



Rep. Jay Hoffman

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1 AMENDMENT TO SENATE BILL 851

2 AMENDMENT NO. _____. Amend Senate Bill 851 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Public Utilities Act is amended by
5 changing Sections 16-108.5 and 21-201 as follows:

6 (220 ILCS 5/16-108.5)

7 Sec. 16-108.5. Infrastructure investment and
8 modernization; regulatory reform.

9 (a) (Blank).

10 (b) For purposes of this Section, "participating utility"
11 means an electric utility or a combination utility serving
12 more than 1,000,000 customers in Illinois that voluntarily
13 elects and commits to undertake (i) the infrastructure
14 investment program consisting of the commitments and
15 obligations described in this subsection (b) and (ii) the
16 customer assistance program consisting of the commitments and

1 obligations described in subsection (b-10) of this Section,
2 notwithstanding any other provisions of this Act and without
3 obtaining any approvals from the Commission or any other
4 agency other than as set forth in this Section, regardless of
5 whether any such approval would otherwise be required.
6 "Combination utility" means a utility that, as of January 1,
7 2011, provided electric service to at least one million retail
8 customers in Illinois and gas service to at least 500,000
9 retail customers in Illinois. A participating utility shall
10 recover the expenditures made under the infrastructure
11 investment program through the ratemaking process, including,
12 but not limited to, the performance-based formula rate and
13 process set forth in this Section.

14 During the infrastructure investment program's peak
15 program year, a participating utility other than a combination
16 utility shall create 2,000 full-time equivalent jobs in
17 Illinois, and a participating utility that is a combination
18 utility shall create 450 full-time equivalent jobs in Illinois
19 related to the provision of electric service. These jobs shall
20 include direct jobs, contractor positions, and induced jobs,
21 but shall not include any portion of a job commitment, not
22 specifically contingent on an amendatory Act of the 97th
23 General Assembly becoming law, between a participating utility
24 and a labor union that existed on December 30, 2011 (the
25 effective date of Public Act 97-646) and that has not yet been
26 fulfilled. A portion of the full-time equivalent jobs created

1 by each participating utility shall include incremental
2 personnel hired subsequent to December 30, 2011 (the effective
3 date of Public Act 97-646). For purposes of this Section,
4 "peak program year" means the consecutive 12-month period with
5 the highest number of full-time equivalent jobs that occurs
6 between the beginning of investment year 2 and the end of
7 investment year 4.

8 A participating utility shall meet one of the following
9 commitments, as applicable:

10 (1) Beginning no later than 180 days after a
11 participating utility other than a combination utility
12 files a performance-based formula rate tariff pursuant to
13 subsection (c) of this Section, or, beginning no later
14 than January 1, 2012 if such utility files such
15 performance-based formula rate tariff within 14 days of
16 October 26, 2011 (the effective date of Public Act
17 97-616), the participating utility shall, except as
18 provided in subsection (b-5):

19 (A) over a 5-year period, invest an estimated
20 \$1,300,000,000 in electric system upgrades,
21 modernization projects, and training facilities,
22 including, but not limited to:

23 (i) distribution infrastructure improvements
24 totaling an estimated \$1,000,000,000, including
25 underground residential distribution cable
26 injection and replacement and mainline cable

1 system refurbishment and replacement projects;

2 (ii) training facility construction or upgrade
3 projects totaling an estimated \$10,000,000,
4 provided that, at a minimum, one such facility
5 shall be located in a municipality having a
6 population of more than 2 million residents and
7 one such facility shall be located in a
8 municipality having a population of more than
9 150,000 residents but fewer than 170,000
10 residents; any such new facility located in a
11 municipality having a population of more than 2
12 million residents must be designed for the purpose
13 of obtaining, and the owner of the facility shall
14 apply for, certification under the United States
15 Green Building Council's Leadership in Energy
16 Efficiency Design Green Building Rating System;

17 (iii) wood pole inspection, treatment, and
18 replacement programs;

19 (iv) an estimated \$200,000,000 for reducing
20 the susceptibility of certain circuits to
21 storm-related damage, including, but not limited
22 to, high winds, thunderstorms, and ice storms;
23 improvements may include, but are not limited to,
24 overhead to underground conversion and other
25 engineered outcomes for circuits; the
26 participating utility shall prioritize the

1 selection of circuits based on each circuit's
2 historical susceptibility to storm-related damage
3 and the ability to provide the greatest customer
4 benefit upon completion of the improvements; to be
5 eligible for improvement, the participating
6 utility's ability to maintain proper tree
7 clearances surrounding the overhead circuit must
8 not have been impeded by third parties; and

9 (B) over a 10-year period, invest an estimated
10 \$1,300,000,000 to upgrade and modernize its
11 transmission and distribution infrastructure and in
12 Smart Grid electric system upgrades, including, but
13 not limited to:

- 14 (i) additional smart meters;
15 (ii) distribution automation;
16 (iii) associated cyber secure data
17 communication network; and
18 (iv) substation micro-processor relay
19 upgrades.

20 (2) Beginning no later than 180 days after a
21 participating utility that is a combination utility files
22 a performance-based formula rate tariff pursuant to
23 subsection (c) of this Section, or, beginning no later
24 than January 1, 2012 if such utility files such
25 performance-based formula rate tariff within 14 days of
26 October 26, 2011 (the effective date of Public Act

1 97-616), the participating utility shall, except as
2 provided in subsection (b-5):

3 (A) over a 10-year period, invest an estimated
4 \$265,000,000 in electric system upgrades,
5 modernization projects, and training facilities,
6 including, but not limited to:

7 (i) distribution infrastructure improvements
8 totaling an estimated \$245,000,000, which may
9 include bulk supply substations, transformers,
10 reconductoring, and rebuilding overhead
11 distribution and sub-transmission lines,
12 underground residential distribution cable
13 injection and replacement and mainline cable
14 system refurbishment and replacement projects;

15 (ii) training facility construction or upgrade
16 projects totaling an estimated \$1,000,000; any
17 such new facility must be designed for the purpose
18 of obtaining, and the owner of the facility shall
19 apply for, certification under the United States
20 Green Building Council's Leadership in Energy
21 Efficiency Design Green Building Rating System;
22 and

23 (iii) wood pole inspection, treatment, and
24 replacement programs; and

25 (B) over a 10-year period, invest an estimated
26 \$360,000,000 to upgrade and modernize its transmission

1 and distribution infrastructure and in Smart Grid
2 electric system upgrades, including, but not limited
3 to:

4 (i) additional smart meters;

5 (ii) distribution automation;

6 (iii) associated cyber secure data
7 communication network; and

8 (iv) substation micro-processor relay
9 upgrades.

10 For purposes of this Section, "Smart Grid electric system
11 upgrades" shall have the meaning set forth in subsection (a)
12 of Section 16-108.6 of this Act.

13 The investments in the infrastructure investment program
14 described in this subsection (b) shall be incremental to the
15 participating utility's annual capital investment program, as
16 defined by, for purposes of this subsection (b), the
17 participating utility's average capital spend for calendar
18 years 2008, 2009, and 2010 as reported in the applicable
19 Federal Energy Regulatory Commission (FERC) Form 1; provided
20 that where one or more utilities have merged, the average
21 capital spend shall be determined using the aggregate of the
22 merged utilities' capital spend reported in FERC Form 1 for
23 the years 2008, 2009, and 2010. A participating utility may
24 add reasonable construction ramp-up and ramp-down time to the
25 investment periods specified in this subsection (b). For each
26 such investment period, the ramp-up and ramp-down time shall

1 not exceed a total of 6 months.

2 Within 60 days after filing a tariff under subsection (c)
3 of this Section, a participating utility shall submit to the
4 Commission its plan, including scope, schedule, and staffing,
5 for satisfying its infrastructure investment program
6 commitments pursuant to this subsection (b). The submitted
7 plan shall include a schedule and staffing plan for the next
8 calendar year. The plan shall also include a plan for the
9 creation, operation, and administration of a Smart Grid test
10 bed as described in subsection (c) of Section 16-108.8. The
11 plan need not allocate the work equally over the respective
12 periods, but should allocate material increments throughout
13 such periods commensurate with the work to be undertaken. No
14 later than April 1 of each subsequent year, the utility shall
15 submit to the Commission a report that includes any updates to
16 the plan, a schedule for the next calendar year, the
17 expenditures made for the prior calendar year and
18 cumulatively, and the number of full-time equivalent jobs
19 created for the prior calendar year and cumulatively. If the
20 utility is materially deficient in satisfying a schedule or
21 staffing plan, then the report must also include a corrective
22 action plan to address the deficiency. The fact that the plan,
23 implementation of the plan, or a schedule changes shall not
24 imply the imprudence or unreasonableness of the infrastructure
25 investment program, plan, or schedule. Further, no later than
26 45 days following the last day of the first, second, and third

1 quarters of each year of the plan, a participating utility
2 shall submit to the Commission a verified quarterly report for
3 the prior quarter that includes (i) the total number of
4 full-time equivalent jobs created during the prior quarter,
5 (ii) the total number of employees as of the last day of the
6 prior quarter, (iii) the total number of full-time equivalent
7 hours in each job classification or job title, (iv) the total
8 number of incremental employees and contractors in support of
9 the investments undertaken pursuant to this subsection (b) for
10 the prior quarter, and (v) any other information that the
11 Commission may require by rule.

