



HR1157

LRB097 21882 CEL 70578 r

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

1 of Section 16-108.5 of the Public Utilities Act at an amount  
2 that is not based on the utility's weighted average cost of  
3 capital; and (3) determining rate base and capital structure  
4 using an average, rather than the year-end amounts as reflected  
5 in FERC Form 1; and be it 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.