the provisions of Part 2 of  
11 Article XII of the Code of Civil Procedure. The giving of the  
12 notice within the 10-day period is a condition precedent to any  
13 judicial action against the sheriff or other authorized person  
14 for wrongfully levying, seizing, or selling the property and  
15 any such person who fails to give notice within the time is  
16 forever barred from bringing any judicial action against the  
17 sheriff or other person for injury or damages to or conversion  
18 of the property.

19 Section 5-120. Foreclosure on real property. In addition to  
20 any other remedy provided for by the laws of this State, and  
21 provided that no hearing or proceedings for review provided by  
22 this Act is pending and the time for the taking thereof has  
23 expired, the Department may foreclose in the circuit court any  
24 lien on real property for any tax or penalty imposed by this  
25 Act to the same extent and in the same manner as in the

1 enforcement of other liens. The proceedings to foreclose may  
2 not be instituted more than 5 years after the filing of the  
3 notice of lien under the provisions of Section 5-95. The  
4 process, practice, and procedure for the foreclosure is the  
5 same as provided in the Civil Practice Law.

6 Section 5-125. Demand and seizure. In addition to any other  
7 remedy provided for by the laws of this State, if the tax  
8 imposed by this Act is not paid within the time required by  
9 this Act, the Department, or some person designated by it, may  
10 cause a demand to be made on the taxpayer for the payment  
11 thereof. If the tax remains unpaid for 10 days after such a  
12 demand has been made and no proceedings have been taken to  
13 review the same, then the Department may issue a warrant  
14 directed to any sheriff or other person authorized to serve  
15 process, commanding the sheriff or other person to levy upon  
16 the property and rights to property (whether real or personal,  
17 tangible or intangible) of the taxpayer, without exemption,  
18 found within his or her jurisdiction, for the payment of the  
19 amount thereof with the added penalties, interest, and the cost  
20 of executing the warrant. The term "levy" includes the power of  
21 distraint and seizure by any means. In any case in which the  
22 warrant to levy has been issued, the sheriff or other person to  
23 whom the warrant was directed may seize and sell the property  
24 or rights to property. The warrant must be returned to the  
25 Department together with the money collected by virtue thereof

1 within the time therein specified, which may not be less than  
2 20 nor more than 90 days after the date of the warrant. The  
3 sheriff or other person to whom the warrant is directed shall  
4 proceed in the same manner as prescribed by law in respect to  
5 the enforcement against property upon judgments by a court, and  
6 is entitled to the same fees for his or her services in  
7 executing the warrant, to be collected in the same manner. The  
8 Department, or some officer, employee, or agent designated by  
9 it, is hereby authorized to bid for and purchase any property  
10 sold under the provisions of this Section. No proceedings for a  
11 levy under this Section may be commenced more than 20 years  
12 after the latest date for filing of the notice of lien under  
13 the provisions of Section 5-95, without regard to whether the  
14 notice was actually filed.

15 Any officer or employee of the Department designated in  
16 writing by the Director is authorized to serve process under  
17 this Section to levy upon accounts or other intangible assets  
18 of a taxpayer held by a financial organization, as defined in  
19 Section 1501 of the Illinois Income Tax Act. In addition to any  
20 other provisions of this Section, any officer or employee of  
21 the Department designated in writing by the Director may levy  
22 upon the following property and rights to property belonging to  
23 a taxpayer: contractual payments, accounts and notes  
24 receivable and other evidences of debt, and interest on bonds  
25 by serving a notice of levy on the person making the payment.  
26 The levy may not be made until the Department has caused a

1 demand to be made on the taxpayer in the manner provided in  
2 this Section. A lien obtained hereunder has priority over any  
3 subsequent lien obtained pursuant to Section 12-808 of the Code  
4 of Civil Procedure.

5 Any officer or employee of the Department designated in  
6 writing by the Director is authorized to serve process under  
7 this Section to levy upon accounts or other intangible assets  
8 of a taxpayer held by a financial organization, as defined in  
9 Section 1501 of the Illinois Income Tax Act. In addition to any  
10 other provisions of this Section, any officer or employee of  
11 the Department designated in writing by the Director may levy  
12 upon the following property and rights to property belonging to  
13 a taxpayer: contractual payments, accounts and notes  
14 receivable and other evidences of debt, and interest on bonds  
15 by serving a notice of levy on the person making the payment.  
16 The levy may not be made until the Department has caused a  
17 demand to be made on the taxpayer in the manner provided in  
18 this Section. A lien obtained hereunder has priority over any  
19 subsequent lien obtained pursuant to Section 12-808 of the Code  
20 of Civil Procedure.