12 With respect to the participating utility's peak job
13 commitment, if, after considering the utility's corrective
14 action plan and compliance thereunder, the Commission enters
15 an order finding, after notice and hearing, that a
16 participating utility did not satisfy its peak job commitment
17 described in this subsection (b) for reasons that are
18 reasonably within its control, then the Commission shall also
19 determine, after consideration of the evidence, including, but
20 not limited to, evidence submitted by the Department of
21 Commerce and Economic Opportunity and the utility, the
22 deficiency in the number of full-time equivalent jobs during
23 the peak program year due to such failure. The Commission
24 shall notify the Department of any proceeding that is
25 initiated pursuant to this paragraph. For each full-time
26 equivalent job deficiency during the peak program year that

1 the Commission finds as set forth in this paragraph, the
2 participating utility shall, within 30 days after the entry of
3 the Commission's order, pay \$6,000 to a fund for training
4 grants administered under Section 605-800 of the Department of
5 Commerce and Economic Opportunity Law, which shall not be a
6 recoverable expense.

7 With respect to the participating utility's investment
8 amount commitments, if, after considering the utility's
9 corrective action plan and compliance thereunder, the
10 Commission enters an order finding, after notice and hearing,
11 that a participating utility is not satisfying its investment
12 amount commitments described in this subsection (b), then the
13 utility shall no longer be eligible to annually update the
14 performance-based formula rate tariff pursuant to subsection
15 (d) of this Section. In such event, the then current rates
16 shall remain in effect until such time as new rates are set
17 pursuant to Article IX of this Act, subject to retroactive
18 adjustment, with interest, to reconcile rates charged with
19 actual costs.

20 If the Commission finds that a participating utility is no
21 longer eligible to update the performance-based formula rate
22 tariff pursuant to subsection (d) of this Section, or the
23 performance-based formula rate is otherwise terminated, then
24 the participating utility's voluntary commitments and
25 obligations under this subsection (b) shall immediately
26 terminate, except for the utility's obligation to pay an

1 amount already owed to the fund for training grants pursuant
2 to a Commission order.

3 In meeting the obligations of this subsection (b), to the
4 extent feasible and consistent with State and federal law, the
5 investments under the infrastructure investment program should
6 provide employment opportunities for all segments of the
7 population and workforce, including minority-owned and
8 female-owned business enterprises, and shall not, consistent
9 with State and federal law, discriminate based on race or
10 socioeconomic status.

11 (b-5) Nothing in this Section shall prohibit the
12 Commission from investigating the prudence and reasonableness
13 of the expenditures made under the infrastructure investment
14 program during the annual review required by subsection (d) of
15 this Section and shall, as part of such investigation,
16 determine whether the utility's actual costs under the program
17 are prudent and reasonable. The fact that a participating
18 utility invests more than the minimum amounts specified in
19 subsection (b) of this Section or its plan shall not imply
20 imprudence or unreasonableness.

21 If the participating utility finds that it is implementing
22 its plan for satisfying the infrastructure investment program
23 commitments described in subsection (b) of this Section at a
24 cost below the estimated amounts specified in subsection (b)
25 of this Section, then the utility may file a petition with the
26 Commission requesting that it be permitted to satisfy its

1 commitments by spending less than the estimated amounts
2 specified in subsection (b) of this Section. The Commission
3 shall, after notice and hearing, enter its order approving, or
4 approving as modified, or denying each such petition within
5 150 days after the filing of the petition.

6 In no event, absent General Assembly approval, shall the
7 capital investment costs incurred by a participating utility
8 other than a combination utility in satisfying its
9 infrastructure investment program commitments described in
10 subsection (b) of this Section exceed \$3,000,000,000 or, for a
11 participating utility that is a combination utility,
12 \$720,000,000. If the participating utility's updated cost
13 estimates for satisfying its infrastructure investment program
14 commitments described in subsection (b) of this Section exceed
15 the limitation imposed by this subsection (b-5), then it shall
16 submit a report to the Commission that identifies the
17 increased costs and explains the reason or reasons for the
18 increased costs no later than the year in which the utility
19 estimates it will exceed the limitation. The Commission shall
20 review the report and shall, within 90 days after the
21 participating utility files the report, report to the General
22 Assembly its findings regarding the participating utility's
23 report. If the General Assembly does not amend the limitation
24 imposed by this subsection (b-5), then the utility may modify
25 its plan so as not to exceed the limitation imposed by this
26 subsection (b-5) and may propose corresponding changes to the

1 metrics established pursuant to subparagraphs (5) through (8)
2 of subsection (f) of this Section, and the Commission may
3 modify the metrics and incremental savings goals established
4 pursuant to subsection (f) of this Section accordingly.

5 (b-10) All participating utilities shall make
6 contributions for an energy low-income and support program in
7 accordance with this subsection. Beginning no later than 180
8 days after a participating utility files a performance-based
9 formula rate tariff pursuant to subsection (c) of this
10 Section, or beginning no later than January 1, 2012 if such
11 utility files such performance-based formula rate tariff
12 within 14 days of December 30, 2011 (the effective date of
13 Public Act 97-646), and without obtaining any approvals from
14 the Commission or any other agency other than as set forth in
15 this Section, regardless of whether any such approval would
16 otherwise be required, a participating utility other than a
17 combination utility shall pay \$10,000,000 per year for 5 years
18 and a participating utility that is a combination utility
19 shall pay \$1,000,000 per year for 10 years to the energy
20 low-income and support program, which is intended to fund
21 customer assistance programs with the primary purpose being
22 avoidance of imminent disconnection. Such programs may
23 include:

24 (1) a residential hardship program that may partner
25 with community-based organizations, including senior
26 citizen organizations, and provides grants to low-income

1 residential customers, including low-income senior
2 citizens, who demonstrate a hardship;

3 (2) a program that provides grants and other bill
4 payment concessions to veterans with disabilities who
5 demonstrate a hardship and members of the armed services
6 or reserve forces of the United States or members of the
7 Illinois National Guard who are on active duty pursuant to
8 an executive order of the President of the United States,
9 an act of the Congress of the United States, or an order of
10 the Governor and who demonstrate a hardship;

11 (3) a budget assistance program that provides tools
12 and education to low-income senior citizens to assist them
13 with obtaining information regarding energy usage and
14 effective means of managing energy costs;

15 (4) a non-residential special hardship program that
16 provides grants to non-residential customers such as small
17 businesses and non-profit organizations that demonstrate a
18 hardship, including those providing services to senior
19 citizen and low-income customers; and

20 (5) a performance-based assistance program that
21 provides grants to encourage residential customers to make
22 on-time payments by matching a portion of the customer's
23 payments or providing credits towards arrearages.

24 The payments made by a participating utility pursuant to
25 this subsection (b-10) shall not be a recoverable expense. A
26 participating utility may elect to fund either new or existing

1 customer assistance programs, including, but not limited to,
2 those that are administered by the utility.

3 Programs that use funds that are provided by a
4 participating utility to reduce utility bills may be
5 implemented through tariffs that are filed with and reviewed
6 by the Commission. If a utility elects to file tariffs with the
7 Commission to implement all or a portion of the programs,
8 those tariffs shall, regardless of the date actually filed, be
9 deemed accepted and approved, and shall become effective on
10 December 30, 2011 (the effective date of Public Act 97-646).
11 The participating utilities whose customers benefit from the
12 funds that are disbursed as contemplated in this Section shall
13 file annual reports documenting the disbursement of those
14 funds with the Commission. The Commission has the authority to
15 audit disbursement of the funds to ensure they were disbursed
16 consistently with this Section.

17 If the Commission finds that a participating utility is no
18 longer eligible to update the performance-based formula rate
19 tariff pursuant to subsection (d) of this Section, or the
20 performance-based formula rate is otherwise terminated, then
21 the participating utility's voluntary commitments and
22 obligations under this subsection (b-10) shall immediately
23 terminate.

24 (c) A participating utility may elect to recover its
25 delivery services costs through a performance-based formula
26 rate approved by the Commission, which shall specify the cost

1 components that form the basis of the rate charged to
2 customers with sufficient specificity to operate in a
3 standardized manner and be updated annually with transparent
4 information that reflects the utility's actual costs to be
5 recovered during the applicable rate year, which is the period
6 beginning with the first billing day of January and extending
7 through the last billing day of the following December. In the
8 event the utility recovers a portion of its costs through
9 automatic adjustment clause tariffs on October 26, 2011 (the
10 effective date of Public Act 97-616), the utility may elect to
11 continue to recover these costs through such tariffs, but then
12 these costs shall not be recovered through the
13 performance-based formula rate. In the event the participating
14 utility, prior to December 30, 2011 (the effective date of
15 Public Act 97-646), filed electric delivery services tariffs
16 with the Commission pursuant to Section 9-201 of this Act that
17 are related to the recovery of its electric delivery services
18 costs that are still pending on December 30, 2011 (the
19 effective date of Public Act 97-646), the participating
20 utility shall, at the time it files its performance-based
21 formula rate tariff with the Commission, also file a notice of
22 withdrawal with the Commission to withdraw the electric
23 delivery services tariffs previously filed pursuant to Section
24 9-201 of this Act. Upon receipt of such notice, the Commission
25 shall dismiss with prejudice any docket that had been
26 initiated to investigate the electric delivery services

1 tariffs filed pursuant to Section 9-201 of this Act, and such
2 tariffs and the record related thereto shall not be the
3 subject of any further hearing, investigation, or proceeding
4 of any kind related to rates for electric delivery services.

