



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

HB3549

Introduced 2/24/2005, by Rep. Elaine Nekritz

#### SYNOPSIS AS INTRODUCED:

220 ILCS 5/16-101A  
220 ILCS 5/16-102  
220 ILCS 5/16-107

Amends the Public Utilities Act. Requires each electric utility to file, on or before February 1, 2006, a tariff or tariffs which allow residential retail customers in the electric utility's service area to elect real-time pricing beginning January 1, 2007. Sets forth information required to be included in the tariff. Requires an electric utility providing real-time pricing to install an appropriate meter for customers who elect to use real-time pricing and in all new service locations unless the customer requests a watt-hour meter. Requires the electric utility to contract with an Illinois nonprofit corporation to develop a program of consumer outreach, education, and enrollment concerning real-time pricing and to establish and administer information and technical and customer assistance for management of electricity use. Authorizes the electric utility to impose a uniform charge on all residential customers in order to recover its reasonable costs in complying with the real-time pricing provisions. Defines "real-time pricing" to mean tariffed retail charges for delivered electric power and energy that vary hour-to-hour (now, that vary on an hour-to-hour basis for non-residential retail customers and that vary on a periodic basis during the day for residential retail customers) and that are determined from prices posted by the Independent System Operator or by a comparable methodology approved by the Illinois Commerce Commission. Effective immediately.

LRB094 11268 MKM 42121 b

1 AN ACT concerning regulation.

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

4 Section 5. The Public Utilities Act is amended by changing  
5 Sections 16-101A, 16-102, and 16-107 as follows:

6 (220 ILCS 5/16-101A)

7 Sec. 16-101A. Legislative findings.

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

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

25 (c) With the advent of increasing competition in this  
26 industry, the State has a continued interest in assuring that  
27 the safety, reliability, and affordability of electrical power  
28 is not sacrificed to competitive pressures, and to that end,  
29 intends to implement safeguards to assure that the industry  
30 continues to operate the electrical system in a manner that  
31 will serve the public's interest. Under the existing regulatory  
32 framework, the industry has been encouraged to undertake

1 certain investments in its physical plant and personnel to  
2 enhance its efficient operation, the cost of which it has been  
3 permitted to pass on to consumers. The State has an interest in  
4 providing the existing utilities a reasonable opportunity to  
5 obtain a return on certain investments on which they depended  
6 in undertaking those commitments in the first instance while,  
7 at the same time, not permitting new entrants into the industry  
8 to take unreasonable advantage of the investments made by the  
9 formerly regulated industry.

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

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

23 (f) The efficiency of electric markets depends both upon  
24 the competitiveness of supply and upon the  
25 price-responsiveness of the demand for service. Therefore, to  
26 ensure the lowest total cost of service and to enhance the  
27 reliability of service, all classes of the electricity  
28 customers of electric utilities should have access to and be  
29 able to voluntarily use real-time pricing and other price-and  
30 demand-response mechanisms.

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

32 (220 ILCS 5/16-102)

33 Sec. 16-102. Definitions. For the purposes of this Article  
34 the following terms shall be defined as set forth in this  
35 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  
27 obtains its electric power and energy from that customer's own  
28 cogeneration or self-generation facilities, (v) an entity that  
29 owns, operates, sells, or arranges for the installation of a  
30 customer's own cogeneration or self-generation facilities, but  
31 only to the extent the entity is engaged in owning, selling or  
32 arranging for the installation of such facility, or operating  
33 the facility on behalf of such customer, provided however that  
34 any such third party owner or operator of a facility built  
35 after January 1, 1999, complies with the labor provisions of  
36 Section 16-128(a) as though such third party were an

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

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

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

34 "Contract service" means (1) services, including the  
35 provision of electric power and energy or other services, that  
36 are provided by mutual agreement between an electric utility

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

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

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

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

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

31 "Real-time pricing" means tariffed retail charges for  
32 delivered electric power and energy that vary ~~on an~~  
33 hour-to-hour and are determined from prices posted by the  
34 Independent System Operator or by a comparable methodology  
35 approved by the Illinois Commerce Commission ~~basis for~~  
36 ~~nonresidential retail customers and that vary on a periodic~~

1 ~~basis during the day for residential retail customers.~~

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

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

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

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

34 "Transition charge" means a charge expressed in cents per  
35 kilowatt-hour that is calculated for a customer or class of  
36 customers as follows for each year in which an electric utility

1 is entitled to recover transition charges as provided in  
2 Section 16-108:

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

30 (2) less the amount of revenue, other than revenue from  
31 transition charges and decommissioning rates, that the  
32 electric utility would receive from such retail customers  
33 for delivery services provided by the electric utility,  
34 assuming such customers were taking delivery services for  
35 all of their usage, based on the delivery services tariffs  
36 in effect during the year for which the transition charge



1 is being calculated and on the usage identified in  
2 paragraph (1);