21 In any case where property or rights to property have been  
22 seized by an officer of the Department of State Police, or  
23 successor agency thereto, under the authority of a warrant to  
24 levy issued by the Department of Revenue, the Department of  
25 Revenue may take possession of and may sell the property or  
26 rights to property and the Department of Revenue may contract

1 with third persons to conduct sales of the property or rights  
2 to the property. In the conduct of these sales, the Department  
3 of Revenue shall proceed in the same manner as is prescribed by  
4 law for proceeding against property to enforce judgments that  
5 are entered by a circuit court of this State. If, in the  
6 Department of Revenue's opinion, no offer to purchase at the  
7 sale is acceptable and the State's interest would be better  
8 served by retaining the property for sale at a later date, then  
9 the Department may decline to accept any bid and may retain the  
10 property for sale at a later date.

11 Section 5-130. Redemption by State. The provisions of  
12 Section 5g of the Retailers' Occupation Tax Act (relating to  
13 time for redemption by the State of real estate sold at  
14 judicial or execution sale) apply for purposes of this Act as  
15 if those provisions were set forth in this Act in their  
16 entirety.

17 Section 5-135. Access to books and records. All books and  
18 records and other papers and documents that are required by  
19 this Act to be kept must, at all times during business hours of  
20 the day, be subject to inspection by the Department or its duly  
21 authorized agents and employees. If, during the course of any  
22 audit, investigation, or hearing, the Department determines  
23 that a taxpayer lacks necessary documentary evidence, the  
24 Department is authorized to notify the taxpayer, in writing, to

1 produce the evidence. The taxpayer has 60 days, subject to the  
2 right of the Department to extend this period either on request  
3 for good cause shown or on its own motion, after the date the  
4 notice is personally delivered or sent to the taxpayer by  
5 certified or registered mail in which to obtain and produce the  
6 evidence for the Department's inspection. The failure to  
7 provide the requested evidence within the 60-day period  
8 precludes the taxpayer from providing the evidence at a later  
9 date during the audit, investigation, or hearing.

10 Section 5-140. Conduct of investigations and hearings. For  
11 the purpose of administering and enforcing the provisions of  
12 this Act, the Department, or any officer or employee of the  
13 Department designated, in writing, by the Director may hold  
14 investigations and hearings concerning any matters covered by  
15 this Act and may examine any books, papers, records, or  
16 memoranda bearing upon such matters, and may require the  
17 attendance of any person, or any officer or employee of that  
18 person, having knowledge of such matters, and may take  
19 testimony and require proof for its information. In the conduct  
20 of any investigation or hearing, neither the Department nor any  
21 officer or employee thereof is bound by the technical rules of  
22 evidence, and no informality in any proceeding, or in the  
23 manner of taking testimony, invalidates any order, decision,  
24 rule, or regulation made or approved or confirmed by the  
25 Department. The Director, or any officer or employee of the

1 Department authorized by the Director has power to administer  
2 oaths to those persons. The books, papers, records, and  
3 memoranda of the Department, or parts thereof, may be proved in  
4 any hearing, investigation, or legal proceeding by a reproduced  
5 copy thereof or by a computer print-out of Department records,  
6 under the certificate of the Director. If reproduced copies of  
7 the Department's books, papers, records, or memoranda are  
8 offered as proof, then the Director must certify that those  
9 copies are true and exact copies of the records on file with  
10 the Department. If computer print-outs of records of the  
11 Department are offered as proof, then the Director must certify  
12 that those computer print-outs are true and exact  
13 representations of records properly entered into standard  
14 electronic computing equipment, in the regular course of the  
15 Department's business, at or reasonably near the time of the  
16 occurrence of the facts recorded, from trustworthy and reliable  
17 information. The reproduced copy shall, without further proof,  
18 be admitted into evidence before the Department or in any legal  
19 proceeding.

20 Section 5-145. Immunity of witnesses. No person is excused  
21 from testifying or from producing any books, papers, records,  
22 or memoranda in any investigation or upon any hearing, when  
23 ordered to do so by the Department or any officer or employee  
24 thereof, upon the ground that the testimony or evidence,  
25 documentary or otherwise, may tend to incriminate him or her or

1 subject him or her to a criminal penalty, but no person may be  
2 prosecuted or subjected to any criminal penalty for, or on  
3 account of, any transaction made or thing concerning which he  
4 or she may testify or produce evidence, documentary or  
5 otherwise, before the Department or an officer or employee  
6 thereof; provided, that the immunity extends only to a natural  
7 person who, in obedience to a subpoena, gives testimony under  
8 oath or produces evidence, documentary or otherwise, under  
9 oath. No person so testifying is exempt from prosecution and  
10 punishment for perjury committed in so testifying.