5 The performance-based formula rate shall be implemented
6 through a tariff filed with the Commission consistent with the
7 provisions of this subsection (c) that shall be applicable to
8 all delivery services customers. The Commission shall initiate
9 and conduct an investigation of the tariff in a manner
10 consistent with the provisions of this subsection (c) and the
11 provisions of Article IX of this Act to the extent they do not
12 conflict with this subsection (c). Except in the case where
13 the Commission finds, after notice and hearing, that a
14 participating utility is not satisfying its investment amount
15 commitments under subsection (b) of this Section, the
16 performance-based formula rate shall remain in effect at the
17 discretion of the utility. The performance-based formula rate
18 approved by the Commission shall do the following:

19 (1) Provide for the recovery of the utility's actual
20 costs of delivery services that are prudently incurred and
21 reasonable in amount consistent with Commission practice
22 and law. The sole fact that a cost differs from that
23 incurred in a prior calendar year or that an investment is
24 different from that made in a prior calendar year shall
25 not imply the imprudence or unreasonableness of that cost
26 or investment.

1 (2) Reflect the utility's actual year-end capital
2 structure for the applicable calendar year, excluding
3 goodwill, subject to a determination of prudence and
4 reasonableness consistent with Commission practice and
5 law. To enable the financing of the incremental capital
6 expenditures, including regulatory assets, for electric
7 utilities that serve less than 3,000,000 retail customers
8 but more than 500,000 retail customers in the State, a
9 participating electric utility's actual year-end capital
10 structure that includes a common equity ratio, excluding
11 goodwill, of up to and including 50% of the total capital
12 structure shall be deemed reasonable and used to set
13 rates.

14 (3) Include a cost of equity, which shall be
15 calculated as the sum of the following:

16 (A) the average for the applicable calendar year
17 of the monthly average yields of 30-year U.S. Treasury
18 bonds published by the Board of Governors of the
19 Federal Reserve System in its weekly H.15 Statistical
20 Release or successor publication; and

21 (B) 580 basis points.

22 At such time as the Board of Governors of the Federal
23 Reserve System ceases to include the monthly average
24 yields of 30-year U.S. Treasury bonds in its weekly H.15
25 Statistical Release or successor publication, the monthly
26 average yields of the U.S. Treasury bonds then having the

1 longest duration published by the Board of Governors in
2 its weekly H.15 Statistical Release or successor
3 publication shall instead be used for purposes of this
4 paragraph (3).

5 (4) Permit and set forth protocols, subject to a
6 determination of prudence and reasonableness consistent
7 with Commission practice and law, for the following:

8 (A) recovery of incentive compensation expense
9 that is based on the achievement of operational
10 metrics, including metrics related to budget controls,
11 outage duration and frequency, safety, customer
12 service, efficiency and productivity, and
13 environmental compliance. Incentive compensation
14 expense that is based on net income or an affiliate's
15 earnings per share shall not be recoverable under the
16 performance-based formula rate;

17 (B) recovery of pension and other post-employment
18 benefits expense, provided that such costs are
19 supported by an actuarial study;

20 (C) recovery of severance costs, provided that if
21 the amount is over \$3,700,000 for a participating
22 utility that is a combination utility or \$10,000,000
23 for a participating utility that serves more than 3
24 million retail customers, then the full amount shall
25 be amortized consistent with subparagraph (F) of this
26 paragraph (4);

1 (D) investment return at a rate equal to the
2 utility's weighted average cost of long-term debt, on
3 the pension assets as, and in the amount, reported in
4 Account 186 (or in such other Account or Accounts as
5 such asset may subsequently be recorded) of the
6 utility's most recently filed FERC Form 1, net of
7 deferred tax benefits;

8 (E) recovery of the expenses related to the
9 Commission proceeding under this subsection (c) to
10 approve this performance-based formula rate and
11 initial rates or to subsequent proceedings related to
12 the formula, provided that the recovery shall be
13 amortized over a 3-year period; recovery of expenses
14 related to the annual Commission proceedings under
15 subsection (d) of this Section to review the inputs to
16 the performance-based formula rate shall be expensed
17 and recovered through the performance-based formula
18 rate;

19 (F) amortization over a 5-year period of the full
20 amount of each charge or credit that exceeds
21 \$3,700,000 for a participating utility that is a
22 combination utility or \$10,000,000 for a participating
23 utility that serves more than 3 million retail
24 customers in the applicable calendar year and that
25 relates to a workforce reduction program's severance
26 costs, changes in accounting rules, changes in law,

1 compliance with any Commission-initiated audit, or a
2 single storm or other similar expense, provided that
3 any unamortized balance shall be reflected in the rate
4 base. For purposes of this subparagraph (F), changes
5 in law includes any enactment, repeal, or amendment in
6 a law, ordinance, rule, regulation, interpretation,
7 permit, license, consent, or order, including those
8 relating to taxes, accounting, or to environmental
9 matters, or in the interpretation or application
10 thereof by any governmental authority occurring after
11 October 26, 2011 (the effective date of Public Act
12 97-616);

13 (G) recovery of existing regulatory assets over
14 the periods previously authorized by the Commission;

15 (H) historical weather normalized billing
16 determinants; and

17 (I) allocation methods for common costs.

18 (5) Provide that if the participating utility's earned
19 rate of return on common equity related to the provision
20 of delivery services for the prior rate year (calculated
21 using costs and capital structure approved by the
22 Commission as provided in subparagraph (2) of this
23 subsection (c), consistent with this Section, in
24 accordance with Commission rules and orders, including,
25 but not limited to, adjustments for goodwill, and after
26 any Commission-ordered disallowances and taxes) is more

1 than 50 basis points higher than the rate of return on
2 common equity calculated pursuant to paragraph (3) of this
3 subsection (c) (after adjusting for any penalties to the
4 rate of return on common equity applied pursuant to the
5 performance metrics provision of subsection (f) of this
6 Section), then the participating utility shall apply a
7 credit through the performance-based formula rate that
8 reflects an amount equal to the value of that portion of
9 the earned rate of return on common equity that is more
10 than 50 basis points higher than the rate of return on
11 common equity calculated pursuant to paragraph (3) of this
12 subsection (c) (after adjusting for any penalties to the
13 rate of return on common equity applied pursuant to the
14 performance metrics provision of subsection (f) of this
15 Section) for the prior rate year, adjusted for taxes. If
16 the participating utility's earned rate of return on
17 common equity related to the provision of delivery
18 services for the prior rate year (calculated using costs
19 and capital structure approved by the Commission as
20 provided in subparagraph (2) of this subsection (c),
21 consistent with this Section, in accordance with
22 Commission rules and orders, including, but not limited
23 to, adjustments for goodwill, and after any
24 Commission-ordered disallowances and taxes) is more than
25 50 basis points less than the return on common equity
26 calculated pursuant to paragraph (3) of this subsection

1 (c) (after adjusting for any penalties to the rate of
2 return on common equity applied pursuant to the
3 performance metrics provision of subsection (f) of this
4 Section), then the participating utility shall apply a
5 charge through the performance-based formula rate that
6 reflects an amount equal to the value of that portion of
7 the earned rate of return on common equity that is more
8 than 50 basis points less than the rate of return on common
9 equity calculated pursuant to paragraph (3) of this
10 subsection (c) (after adjusting for any penalties to the
11 rate of return on common equity applied pursuant to the
12 performance metrics provision of subsection (f) of this
13 Section) for the prior rate year, adjusted for taxes.

14 (6) Provide for an annual reconciliation, as described
15 in subsection (d) of this Section, with interest, of the
16 revenue requirement reflected in rates for each calendar
17 year, beginning with the calendar year in which the
18 utility files its performance-based formula rate tariff
19 pursuant to subsection (c) of this Section, with what the
20 revenue requirement would have been had the actual cost
21 information for the applicable calendar year been
22 available at the filing date.

23 The utility shall file, together with its tariff, final
24 data based on its most recently filed FERC Form 1, plus
25 projected plant additions and correspondingly updated
26 depreciation reserve and expense for the calendar year in

1 which the tariff and data are filed, that shall populate the
2 performance-based formula rate and set the initial delivery
3 services rates under the formula. For purposes of this
4 Section, "FERC Form 1" means the Annual Report of Major
5 Electric Utilities, Licensees and Others that electric
6 utilities are required to file with the Federal Energy
7 Regulatory Commission under the Federal Power Act, Sections 3,
8 4(a), 304 and 209, modified as necessary to be consistent with
9 83 Ill. Adm. Admin. Code Part 415 as of May 1, 2011. Nothing in
10 this Section is intended to allow costs that are not otherwise
11 recoverable to be recoverable by virtue of inclusion in FERC
12 Form 1.

