



SR0821

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SENATE RESOLUTION

2 WHEREAS, The 97th Illinois General Assembly passed Senate
3 Bill 1652 and House Bill 3036 with supermajority votes in both
4 legislative chambers; Senate Bill 1652 became law on October
5 26, 2011 as Public Act 97-616 and House Bill 3036 became law on
6 December 30, 2011 as Public Act 97-646; and

7 WHEREAS, Public Act 97-616, which is commonly referred to
8 as the Energy Infrastructure Modernization Act, confers
9 substantial benefits upon the State's electric utility
10 customers; it established detailed infrastructure investment
11 plans to modernize and upgrade the State's aging electric grid
12 in order to ensure the continued provision of safe, reliable,
13 and affordable service to Illinoisans; participating utilities
14 that elect to undertake the infrastructure investment plan may
15 recover their costs through a performance-based formula rate
16 tariff mechanism, which was designed to increase
17 predictability, stability, and transparency in the ratemaking
18 process; and

19 WHEREAS, Public Act 97-646 was enacted as "trailer
20 legislation" to Public Act 97-616 with the intent to amend the
21 Energy Infrastructure Modernization Act to provide additional
22 benefits to customers; and

1 WHEREAS, To make this investment possible, the
2 performance-based formula rate tariff must, among other
3 things, establish and set forth certain protocols providing
4 that participating utilities recover the costs of service and
5 these investments, including, but not limited to, allowing for
6 the recovery of an "investment return on pension assets net of
7 deferred tax benefits equal to the utility's long-term debt
8 cost of capital as of the end of the applicable calendar year",
9 which is set forth in subparagraph (D) of paragraph (4) of
10 subsection (c) of Section 16-108.5 of the Public Utilities Act;
11 and

12 WHEREAS, In so providing, the General Assembly did not, and
13 did not intend to, overturn or generally depart from Illinois
14 Commerce Commission practice and law regarding the
15 establishment of these protocols, including the electric
16 utility's ability to continue to recover a return on its
17 pension assets as the Commission has previously allowed; and

18 WHEREAS, No statutory authority was given to the Illinois
19 Commerce Commission to deny recovery of a return on what is
20 commonly referred to as, what is reported in the Federal Energy
21 Regulatory Commission Form 1 (FERC Form 1) as, and what the
22 General Assembly regarded to be a pension asset; and

23 WHEREAS, The Energy Infrastructure Modernization Act

1 further provides in subsections (c) and (d) of Section 16-108.5
2 that those amounts to be credited or charged to customers
3 following the annual reconciliation process under the
4 performance-based formula rate shall be "with interest" so the
5 utility will be made whole for unrecovered amounts that were
6 prudently and reasonably incurred and customers will be made
7 whole for amounts they overpaid, if any; and

8 WHEREAS, Such interest is intended to be set at the
9 utility's weighted average cost of capital, determined in
10 accordance with the statute, which represents the reasonable
11 cost and means of financing a utility's investments and
12 operating costs, so that the utility and customers are made
13 whole when charges or credits are necessary to reconcile to
14 actual prudent and reasonable investments and costs; and

15 WHEREAS, The Energy Infrastructure Modernization Act also
16 provides that the final year-end cost data filed in FERC Form 1
17 should generally be used to determine rates; and

18 WHEREAS, No statutory authority was given to the Illinois
19 Commerce Commission to set rate base and capital structure
20 using average numbers that do not represent final year-end
21 values reflected in the FERC Form 1, and the Illinois Commerce
22 Commission's use of such average is contrary to the statute;
23 and

1 WHEREAS, The Illinois Supreme and Appellate Courts have
2 consistently held that, because the administrative agencies
3 are creatures of statute, administrative agencies possess only
4 those powers expressly delegated by law and may not act beyond
5 its statutorily delegated authority; and

6 WHEREAS, The Illinois Supreme and Appellate Courts have
7 consistently held that public policy in Illinois is expressed
8 by the General Assembly, and it is not the province of an
9 administrative agency to inquire into the wisdom and propriety
10 of the legislature's act or to substitute its own judgment for
11 that of the legislature; therefore, be it

12 RESOLVED, BY THE SENATE OF THE NINETY-SEVENTH GENERAL
13 ASSEMBLY OF THE STATE OF ILLINOIS, that we express serious
14 concerns that the Illinois Commerce Commission Order, entered
15 on May 29, 2012 in Commission Docket No. 11-0721, fails to
16 reflect the statutory directives and the intent of the Illinois
17 General Assembly by: (1) not allowing Commonwealth Edison
18 Company to earn a return on what is commonly referred to as,
19 identified in the FERC Form 1 as, and what the General Assembly
20 referred to as a pension asset in subparagraph (D) of paragraph
21 (4) of subsection (c) of Section 16-108.5; (2) assessing
22 interest on those amounts to be credited or charged to
23 customers as set forth in subsection (d) of Section 16-108.5 of

1 the Public Utilities Act at an amount that is not based on the
2 utility's weighted average cost of capital; and (3) determining
3 rate base and capital structure using an average, rather than
4 the year-end amounts as reflected in FERC Form 1; and be it
5 further

6 RESOLVED, That we urge that the Illinois Commerce
7 Commission rehear the matter and, upon rehearing, reach a
8 decision that reflects statutory directives and the intent of
9 the Illinois General Assembly in passing Public Acts 97-616 and
10 97-646 as reaffirmed in this resolution; and be it further

11 RESOLVED, That suitable copies of this resolution be
12 delivered to the Governor of the State of Illinois and the
13 Chairman and Commissioners of the Illinois Commerce
14 Commission.