11 Section 5-150. Production of witnesses and records.

12 (a) The Department or any officer or employee of the  
13 Department designated in writing by the Director, shall at its  
14 or his or her own instance, or on the written request of any  
15 other party to the proceeding, issue subpoenas requiring the  
16 attendance of and the giving of testimony by witnesses, and  
17 subpoenas duces tecum requiring the production of books,  
18 papers, records, or memoranda. All subpoenas and subpoenas  
19 duces tecum issued under this Act may be served by any person  
20 of full age.

21 (b) The fees of witnesses for attendance and travel are the  
22 same as the fees of witnesses before a Circuit Court of this  
23 State, such fees to be paid when the witness is excused from  
24 further attendance. When the witness is subpoenaed at the  
25 instance of the Department or any officer or employee thereof,

1 the fees must be paid in the same manner as other expenses of  
2 the Department, and when the witness is subpoenaed at the  
3 instance of any other party to any such proceeding, the  
4 Department may require that the cost of service of the subpoena  
5 or subpoenas duces tecum and the fee of the witness be borne by  
6 the party at whose instance the witness is summoned. In such  
7 case, the Department, in its discretion, may require a deposit  
8 to cover the cost of the service and witness fees. A subpoena  
9 or subpoena duces tecum so issued must be served in the same  
10 manner as a subpoena issued out of a court.

11 (c) Any Circuit Court of this State, upon the application  
12 of the Department or any officer or employee thereof, or upon  
13 the application of any other party to the proceeding may, in  
14 its discretion, compel the attendance of witnesses, the  
15 production of books, papers, records, or memoranda and the  
16 giving of testimony before the Department or any officer or  
17 employee thereof conducting an investigation or holding a  
18 hearing authorized by this Act, by an attachment for contempt,  
19 or otherwise, in the same manner as production of evidence may  
20 be compelled before the Court.

21 Section 5-155. Place of hearings. All hearings provided  
22 for in this Act with respect to or concerning a taxpayer having  
23 a residence or its commercial domicile in this State must be  
24 held at the Department of Revenue's office nearest to the  
25 location of that residence or domicile, except that, if the

1 taxpayer has its commercial domicile in Cook County, the  
2 hearing must be held in Cook County. If the taxpayer does not  
3 have its commercial domicile in this State, the hearing must be  
4 held in Cook County.

5 Section 5-160. Penalties and interest.

6 (a) Penalties and interest imposed by the Uniform Penalty  
7 and Interest Act with respect to the obligations of a taxpayer  
8 under this Act must be paid upon notice and demand and, except  
9 as provided in subsection (b), must be assessed, collected, and  
10 paid in the same manner as the tax imposed by this Act, and any  
11 reference in this Act to the tax imposed by this Act refers  
12 also to interest and penalties imposed by the Uniform Penalty  
13 and Interest Act.

14 (b) Interest is deemed to be assessed upon the assessment  
15 of the tax to which the interest relates. Penalties for late  
16 payment or underpayment are deemed to be assessed upon  
17 assessment of the tax to which the penalty relates.

18 Section 5-165. Administrative Review Law. The provisions  
19 of the Administrative Review Law, and the rules adopted  
20 pursuant thereto, apply to and govern all proceedings for the  
21 judicial review of final actions of the Department. These final  
22 actions constitute "administrative decisions", as defined in  
23 Section 3-101 of the Code of Civil Procedure.

1           Section 5-170. Venue. The Circuit Court of the county  
2 where the taxpayer has his or her residence or commercial  
3 domicile, or of Cook County in those cases where the taxpayer  
4 does not have his or her residence or commercial domicile in  
5 this State, has the power to review all final administrative  
6 decisions of the Department in administering the provisions of  
7 this Act.

8           Section 5-175. Service, certification, and dismissal.

9           (a) Service upon the Director or the Assistant Director of  
10 Revenue of summons issued in an action to review a final  
11 administrative decision of the Department is service upon the  
12 Department.

13           (b) The Department shall certify the record of its  
14 proceedings if the taxpayer pays to it the sum of \$0.75 per  
15 page of testimony taken before the Department and \$0.25 per  
16 page of all other matters contained in the record, except that  
17 these charges may be waived if the Department is satisfied that  
18 the aggrieved party is a poor person who cannot afford to pay  
19 the charges.