13 After the utility files its proposed performance-based
14 formula rate structure and protocols and initial rates, the
15 Commission shall initiate a docket to review the filing. The
16 Commission shall enter an order approving, or approving as
17 modified, the performance-based formula rate, including the
18 initial rates, as just and reasonable within 270 days after
19 the date on which the tariff was filed, or, if the tariff is
20 filed within 14 days after October 26, 2011 (the effective
21 date of Public Act 97-616), then by May 31, 2012. Such review
22 shall be based on the same evidentiary standards, including,
23 but not limited to, those concerning the prudence and
24 reasonableness of the costs incurred by the utility, the
25 Commission applies in a hearing to review a filing for a
26 general increase in rates under Article IX of this Act. The

1 initial rates shall take effect within 30 days after the
2 Commission's order approving the performance-based formula
3 rate tariff.

4 Until such time as the Commission approves a different
5 rate design and cost allocation pursuant to subsection (e) of
6 this Section, rate design and cost allocation across customer
7 classes shall be consistent with the Commission's most recent
8 order regarding the participating utility's request for a
9 general increase in its delivery services rates.

10 Subsequent changes to the performance-based formula rate
11 structure or protocols shall be made as set forth in Section
12 9-201 of this Act, but nothing in this subsection (c) is
13 intended to limit the Commission's authority under Article IX
14 and other provisions of this Act to initiate an investigation
15 of a participating utility's performance-based formula rate
16 tariff, provided that any such changes shall be consistent
17 with paragraphs (1) through (6) of this subsection (c). Any
18 change ordered by the Commission shall be made at the same time
19 new rates take effect following the Commission's next order
20 pursuant to subsection (d) of this Section, provided that the
21 new rates take effect no less than 30 days after the date on
22 which the Commission issues an order adopting the change.

23 A participating utility that files a tariff pursuant to
24 this subsection (c) must submit a one-time \$200,000 filing fee
25 at the time the Chief Clerk of the Commission accepts the
26 filing, which shall be a recoverable expense.

1 In the event the performance-based formula rate is
2 terminated, the then current rates shall remain in effect
3 until such time as new rates are set pursuant to Article IX of
4 this Act, subject to retroactive rate adjustment, with
5 interest, to reconcile rates charged with actual costs. At
6 such time that the performance-based formula rate is
7 terminated, the participating utility's voluntary commitments
8 and obligations under subsection (b) of this Section shall
9 immediately terminate, except for the utility's obligation to
10 pay an amount already owed to the fund for training grants
11 pursuant to a Commission order issued under subsection (b) of
12 this Section.

13 (d) Subsequent to the Commission's issuance of an order
14 approving the utility's performance-based formula rate
15 structure and protocols, and initial rates under subsection
16 (c) of this Section, the utility shall file, on or before May 1
17 of each year, with the Chief Clerk of the Commission its
18 updated cost inputs to the performance-based formula rate for
19 the applicable rate year and the corresponding new charges.
20 Each such filing shall conform to the following requirements
21 and include the following information:

22 (1) The inputs to the performance-based formula rate
23 for the applicable rate year shall be based on final
24 historical data reflected in the utility's most recently
25 filed annual FERC Form 1 plus projected plant additions
26 and correspondingly updated depreciation reserve and

1 expense for the calendar year in which the inputs are
2 filed. The filing shall also include a reconciliation of
3 the revenue requirement that was in effect for the prior
4 rate year (as set by the cost inputs for the prior rate
5 year) with the actual revenue requirement for the prior
6 rate year (determined using a year-end rate base) that
7 uses amounts reflected in the applicable FERC Form 1 that
8 reports the actual costs for the prior rate year. Any
9 over-collection or under-collection indicated by such
10 reconciliation shall be reflected as a credit against, or
11 recovered as an additional charge to, respectively, with
12 interest calculated at a rate equal to the utility's
13 weighted average cost of capital approved by the
14 Commission for the prior rate year, the charges for the
15 applicable rate year. Provided, however, that the first
16 such reconciliation shall be for the calendar year in
17 which the utility files its performance-based formula rate
18 tariff pursuant to subsection (c) of this Section and
19 shall reconcile (i) the revenue requirement or
20 requirements established by the rate order or orders in
21 effect from time to time during such calendar year
22 (weighted, as applicable) with (ii) the revenue
23 requirement determined using a year-end rate base for that
24 calendar year calculated pursuant to the performance-based
25 formula rate using (A) actual costs for that year as
26 reflected in the applicable FERC Form 1, and (B) for the

1 first such reconciliation only, the cost of equity, which
2 shall be calculated as the sum of 590 basis points plus the
3 average for the applicable calendar year of the monthly
4 average yields of 30-year U.S. Treasury bonds published by
5 the Board of Governors of the Federal Reserve System in
6 its weekly H.15 Statistical Release or successor
7 publication. The first such reconciliation is not intended
8 to provide for the recovery of costs previously excluded
9 from rates based on a prior Commission order finding of
10 imprudence or unreasonableness. Each reconciliation shall
11 be certified by the participating utility in the same
12 manner that FERC Form 1 is certified. The filing shall
13 also include the charge or credit, if any, resulting from
14 the calculation required by paragraph (6) of subsection
15 (c) of this Section.

16 Notwithstanding anything that may be to the contrary,
17 the intent of the reconciliation is to ultimately
18 reconcile the revenue requirement reflected in rates for
19 each calendar year, beginning with the calendar year in
20 which the utility files its performance-based formula rate
21 tariff pursuant to subsection (c) of this Section, with
22 what the revenue requirement determined using a year-end
23 rate base for the applicable calendar year would have been
24 had the actual cost information for the applicable
25 calendar year been available at the filing date.

26 (2) The new charges shall take effect beginning on the

1 first billing day of the following January billing period
2 and remain in effect through the last billing day of the
3 next December billing period regardless of whether the
4 Commission enters upon a hearing pursuant to this
5 subsection (d).

6 (3) The filing shall include relevant and necessary
7 data and documentation for the applicable rate year that
8 is consistent with the Commission's rules applicable to a
9 filing for a general increase in rates or any rules
10 adopted by the Commission to implement this Section.
11 Normalization adjustments shall not be required.
12 Notwithstanding any other provision of this Section or Act
13 or any rule or other requirement adopted by the
14 Commission, a participating utility that is a combination
15 utility with more than one rate zone shall not be required
16 to file a separate set of such data and documentation for
17 each rate zone and may combine such data and documentation
18 into a single set of schedules.

19 Within 45 days after the utility files its annual update
20 of cost inputs to the performance-based formula rate, the
21 Commission shall have the authority, either upon complaint or
22 its own initiative, but with reasonable notice, to enter upon
23 a hearing concerning the prudence and reasonableness of the
24 costs incurred by the utility to be recovered during the
25 applicable rate year that are reflected in the inputs to the
26 performance-based formula rate derived from the utility's FERC

1 Form 1. During the course of the hearing, each objection shall
2 be stated with particularity and evidence provided in support
3 thereof, after which the utility shall have the opportunity to
4 rebut the evidence. Discovery shall be allowed consistent with
5 the Commission's Rules of Practice, which Rules shall be
6 enforced by the Commission or the assigned administrative law
7 judge. The Commission shall apply the same evidentiary
8 standards, including, but not limited to, those concerning the
9 prudence and reasonableness of the costs incurred by the
10 utility, in the hearing as it would apply in a hearing to
11 review a filing for a general increase in rates under Article
12 IX of this Act. The Commission shall not, however, have the
13 authority in a proceeding under this subsection (d) to
14 consider or order any changes to the structure or protocols of
15 the performance-based formula rate approved pursuant to
16 subsection (c) of this Section. In a proceeding under this
17 subsection (d), the Commission shall enter its order no later
18 than the earlier of 240 days after the utility's filing of its
19 annual update of cost inputs to the performance-based formula
20 rate or December 31. The Commission's determinations of the
21 prudence and reasonableness of the costs incurred for the
22 applicable calendar year shall be final upon entry of the
23 Commission's order and shall not be subject to reopening,
24 reexamination, or collateral attack in any other Commission
25 proceeding, case, docket, order, rule or regulation, provided,
26 however, that nothing in this subsection (d) shall prohibit a

1 party from petitioning the Commission to rehear or appeal to
2 the courts the order pursuant to the provisions of this Act.

3 In the event the Commission does not, either upon
4 complaint or its own initiative, enter upon a hearing within
5 45 days after the utility files the annual update of cost
6 inputs to its performance-based formula rate, then the costs
7 incurred for the applicable calendar year shall be deemed
8 prudent and reasonable, and the filed charges shall not be
9 subject to reopening, reexamination, or collateral attack in
10 any other proceeding, case, docket, order, rule, or
11 regulation.

12 A participating utility's first filing of the updated cost
13 inputs, and any Commission investigation of such inputs
14 pursuant to this subsection (d) shall proceed notwithstanding
15 the fact that the Commission's investigation under subsection
16 (c) of this Section is still pending and notwithstanding any
17 other law, order, rule, or Commission practice to the
18 contrary.