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

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

15 (A) for nonresidential retail customers, an amount  
16 equal to the greater of (i) 0.5 cents per kilowatt-hour  
17 during the period October 1, 1999 through December 31,  
18 2004, 0.6 cents per kilowatt-hour in calendar year  
19 2005, and 0.9 cents per kilowatt-hour in calendar year  
20 2006, multiplied in each year by the usage identified  
21 in paragraph (1), or (ii) an amount equal to the  
22 following percentages of the amount produced by  
23 applying the applicable base rates (adjusted as  
24 described in subparagraph (1)(B)) or contract rate to  
25 the usage identified in paragraph (1): 8% for the  
26 period October 1, 1999 through December 31, 2002, 10%  
27 in calendar years 2003 and 2004, 11% in calendar year  
28 2005 and 12% in calendar year 2006; and

29 (B) for residential retail customers, an amount  
30 equal to the following percentages of the amount  
31 produced by applying the base rates in effect on  
32 October 1, 1996 (adjusted as described in subparagraph  
33 (1)(B)) to the usage identified in paragraph (1): (i)  
34 6% from May 1, 2002 through December 31, 2002, (ii) 7%  
35 in calendar years 2003 and 2004, (iii) 8% in calendar  
36 year 2005, and (iv) 10% in calendar year 2006;

1           (5) divided by the usage of such customers identified  
2           in paragraph (1),  
3           provided that the transition charge shall never be less than  
4           zero.

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

8           (Source: P.A. 91-50, eff. 6-30-99; 92-537, eff. 6-6-02.)

9           (220 ILCS 5/16-107)

10          Sec. 16-107. Real-time pricing.

11          (a) Each electric utility shall file, on or before May 1,  
12          1998, a tariff or tariffs which allow nonresidential retail  
13          customers in the electric utility's service area to elect  
14          real-time pricing beginning October 1, 1998.

15          (b) Each electric utility shall file, on or before May 1,  
16          2000, a tariff or tariffs which allow residential retail  
17          customers in the electric utility's service area to elect  
18          real-time pricing beginning October 1, 2000.

19          (b-5) Each electric utility shall file, on or before  
20          February 1, 2006, a tariff or tariffs which allow residential  
21          retail customers in the electric utility's service area to  
22          elect real-time pricing beginning January 1, 2007.

23          The tariff or tariffs filed pursuant to this subsection  
24          shall describe: (i) the methodology for determining the market  
25          price of energy to be reflected in the real-time rate; (ii)  
26          cost-based distribution and transmission charges that are no  
27          greater than the charges made to other residential customers;  
28          (iii) a customer charge no greater than that charged to other  
29          residential customers; and (iv) an information system that  
30          provides customers ready access to hourly market prices,  
31          including, but not limited to, day-ahead hourly energy prices,  
32          price change notification, and other information and technical  
33          assistance necessary to enable customers to manage electricity  
34          use.

35          Each electric utility providing real-time pricing shall

1 install a meter capable of recording hourly interval energy use  
2 at the service location of each customer that elects real-time  
3 pricing pursuant to this subsection and shall install such a  
4 meter in all new service locations unless a watt-hour meter is  
5 specifically requested by the customer.

6 The electric utility shall contract with and shall fully  
7 and adequately compensate an Illinois nonprofit corporation in  
8 accordance with this subsection to develop and implement a  
9 program to provide consumer outreach, enrollment, and  
10 education concerning real-time pricing and to establish and  
11 administer an information system and technical and other  
12 customer assistance that is necessary to enable customers to  
13 manage electricity use. The Illinois nonprofit corporation:  
14 (i) shall be selected and compensated by the electric utility,  
15 subject to Commission approval; (ii) shall have demonstrated  
16 technical and managerial competence in the development and  
17 administration of demand management programs; and (iii) may  
18 develop and implement risk management, energy efficiency, and  
19 other services related to energy use management for which it  
20 shall be compensated by participants in the program. The  
21 electric utility shall provide the Illinois nonprofit  
22 corporation with all information and assistance necessary to  
23 perform its duties, including, but not limited to, customer,  
24 account, and energy use data. The electric utility shall permit  
25 the contractor to include inserts in residential customer bills  
26 at least 2 times per year to assist with customer outreach and  
27 enrollment.

28 The Illinois nonprofit corporation shall submit an annual  
29 report to the electric utility no later than April 1 of each  
30 year describing the operation and results of the program,  
31 including information concerning the number and types of  
32 customers using real-time pricing, changes in customers'  
33 energy use patterns, an assessment of the value of the program  
34 to both participants and non-participants, and recommendations  
35 concerning modification of the program and the tariff or  
36 tariffs filed under this subsection. This report shall be filed

1 by the electric utility with the Commission within 30 days of  
2 receipt and shall be available to the public on the  
3 Commission's web site.

4 The electric utility and the Illinois nonprofit  
5 corporation shall each work to achieve the goal of enrolling at  
6 least 3% of residential retail customers in real-time pricing  
7 by the year 2010.

8 The electric utility shall be entitled to recover  
9 reasonable costs incurred by the electric utility in complying  
10 with the requirements of this subsection by imposing a uniform  
11 charge, included in its distribution charge, on all residential  
12 customers in its service territory.

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

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

16 Section 99. Effective date. This Act takes effect upon  
17 becoming law.