20           (c) If payment for the record is not made by the taxpayer  
21 within 30 days after notice from the Department or the Attorney  
22 General of the cost thereof, the court in which the proceeding  
23 is pending, on motion of the Department, shall dismiss the  
24 complaint and shall enter judgment against the taxpayer and in  
25 favor of the Department in accordance with the final action of

1 the Department, together with interest on any deficiency to the  
2 date of entry of the judgment, and also for costs.

3 Section 5-180. Crimes.

4 (a) Any person who is subject to the provisions of this Act  
5 and who willfully fails to file a return, who files a  
6 fraudulent return, or who willfully attempts in any other  
7 manner to evade or defeat any tax imposed by this Act or the  
8 payment thereof or any accountant or other agent who knowingly  
9 enters false information on the return of any taxpayer under  
10 this Act, is, in addition to other penalties, guilty of a Class  
11 4 felony for the first offense and a Class 3 felony for each  
12 subsequent offense. Any person who is subject to this Act and  
13 who willfully violates any rule or regulation of the Department  
14 of Revenue for the administration and enforcement of this Act  
15 or who fails to keep books and records as required in this Act  
16 is, in addition to other penalties, guilty of a Class A  
17 misdemeanor.

18 (b) Any person who accepts money that is due to the  
19 Department under this Act from a taxpayer for the purpose of  
20 acting as the taxpayer's agent to make the payment to the  
21 Department, but who willfully fails to remit that payment to  
22 the Department when due, is guilty of a Class A misdemeanor.  
23 Any such person who purports to make that payment by issuing or  
24 delivering a check or other order upon a real or fictitious  
25 depository for the payment of money, knowing that it will not

1 be paid by the depository, is guilty of a deceptive practice in  
2 violation of Section 17-1 of the Criminal Code of 1961.

3 (c) Any person whose commercial domicile or whose residence  
4 is in this State and who is charged with a violation under this  
5 Section must be tried in the county where his or her commercial  
6 domicile or his or her residence is located unless he or she  
7 asserts a right to be tried in another venue. A prosecution for  
8 any act or omission in violation of this Section may be  
9 commenced at any time within 5 years after the commission of  
10 that act or failure to act.

11 Section 5-185. Adoption of rules. The Department is  
12 authorized to make, adopt, and enforce such reasonable rules  
13 and regulations, and to prescribe such forms, relating to the  
14 administration and enforcement of the provisions of this Act,  
15 as it may deem appropriate.

16 Section 5-190. Notice. If notice is required by this Act,  
17 then the notice must, if not otherwise provided, be given or  
18 issued by mailing it by registered or certified mail addressed  
19 to the person concerned at his or her last known address.

20 Section 5-195. Amounts less than \$1.

21 (a) Payments, refunds, etc. The Department may by rule  
22 provide that, if a total amount of less than \$1 is payable,  
23 refundable, or creditable, then the amount may be disregarded

1 or, alternatively, is disregarded if it is less than \$0.50 and  
2 is increased to \$1 if it is \$0.50 or more.

3 (b) The Department may by rule provide that any amount that  
4 is required to be shown or reported on any return or other  
5 document under this Act is, if that amount is not a  
6 whole-dollar amount, increased to the nearest whole-dollar  
7 amount in any case where the fractional part of a dollar is  
8 \$0.50 or more and decreased to the nearest whole-dollar amount  
9 when the fractional part of a dollar is less than \$0.50.

10 Section 5-200. Administrative Procedure Act; application.

11 (a) The Illinois Administrative Procedure Act is hereby  
12 expressly adopted and applies to all administrative rules and  
13 procedures of the Department under this Act, except that: (1)  
14 paragraph (b) of Section 5-10 of the Illinois Administrative  
15 Procedure Act does not apply to final orders, decisions, and  
16 opinions of the Department; (2) subparagraph (a)(2) of Section  
17 5-10 of the Illinois Administrative Procedure Act does not  
18 apply to forms established by the Department for use under this  
19 Act; and (3) the provisions of Section 10-45 of the Illinois  
20 Administrative Procedure Act regarding proposals for decision  
21 are excluded and not applicable to the Department under this  
22 Act.

23 (b) For the public interest, safety, and welfare, in order  
24 to initially implement this Act, the Department is authorized  
25 to adopt emergency rules under Section 5-45 of the Illinois

1 Administrative Procedure Act.

2 ARTICLE 99. SEVERABILITY; EFFECTIVE DATE

3 Section 99-97. Severability. The provisions of this Act are  
4 severable under Section 1.31 of the Statute on Statutes.

5 Section 99-99. Effective date. This Act takes effect upon  
6 becoming law.".