19 (e) Nothing in subsections (c) or (d) of this Section
20 shall prohibit the Commission from investigating, or a
21 participating utility from filing, revenue-neutral tariff
22 changes related to rate design of a performance-based formula
23 rate that has been placed into effect for the utility.
24 Following approval of a participating utility's
25 performance-based formula rate tariff pursuant to subsection
26 (c) of this Section, the utility shall make a filing with the

1 Commission within one year after the effective date of the
2 performance-based formula rate tariff that proposes changes to
3 the tariff to incorporate the findings of any final rate
4 design orders of the Commission applicable to the
5 participating utility and entered subsequent to the
6 Commission's approval of the tariff. The Commission shall,
7 after notice and hearing, enter its order approving, or
8 approving with modification, the proposed changes to the
9 performance-based formula rate tariff within 240 days after
10 the utility's filing. Following such approval, the utility
11 shall make a filing with the Commission during each subsequent
12 3-year period that either proposes revenue-neutral tariff
13 changes or re-files the existing tariffs without change, which
14 shall present the Commission with an opportunity to suspend
15 the tariffs and consider revenue-neutral tariff changes
16 related to rate design.

17 (f) Within 30 days after the filing of a tariff pursuant to
18 subsection (c) of this Section, each participating utility
19 shall develop and file with the Commission multi-year metrics
20 designed to achieve, ratably (i.e., in equal segments) over a
21 10-year period, improvement over baseline performance values
22 as follows:

23 (1) Twenty percent improvement in the System Average
24 Interruption Frequency Index, using a baseline of the
25 average of the data from 2001 through 2010.

26 (2) Fifteen percent improvement in the system Customer

1 Average Interruption Duration Index, using a baseline of
2 the average of the data from 2001 through 2010.

3 (3) For a participating utility other than a
4 combination utility, 20% improvement in the System Average
5 Interruption Frequency Index for its Southern Region,
6 using a baseline of the average of the data from 2001
7 through 2010. For purposes of this paragraph (3), Southern
8 Region shall have the meaning set forth in the
9 participating utility's most recent report filed pursuant
10 to Section 16-125 of this Act.

11 (3.5) For a participating utility other than a
12 combination utility, 20% improvement in the System Average
13 Interruption Frequency Index for its Northeastern Region,
14 using a baseline of the average of the data from 2001
15 through 2010. For purposes of this paragraph (3.5),
16 Northeastern Region shall have the meaning set forth in
17 the participating utility's most recent report filed
18 pursuant to Section 16-125 of this Act.

19 (4) Seventy-five percent improvement in the total
20 number of customers who exceed the service reliability
21 targets as set forth in subparagraphs (A) through (C) of
22 paragraph (4) of subsection (b) of 83 Ill. ~~Adm. Admin.~~
23 Code ~~Part~~ 411.140 as of May 1, 2011, using 2010 as the
24 baseline year.

25 (5) Reduction in issuance of estimated electric bills:
26 90% improvement for a participating utility other than a

1 combination utility, and 56% improvement for a
2 participating utility that is a combination utility, using
3 a baseline of the average number of estimated bills for
4 the years 2008 through 2010.

5 (6) Consumption on inactive meters: 90% improvement
6 for a participating utility other than a combination
7 utility, and 56% improvement for a participating utility
8 that is a combination utility, using a baseline of the
9 average unbilled kilowatthours for the years 2009 and
10 2010.

11 (7) Unaccounted for energy: 50% improvement for a
12 participating utility other than a combination utility
13 using a baseline of the non-technical line loss
14 unaccounted for energy kilowatthours for the year 2009.

15 (8) Uncollectible expense: reduce uncollectible
16 expense by at least \$30,000,000 for a participating
17 utility other than a combination utility and by at least
18 \$3,500,000 for a participating utility that is a
19 combination utility, using a baseline of the average
20 uncollectible expense for the years 2008 through 2010.

21 (9) Opportunities for minority-owned and female-owned
22 business enterprises: design a performance metric
23 regarding the creation of opportunities for minority-owned
24 and female-owned business enterprises consistent with
25 State and federal law using a base performance value of
26 the percentage of the participating utility's capital

1 expenditures that were paid to minority-owned and
2 female-owned business enterprises in 2010.

3 The definitions set forth in 83 Ill. ~~Adm. Admin.~~ Code ~~Part~~
4 411.20 as of May 1, 2011 shall be used for purposes of
5 calculating performance under paragraphs (1) through (3.5) of
6 this subsection (f), provided, however, that the participating
7 utility may exclude up to 9 extreme weather event days from
8 such calculation for each year, and provided further that the
9 participating utility shall exclude 9 extreme weather event
10 days when calculating each year of the baseline period to the
11 extent that there are 9 such days in a given year of the
12 baseline period. For purposes of this Section, an extreme
13 weather event day is a 24-hour calendar day (beginning at
14 12:00 a.m. and ending at 11:59 p.m.) during which any weather
15 event (e.g., storm, tornado) caused interruptions for 10,000
16 or more of the participating utility's customers for 3 hours
17 or more. If there are more than 9 extreme weather event days in
18 a year, then the utility may choose no more than 9 extreme
19 weather event days to exclude, provided that the same extreme
20 weather event days are excluded from each of the calculations
21 performed under paragraphs (1) through (3.5) of this
22 subsection (f).

23 The metrics shall include incremental performance goals
24 for each year of the 10-year period, which shall be designed to
25 demonstrate that the utility is on track to achieve the
26 performance goal in each category at the end of the 10-year

1 period. The utility shall elect when the 10-year period shall
2 commence for the metrics set forth in subparagraphs (1)
3 through (4) and (9) of this subsection (f), provided that it
4 begins no later than 14 months following the date on which the
5 utility begins investing pursuant to subsection (b) of this
6 Section, and when the 10-year period shall commence for the
7 metrics set forth in subparagraphs (5) through (8) of this
8 subsection (f), provided that it begins no later than 14
9 months following the date on which the Commission enters its
10 order approving the utility's Advanced Metering Infrastructure
11 Deployment Plan pursuant to subsection (c) of Section 16-108.6
12 of this Act.

13 The metrics and performance goals set forth in
14 subparagraphs (5) through (8) of this subsection (f) are based
15 on the assumptions that the participating utility may fully
16 implement the technology described in subsection (b) of this
17 Section, including utilizing the full functionality of such
18 technology and that there is no requirement for personal
19 on-site notification. If the utility is unable to meet the
20 metrics and performance goals set forth in subparagraphs (5)
21 through (8) of this subsection (f) for such reasons, and the
22 Commission so finds after notice and hearing, then the utility
23 shall be excused from compliance, but only to the limited
24 extent achievement of the affected metrics and performance
25 goals was hindered by the less than full implementation.

26 (f-5) The financial penalties applicable to the metrics

1 described in subparagraphs (1) through (8) of subsection (f)
2 of this Section, as applicable, shall be applied through an
3 adjustment to the participating utility's return on equity of
4 no more than a total of 30 basis points in each of the first 3
5 years, of no more than a total of 34 basis points in each of
6 the 3 years thereafter, and of no more than a total of 38 basis
7 points in each of the 4 years thereafter, as follows:

8 (1) With respect to each of the incremental annual
9 performance goals established pursuant to paragraph (1) of
10 subsection (f) of this Section,

11 (A) for each year that a participating utility
12 other than a combination utility does not achieve the
13 annual goal, the participating utility's return on
14 equity shall be reduced as follows: during years 1
15 through 3, by 5 basis points; during years 4 through 6,
16 by 6 basis points; and during years 7 through 10, by 7
17 basis points; and

18 (B) for each year that a participating utility
19 that is a combination utility does not achieve the
20 annual goal, the participating utility's return on
21 equity shall be reduced as follows: during years 1
22 through 3, by 10 basis points; during years 4 through
23 6, by 12 basis points; and during years 7 through 10,
24 by 14 basis points.

25 (2) With respect to each of the incremental annual
26 performance goals established pursuant to paragraph (2) of

1 subsection (f) of this Section, for each year that the
2 participating utility does not achieve each such goal, the
3 participating utility's return on equity shall be reduced
4 as follows: during years 1 through 3, by 5 basis points;
5 during years 4 through 6, by 6 basis points; and during
6 years 7 through 10, by 7 basis points.

7 (3) With respect to each of the incremental annual
8 performance goals established pursuant to paragraphs (3)
9 and (3.5) of subsection (f) of this Section, for each year
10 that a participating utility other than a combination
11 utility does not achieve both such goals, the
12 participating utility's return on equity shall be reduced
13 as follows: during years 1 through 3, by 5 basis points;
14 during years 4 through 6, by 6 basis points; and during
15 years 7 through 10, by 7 basis points.

16 (4) With respect to each of the incremental annual
17 performance goals established pursuant to paragraph (4) of
18 subsection (f) of this Section, for each year that the
19 participating utility does not achieve each such goal, the
20 participating utility's return on equity shall be reduced
21 as follows: during years 1 through 3, by 5 basis points;
22 during years 4 through 6, by 6 basis points; and during
23 years 7 through 10, by 7 basis points.

24 (5) With respect to each of the incremental annual
25 performance goals established pursuant to subparagraph (5)
26 of subsection (f) of this Section, for each year that the

1 participating utility does not achieve at least 95% of
2 each such goal, the participating utility's return on
3 equity shall be reduced by 5 basis points for each such
4 unachieved goal.

5 (6) With respect to each of the incremental annual
6 performance goals established pursuant to paragraphs (6),
7 (7), and (8) of subsection (f) of this Section, as
8 applicable, which together measure non-operational
9 customer savings and benefits relating to the
10 implementation of the Advanced Metering Infrastructure
11 Deployment Plan, as defined in Section 16-108.6 of this
12 Act, the performance under each such goal shall be
13 calculated in terms of the percentage of the goal
14 achieved. The percentage of goal achieved for each of the
15 goals shall be aggregated, and an average percentage value
16 calculated, for each year of the 10-year period. If the
17 utility does not achieve an average percentage value in a
18 given year of at least 95%, the participating utility's
19 return on equity shall be reduced by 5 basis points.

20 The financial penalties shall be applied as described in
21 this subsection (f-5) for the 12-month period in which the
22 deficiency occurred through a separate tariff mechanism, which
23 shall be filed by the utility together with its metrics. In the
24 event the formula rate tariff established pursuant to
25 subsection (c) of this Section terminates, the utility's
26 obligations under subsection (f) of this Section and this

1 subsection (f-5) shall also terminate, provided, however, that
2 the tariff mechanism established pursuant to subsection (f) of
3 this Section and this subsection (f-5) shall remain in effect
4 until any penalties due and owing at the time of such
5 termination are applied.

6 The Commission shall, after notice and hearing, enter an
7 order within 120 days after the metrics are filed approving,
8 or approving with modification, a participating utility's
9 tariff or mechanism to satisfy the metrics set forth in
10 subsection (f) of this Section. On June 1 of each subsequent
11 year, each participating utility shall file a report with the
12 Commission that includes, among other things, a description of
13 how the participating utility performed under each metric and
14 an identification of any extraordinary events that adversely
15 impacted the utility's performance. Whenever a participating
16 utility does not satisfy the metrics required pursuant to
17 subsection (f) of this Section, the Commission shall, after
18 notice and hearing, enter an order approving financial
19 penalties in accordance with this subsection (f-5). The
20 Commission-approved financial penalties shall be applied
21 beginning with the next rate year. Nothing in this Section
22 shall authorize the Commission to reduce or otherwise obviate
23 the imposition of financial penalties for failing to achieve
24 one or more of the metrics established pursuant to
25 subparagraphs ~~subparagraph~~ (1) through (4) of subsection (f)
26 of this Section.

1 (g) On or before July 31, 2014, each participating utility
2 shall file a report with the Commission that sets forth the
3 average annual increase in the average amount paid per
4 kilowatthour for residential eligible retail customers,
5 exclusive of the effects of energy efficiency programs,
6 comparing the 12-month period ending May 31, 2012; the
7 12-month period ending May 31, 2013; and the 12-month period
8 ending May 31, 2014. For a participating utility that is a
9 combination utility with more than one rate zone, the weighted
10 average aggregate increase shall be provided. The report shall
11 be filed together with a statement from an independent auditor
12 attesting to the accuracy of the report. The cost of the
13 independent auditor shall be borne by the participating
14 utility and shall not be a recoverable expense. "The average
15 amount paid per kilowatthour" shall be based on the
16 participating utility's tariffed rates actually in effect and
17 shall not be calculated using any hypothetical rate or
18 adjustments to actual charges (other than as specified for
19 energy efficiency) as an input.

20 In the event that the average annual increase exceeds 2.5%
21 as calculated pursuant to this subsection (g), then Sections
22 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of this Act, other
23 than this subsection, shall be inoperative as they relate to
24 the utility and its service area as of the date of the report
25 due to be submitted pursuant to this subsection and the
26 utility shall no longer be eligible to annually update the

1 performance-based formula rate tariff pursuant to subsection
2 (d) of this Section. In such event, the then current rates
3 shall remain in effect until such time as new rates are set
4 pursuant to Article IX of this Act, subject to retroactive
5 adjustment, with interest, to reconcile rates charged with
6 actual costs, and the participating utility's voluntary
7 commitments and obligations under subsection (b) of this
8 Section shall immediately terminate, except for the utility's
9 obligation to pay an amount already owed to the fund for
10 training grants pursuant to a Commission order issued under
11 subsection (b) of this Section.

12 In the event that the average annual increase is 2.5% or
13 less as calculated pursuant to this subsection (g), then the
14 performance-based formula rate shall remain in effect as set
15 forth in this Section.

16 For purposes of this Section, the amount per kilowatthour
17 means the total amount paid for electric service expressed on
18 a per kilowatthour basis, and the total amount paid for
19 electric service includes without limitation amounts paid for
20 supply, transmission, distribution, surcharges, and add-on
21 taxes exclusive of any increases in taxes or new taxes imposed
22 after October 26, 2011 (the effective date of Public Act
23 97-616). For purposes of this Section, "eligible retail
24 customers" shall have the meaning set forth in Section
25 16-111.5 of this Act.

26 The fact that this Section becomes inoperative as set

1 forth in this subsection shall not be construed to mean that
2 the Commission may reexamine or otherwise reopen prudence or
3 reasonableness determinations already made.

4 (h) By December 31, 2017, the Commission shall prepare and
5 file with the General Assembly a report on the infrastructure
6 program and the performance-based formula rate. The report
7 shall include the change in the average amount per
8 kilowatthour paid by residential customers between June 1,
9 2011 and May 31, 2017. If the change in the total average rate
10 paid exceeds 2.5% compounded annually, the Commission shall
11 include in the report an analysis that shows the portion of the
12 change due to the delivery services component and the portion
13 of the change due to the supply component of the rate. The
14 report shall include separate sections for each participating
15 utility.

16 Sections 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of
17 this Act, other than this subsection (h) and subsection (i) of
18 this Section, are inoperative after December 31, 2022 for
19 every participating utility, after which time a participating
20 utility shall no longer be eligible to annually update the
21 performance-based formula rate tariff pursuant to subsection
22 (d) of this Section. At such time, the then current rates shall
23 remain in effect until such time as new rates are set pursuant
24 to Article IX of this Act, subject to retroactive adjustment,
25 with interest, to reconcile rates charged with actual costs.

26 The fact that this Section becomes inoperative as set

1 forth in this subsection shall not be construed to mean that
2 the Commission may reexamine or otherwise reopen prudence or
3 reasonableness determinations already made.

4 (i) While a participating utility may use, develop, and
5 maintain broadband systems and the delivery of broadband
6 services, voice-over-internet-protocol services,
7 telecommunications services, and cable and video programming
8 services for use in providing delivery services and Smart Grid
9 functionality or application to its retail customers,
10 including, but not limited to, the installation,
11 implementation and maintenance of Smart Grid electric system
12 upgrades as defined in Section 16-108.6 of this Act, a
13 participating utility is prohibited from providing to its
14 retail customers broadband services,
15 voice-over-internet-protocol services, telecommunications
16 services, or cable or video programming services, unless they
17 are part of a service directly related to delivery services or
18 Smart Grid functionality or applications as defined in Section
19 16-108.6 of this Act, and from recovering the costs of such
20 offerings from retail customers. Furthermore, a participating
21 utility in a county having a population of 3,000,000 or more is
22 prohibited from making available to its customers broadband
23 services, voice-over-internet-protocol services,
24 telecommunications services, or cable or video programming
25 services, unless they are part of a service directly related
26 to delivery services or Smart Grid functionality or

1 applications as defined in Section 16-108.6, and from
2 recovering the costs of such offerings from retail customers.

3 The prohibition set forth in this subsection (i) is
4 inoperative after December 31, 2027 for every participating
5 utility.

6 (j) Nothing in this Section is intended to legislatively
7 overturn the opinion issued in Commonwealth Edison Co. v. Ill.
8 Commerce Comm'n, Nos. 2-08-0959, 2-08-1037, 2-08-1137,
9 1-08-3008, 1-08-3030, 1-08-3054, 1-08-3313 cons. (Ill. App.
10 Ct. 2d Dist. Sept. 30, 2010). Public Act 97-616 shall not be
11 construed as creating a contract between the General Assembly
12 and the participating utility, and shall not establish a
13 property right in the participating utility.

14 (k) The changes made in subsections (c) and (d) of this
15 Section by Public Act 98-15 are intended to be a restatement
16 and clarification of existing law, and intended to give
17 binding effect to the provisions of House Resolution 1157
18 adopted by the House of Representatives of the 97th General
19 Assembly and Senate Resolution 821 adopted by the Senate of
20 the 97th General Assembly that are reflected in paragraph (3)
21 of this subsection. In addition, Public Act 98-15 preempts and
22 supersedes any final Commission orders entered in Docket Nos.
23 11-0721, 12-0001, 12-0293, and 12-0321 to the extent
24 inconsistent with the amendatory language added to subsections
25 (c) and (d).

26 (1) No earlier than 5 business days after May 22, 2013

1 (the effective date of Public Act 98-15), each
2 participating utility shall file any tariff changes
3 necessary to implement the amendatory language set forth
4 in subsections (c) and (d) of this Section by Public Act
5 98-15 and a revised revenue requirement under the
6 participating utility's performance-based formula rate.
7 The Commission shall enter a final order approving such
8 tariff changes and revised revenue requirement within 21
9 days after the participating utility's filing.

10 (2) Notwithstanding anything that may be to the
11 contrary, a participating utility may file a tariff to
12 retroactively recover its previously unrecovered actual
13 costs of delivery service that are no longer subject to
14 recovery through a reconciliation adjustment under
15 subsection (d) of this Section. This retroactive recovery
16 shall include any derivative adjustments resulting from
17 the changes to subsections (c) and (d) of this Section by
18 Public Act 98-15. Such tariff shall allow the utility to
19 assess, on current customer bills over a period of 12
20 monthly billing periods, a charge or credit related to
21 those unrecovered costs with interest at the utility's
22 weighted average cost of capital during the period in
23 which those costs were unrecovered. A participating
24 utility may file a tariff that implements a retroactive
25 charge or credit as described in this paragraph for
26 amounts not otherwise included in the tariff filing

1 provided for in paragraph (1) of this subsection (k). The
2 Commission shall enter a final order approving such tariff
3 within 21 days after the participating utility's filing.

4 (3) The tariff changes described in paragraphs (1) and
5 (2) of this subsection (k) shall relate only to, and be
6 consistent with, the following provisions of Public Act
7 98-15: paragraph (2) of subsection (c) regarding year-end
8 capital structure, subparagraph (D) of paragraph (4) of
9 subsection (c) regarding pension assets, and subsection
10 (d) regarding the reconciliation components related to
11 year-end rate base and interest calculated at a rate equal
12 to the utility's weighted average cost of capital.

13 (4) Nothing in this subsection is intended to effect a
14 dismissal of or otherwise affect an appeal from any final
15 Commission orders entered in Docket Nos. 11-0721, 12-0001,
16 12-0293, and 12-0321 other than to the extent of the
17 amendatory language contained in subsections (c) and (d)
18 of this Section of Public Act 98-15.

19 (1) Each participating utility shall be deemed to have
20 been in full compliance with all requirements of subsection
21 (b) of this Section, subsection (c) of this Section, Section
22 16-108.6 of this Act, and all Commission orders entered
23 pursuant to Sections 16-108.5 and 16-108.6 of this Act, up to
24 and including May 22, 2013 (the effective date of Public Act
25 98-15). The Commission shall not undertake any investigation
26 of such compliance and no penalty shall be assessed or adverse

1 action taken against a participating utility for noncompliance
2 with Commission orders associated with subsection (b) of this
3 Section, subsection (c) of this Section, and Section 16-108.6
4 of this Act prior to such date. Each participating utility
5 other than a combination utility shall be permitted, without
6 penalty, a period of 12 months after such effective date to
7 take actions required to ensure its infrastructure investment
8 program is in compliance with subsection (b) of this Section
9 and with Section 16-108.6 of this Act. Provided further, the
10 following subparagraphs shall apply to a participating utility
11 other than a combination utility:

12 (A) if the Commission has initiated a proceeding
13 pursuant to subsection (e) of Section 16-108.6 of this Act
14 that is pending as of May 22, 2013 (the effective date of
15 Public Act 98-15), then the order entered in such
16 proceeding shall, after notice and hearing, accelerate the
17 commencement of the meter deployment schedule approved in
18 the final Commission order on rehearing entered in Docket
19 No. 12-0298;

20 (B) if the Commission has entered an order pursuant to
21 subsection (e) of Section 16-108.6 of this Act prior to
22 May 22, 2013 (the effective date of Public Act 98-15) that
23 does not accelerate the commencement of the meter
24 deployment schedule approved in the final Commission order
25 on rehearing entered in Docket No. 12-0298, then the
26 utility shall file with the Commission, within 45 days

1 after such effective date, a plan for accelerating the
2 commencement of the utility's meter deployment schedule
3 approved in the final Commission order on rehearing
4 entered in Docket No. 12-0298; the Commission shall reopen
5 the proceeding in which it entered its order pursuant to
6 subsection (e) of Section 16-108.6 of this Act and shall,
7 after notice and hearing, enter an amendatory order that
8 approves or approves as modified such accelerated plan
9 within 90 days after the utility's filing; or

10 (C) if the Commission has not initiated a proceeding
11 pursuant to subsection (e) of Section 16-108.6 of this Act
12 prior to May 22, 2013 (the effective date of Public Act
13 98-15), then the utility shall file with the Commission,
14 within 45 days after such effective date, a plan for
15 accelerating the commencement of the utility's meter
16 deployment schedule approved in the final Commission order
17 on rehearing entered in Docket No. 12-0298 and the
18 Commission shall, after notice and hearing, approve or
19 approve as modified such plan within 90 days after the
20 utility's filing.

21 Any schedule for meter deployment approved by the
22 Commission pursuant to this subsection (l) shall take into
23 consideration procurement times for meters and other equipment
24 and operational issues. Nothing in Public Act 98-15 shall
25 shorten or extend the end dates for the 5-year or 10-year
26 periods set forth in subsection (b) of this Section or Section

1 16-108.6 of this Act. Nothing in this subsection is intended
2 to address whether a participating utility has, or has not,
3 satisfied any or all of the metrics and performance goals
4 established pursuant to subsection (f) of this Section.

5 (m) The provisions of Public Act 98-15 are severable under
6 Section 1.31 of the Statute on Statutes.

7 (Source: P.A. 102-1031, eff. 5-27-22; revised 8-22-22.)

8 (220 ILCS 5/21-201)

9 (Section scheduled to be repealed on December 31, 2026)

10 Sec. 21-201. Definitions. As used in this Article:

11 (a) "Access" means that the cable or video provider is
12 capable of providing cable services or video services at the
13 household address using any technology, other than
14 direct-to-home satellite service, that provides 2-way
15 broadband Internet capability and video programming, content,
16 and functionality, regardless of whether any customer has
17 ordered service or whether the owner or landlord or other
18 responsible person has granted access to the household. If
19 more than one technology is used, the technologies shall
20 provide similar 2-way broadband Internet accessibility and
21 similar video programming.

22 (b) "Basic cable or video service" means any cable or
23 video service offering or tier that includes the
24 retransmission of local television broadcast signals.

25 (c) "Broadband service" means a high speed service

1 connection to the public Internet capable of supporting, in at
2 least one direction, a speed in excess of 200 kilobits per
3 second (kbps) to the network demarcation point at the
4 subscriber's premises.

5 (d) "Cable operator" means that term as defined in item
6 (5) of 47 U.S.C. 522.

7 (e) "Cable service" means that term as defined in item (6)
8 of 47 U.S.C. 522. "Cable service" does not include any video
9 programming accessed via an Internet access service that
10 enables end users to access content, information, electronic
11 mail, or other services offered over the Internet, including
12 streaming video content, regardless of the provider of the
13 Internet access service.

14 (f) "Cable system" means that term as defined in item (7)
15 of 47 U.S.C. 522.

16 (g) "Commission" means the Illinois Commerce Commission.

17 (h) "Competitive cable service or video service provider"
18 means a person or entity that is providing or seeks to provide
19 cable service or video service in an area where there is at
20 least one incumbent cable operator.

21 (i) "Designated market area" means a designated market
22 area, as determined by Nielsen Media Research and published in
23 the 1999-2000 Nielsen Station Index Directory and Nielsen
24 Station Index United States Television Household Estimates or
25 any successor publication. For any designated market area that
26 crosses State lines, only households in the portion of the

1 designated market area that is located within the holder's
2 telecommunications service area in the State where access to
3 video service will be offered shall be considered.

4 (j) "Footprint" means the geographic area designated by
5 the cable service or video service provider as the geographic
6 area in which it will offer cable services or video services
7 during the period of its State-issued authorization. Each
8 footprint shall be identified in terms of either (i)
9 exchanges, as that term is defined in Section 13-206 of this
10 Act; (ii) a collection of United States Census Bureau Block
11 numbers (13 digit); (iii) if the area is smaller than the areas
12 identified in either (i) or (ii), by geographic information
13 system digital boundaries meeting or exceeding national map
14 accuracy standards; or (iv) local units of government.

15 (k) "Holder" means a person or entity that has received
16 authorization to offer or provide cable or video service from
17 the Commission pursuant to Section 21-401 of this Article.

18 (l) "Household" means a house, an apartment, a mobile
19 home, a group of rooms, or a single room that is intended for
20 occupancy as separate living quarters. Separate living
21 quarters are those in which the occupants live and eat
22 separately from any other persons in the building and that
23 have direct access from the outside of the building or through
24 a common hall. This definition is consistent with the United
25 States Census Bureau, as that definition may be amended
26 thereafter.

1 (m) "Incumbent cable operator" means a person or entity
2 that provided cable services or video services in a particular
3 area under a franchise agreement with a local unit of
4 government pursuant to Section 11-42-11 of the Illinois
5 Municipal Code (65 ILCS 5/11-42-11) or Section 5-1095 of the
6 Counties Code (55 ILCS 5/5-1095) on January 1, 2007.

7 (n) "Local franchising authority" means the local unit of
8 government that has or requires a franchise with a cable
9 operator, a provider of cable services, or a provider of video
10 services to construct or operate a cable or video system or to
11 offer cable services or video services under Section 11-42-11
12 of the Illinois Municipal Code (65 ILCS 5/11-42-11) or Section
13 5-1095 of the Counties Code (55 ILCS 5/5-1095).

14 (o) "Local unit of government" means a city, village,
15 incorporated town, or county.

16 (p) "Low-income household" means those residential
17 households located within the holder's existing telephone
18 service area where the average annual household income is less
19 than \$35,000, based on the United States Census Bureau
20 estimates adjusted annually to reflect rates of change and
21 distribution.

22 (q) "Public rights-of-way" means the areas on, below, or
23 above a public roadway, highway, street, public sidewalk,
24 alley, waterway, or utility easements dedicated for compatible
25 uses.

26 (r) "Service" means the provision of cable service or

1 video service to subscribers and the interaction of
2 subscribers with the person or entity that has received
3 authorization to offer or provide cable or video service from
4 the Commission pursuant to Section 21-401 of this Act.

5 (s) "Service provider fee" means the amount paid under
6 Section 21-801 of this Act by the holder to a municipality, or
7 in the case of an unincorporated service area to a county, for
8 service areas within its territorial jurisdiction, but under
9 no circumstances shall the service provider fee be paid to
10 more than one local unit of government for the same portion of
11 the holder's service area.

12 (t) "Telecommunications service area" means the area
13 designated by the Commission as the area in which a
14 telecommunications company was obligated to provide
15 non-competitive local telephone service as of February 8, 1996
16 as incorporated into Section 13-202.5 of this Act.

17 (u) "Video programming" means that term as defined in item
18 (20) of 47 U.S.C. 522.

19 (v) "Video service" means video programming and subscriber
20 interaction, if any, that is required for the selection or use
21 of such video programming services, and that is provided
22 through wireline facilities located at least in part in the
23 public rights-of-way without regard to delivery technology,
24 including Internet protocol technology. This definition does
25 not include any video programming provided by a commercial
26 mobile service provider defined in subsection (d) of 47 U.S.C.

1 332 or any video programming provided solely as part of, and
2 via, service that enables users to access content,
3 information, electronic mail, or other services offered over
4 the public Internet.

5 (Source: P.A. 100-20, eff. 7-1-17.)

6 Section 10. The Broadband Advisory Council Act is amended
7 by changing Section 20 and by adding Section 30 as follows:

8 (220 ILCS 80/20)

9 Sec. 20. Powers and duties of the Council generally.

10 (a) The Council shall:

11 (1) explore any and all ways to expand the
12 availability to end-user customers of broadband services
13 using available technologies, including, but not limited
14 to, wireline, wireless, fixed wireless, and satellite
15 applications;

16 (2) identify barriers to broadband adoption among the
17 residents and small businesses of Illinois;

18 (3) research ways to eliminate barriers to adoption
19 through measures such as: digital literacy programs;
20 programs to assist older citizens in using broadband
21 Internet access; programs to facilitate adoption by
22 disabled citizens; and programs to encourage collaborative
23 efforts among public universities, community colleges,
24 libraries, public housing, and other institutions;

1 (4) assess the availability of broadband for
2 low-income households compared to the availability of
3 broadband for other households;

4 (5) explore the potential for increased use of
5 broadband service for the purposes of education, career
6 readiness, workforce preparation, and alternative career
7 training;

8 (6) explore the potential for increased use of
9 broadband services to facilitate aging in place;

10 (7) explore ways for encouraging State and municipal
11 agencies, including public housing authorities, to expand
12 the use of broadband services for the purpose of better
13 serving the public, including audio and video streaming,
14 voice-over Internet protocol, teleconferencing, and
15 wireless networking;

16 (8) cooperate and assist in the expansion of
17 electronic instruction and distance education services;
18 ~~and~~

19 (9) as the Federal Communications Commission updates
20 the benchmark downstream data rates and upstream data
21 rates, publish the revised data rates in the Illinois
22 Register within 60 days after the federal update; and ~~and~~

23 (10) evaluate the expansion of the Illinois Century
24 Network to Illinois public schools, public libraries, and
25 State-owned correctional institutions or facilities,
26 including issuing recommendations for increasing agency

1 staffing, infrastructure development, price modeling, and
2 providing download speeds of at least one gigabyte per
3 second and upload speeds of at least one gigabyte per
4 second.

5 (b) In addition to the powers set forth elsewhere in this
6 Act, the Council is hereby granted the powers necessary to
7 carry out the purpose and intent of this Act, as enumerated in
8 this Section, including, but not limited to:

9 (1) promoting awareness of public facilities that have
10 community broadband access that can be used for distance
11 education and workforce development; and

12 (2) advising on deployment of e-government portals
13 such that all public bodies and political subdivisions
14 have websites and encourage one-stop government access and
15 that all public entities stream audio and video of all
16 public meetings.

17 (c) The Council shall also:

18 (1) monitor the broadband-based development efforts of
19 other states in areas such as business, education, aging
20 in place, and health;

21 (2) receive input provided on a voluntary basis from
22 all Illinois broadband stakeholders and advise the
23 Governor and the General Assembly on policies related to
24 broadband in Illinois, provided that no stakeholders shall
25 be required to publicly disclose competitively sensitive
26 information or information that could compromise network

1 security or undermine the efficacy of reasonable network
2 management practices, and that any such information
3 voluntarily disclosed shall be protected from public
4 disclosure; and

5 (3) serve as the broadband advocate to State agencies
6 and other State entities to communicate the broadband
7 needs of citizens and organizations that do not have
8 access to broadband service or to broadband service
9 adequate for their needs.

10 (d) The Council shall exercise its powers and authority to
11 (1) advise and make recommendations to the General Assembly
12 and the Governor on bringing broadband service to unserved and
13 underserved rural and urban areas and improving broadband
14 service statewide, (2) advise and make recommendations to the
15 General Assembly and the Governor on facilitating broadband
16 adoption by all citizens, and (3) propose statutory changes
17 that may enhance and expand broadband in the State.

18 (e) The Council shall report to the General Assembly on or
19 before January 1 of each year. The report to the General
20 Assembly shall be filed with the Clerk of the House of
21 Representatives and the Secretary of the Senate in electronic
22 form only, in the manner that the Clerk and the Secretary shall
23 direct. The report shall include the action that was taken by
24 the Council during the previous year in carrying out the
25 provisions of this Act. The Council shall also make any other
26 reports as may be required by the General Assembly or the

1 Governor.

2 (Source: P.A. 100-833, eff. 1-1-19.)

3 (220 ILCS 80/30 new)

4 Sec. 30. Illinois Century Network Study.

5 (a) The Council shall study the feasibility of connecting
6 all Illinois public schools, public libraries, and State-owned
7 correctional facilities to the Illinois Century Network by
8 January 1, 2030. The purpose and scope of the study is limited
9 to connecting all public schools, public libraries, and
10 State-owned correctional facilities to the Illinois Century
11 Network, with a goal to give all public schools, public
12 libraries, and State-owned correctional institutions or
13 facilities access to reliable, gigabit-level broadband service
14 by January 1, 2030. The Office of Broadband within the
15 Department of Commerce and Economic Opportunity shall support
16 and assist the Council in the development of the study.

17 (b) The feasibility study required under subsection (a)
18 shall explore:

19 (1) efforts among other states and units of local
20 government to connect public schools, public libraries,
21 and correctional facilities to a public broadband service;

22 (2) the current state of broadband service connection
23 for all public schools, public libraries, and State-owned
24 correctional facilities, including connection speeds, type
25 of technology, and whether the network is serviced by the

1 Illinois Century Network currently;

2 (3) models for expanding the Illinois Century Network
3 solely for the purpose of connecting all Illinois public
4 schools, public libraries, and State-owned correctional
5 facilities;

6 (4) the resources necessary to expand the Illinois
7 Century Network across the State of Illinois to all
8 Illinois public schools, public libraries, and State-owned
9 correctional facilities;

10 (5) the benefits of the Illinois Century Network in
11 Illinois public schools, public libraries, and State-owned
12 correctional facilities;

13 (6) potential sources of funding for the expansion of
14 the Illinois Century Network to Illinois public schools,
15 public libraries, and State-owned correctional facilities;

16 (7) additional staff and contracting needs that would
17 be necessary to expand the Illinois Century Network to all
18 Illinois public schools, public libraries, and State-owned
19 correctional facilities;

20 (8) options for partnering with units of local
21 government in Illinois that have taken steps toward
22 offering public broadband service for the purpose of
23 connecting all Illinois public schools, public libraries,
24 and State-owned correctional facilities to the Illinois
25 Century Network; and

26 (9) any other factors that are necessary for the

1 exploration of the feasibility of expanding the Illinois
2 Century Network to all Illinois public schools, public
3 libraries, and State-owned correctional facilities.

4 The feasibility study shall offer recommendations based on
5 the results of the study and shall offer options for the
6 expansion of the Illinois Century Network, including a
7 timeline, staffing needs, financial resources needed, and
8 suggested rates for broadband service.

9 (c) The Council shall issue a report on its findings,
10 recommendations, options for expansion, and any recommended
11 legislation to the General Assembly by January 1, 2024.

12 Section 99. Effective date. This Act takes effect upon
13 becoming law.".