



Rep. Brandon W. Phelps

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LRB098 15537 RPS 62088 a

1 AMENDMENT TO HOUSE BILL 3975

2 AMENDMENT NO. _____. Amend House Bill 3975 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Public Utilities Act is amended by changing
5 Section 16-108.5 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 more
12 than 1,000,000 customers in Illinois that voluntarily elects
13 and commits to undertake (i) the infrastructure investment
14 program consisting of the commitments and obligations
15 described in this subsection (b) and (ii) the customer
16 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 agency
4 other than as set forth in this Section, regardless of whether
5 any such approval would otherwise be required. "Combination
6 utility" means a utility that, as of January 1, 2011, provided
7 electric service to at least one million retail customers in
8 Illinois and gas service to at least 500,000 retail customers
9 in Illinois. A participating utility shall recover the
10 expenditures made under the infrastructure investment program
11 through the ratemaking process, including, but not limited to,
12 the performance-based formula rate and process set forth in
13 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 the effective date of this
25 amendatory Act of the 97th General Assembly and that has not
26 yet been fulfilled. A portion of the full-time equivalent jobs

1 created by each participating utility shall include
2 incremental personnel hired subsequent to the effective date of
3 this amendatory Act of the 97th General Assembly. For purposes
4 of this Section, "peak program year" means the consecutive
5 12-month period with the highest number of full-time equivalent
6 jobs that occurs between the beginning of investment year 2 and
7 the end of 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 than
14 January 1, 2012 if such utility files such
15 performance-based formula rate tariff within 14 days of the
16 effective date of this amendatory Act of the 97th General
17 Assembly, 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 one
7 such facility shall be located in a municipality
8 having a population of more than 150,000 residents
9 but fewer than 170,000 residents; any such new
10 facility located in a municipality having a
11 population of more than 2 million residents must be
12 designed for the purpose of obtaining, and the
13 owner of the facility shall apply for,
14 certification under the United States Green
15 Building Council's Leadership in Energy Efficiency
16 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 a
22 performance-based formula rate tariff pursuant to
23 subsection (c) of this Section, or, beginning no later than
24 January 1, 2012 if such utility files such
25 performance-based formula rate tariff within 14 days of the
26 effective date of this amendatory Act of the 97th General

1 Assembly, 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) of
12 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 the
23 years 2008, 2009, and 2010. A participating utility may add
24 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 plan
7 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 cumulatively,
18 and the number of full-time equivalent jobs created for the
19 prior calendar year and cumulatively. If the utility is
20 materially deficient in satisfying a schedule or staffing plan,
21 then the report must also include a corrective action plan to
22 address the deficiency. The fact that the plan, implementation
23 of the plan, or a schedule changes shall not imply the
24 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 an
15 order finding, after notice and hearing, that a participating
16 utility did not satisfy its peak job commitment described in
17 this subsection (b) for reasons that are reasonably within its
18 control, then the Commission shall also determine, after
19 consideration of the evidence, including, but not limited to,
20 evidence submitted by the Department of Commerce and Economic
21 Opportunity and the utility, the deficiency in the number of
22 full-time equivalent jobs during the peak program year due to
23 such failure. The Commission shall notify the Department of any
24 proceeding that is initiated pursuant to this paragraph. For
25 each full-time equivalent job deficiency during the peak
26 program year that the Commission finds as set forth in this

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

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

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

1 Commission order.

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

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

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

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

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

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

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

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

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

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

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

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

22 The payments made by a participating utility pursuant to
23 this subsection (b-10) shall not be a recoverable expense. A
24 participating utility may elect to fund either new or existing
25 customer assistance programs, including, but not limited to,
26 those that are administered by the utility.

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

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

22 (c) A participating utility may elect to recover its
23 delivery services costs through a performance-based formula
24 rate approved by the Commission, which shall specify the cost
25 components that form the basis of the rate charged to customers
26 with sufficient specificity to operate in a standardized manner

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

1 investigation, or proceeding of any kind related to rates for
2 electric delivery services.

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

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

25 (2) Reflect the utility's actual year-end capital
26 structure for the applicable calendar year, excluding

1 goodwill, subject to a determination of prudence and
2 reasonableness consistent with Commission practice and
3 law.

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

6 (A) the average for the applicable calendar year of
7 the monthly average yields of 30-year U.S. Treasury
8 bonds published by the Board of Governors of the
9 Federal Reserve System in its weekly H.15 Statistical
10 Release or successor publication; and

11 (B) 580 basis points.

12 At such time as the Board of Governors of the Federal
13 Reserve System ceases to include the monthly average yields
14 of 30-year U.S. Treasury bonds in its weekly H.15
15 Statistical Release or successor publication, the monthly
16 average yields of the U.S. Treasury bonds then having the
17 longest duration published by the Board of Governors in its
18 weekly H.15 Statistical Release or successor publication
19 shall instead be used for purposes of this paragraph (3).

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

23 (A) recovery of incentive compensation expense
24 that is based on the achievement of operational
25 metrics, including metrics related to budget controls,
26 outage duration and frequency, safety, customer

1 service, efficiency and productivity, and
2 environmental compliance. Incentive compensation
3 expense that is based on net income or an affiliate's
4 earnings per share shall not be recoverable under the
5 performance-based formula rate;

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

9 (C) recovery of severance costs, provided that if
10 the amount is over \$3,700,000 for a participating
11 utility that is a combination utility or \$10,000,000
12 for a participating utility that serves more than 3
13 million retail customers, then the full amount shall be
14 amortized consistent with subparagraph (F) of this
15 paragraph (4);

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

23 (E) recovery of the expenses related to the
24 Commission proceeding under this subsection (c) to
25 approve this performance-based formula rate and
26 initial rates or to subsequent proceedings related to

1 the formula, provided that the recovery shall be
2 amortized over a 3-year period; recovery of expenses
3 related to the annual Commission proceedings under
4 subsection (d) of this Section to review the inputs to
5 the performance-based formula rate shall be expensed
6 and recovered through the performance-based formula
7 rate;

8 (F) amortization over a 5-year period of the full
9 amount of each charge or credit that exceeds \$3,700,000
10 for a participating utility that is a combination
11 utility or \$10,000,000 for a participating utility
12 that serves more than 3 million retail customers in the
13 applicable calendar year and that relates to a
14 workforce reduction program's severance costs, changes
15 in accounting rules, changes in law, compliance with
16 any Commission-initiated audit, or a single storm or
17 other similar expense, provided that any unamortized
18 balance shall be reflected in rate base. For purposes
19 of this subparagraph (F), changes in law includes any
20 enactment, repeal, or amendment in a law, ordinance,
21 rule, regulation, interpretation, permit, license,
22 consent, or order, including those relating to taxes,
23 accounting, or to environmental matters, or in the
24 interpretation or application thereof by any
25 governmental authority occurring after the effective
26 date of this amendatory Act of the 97th General

1 Assembly;

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

4 (H) historical weather normalized billing
5 determinants; and

6 (I) allocation methods for common costs.

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

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

1 rate year, adjusted for taxes.

2 (6) Provide for an annual reconciliation, as described
3 in subsection (d) of this Section, with interest, of the
4 revenue requirement reflected in rates for each calendar
5 year, beginning with the calendar year in which the utility
6 files its performance-based formula rate tariff pursuant
7 to subsection (c) of this Section, with what the revenue
8 requirement would have been had the actual cost information
9 for the applicable calendar year been available at the
10 filing date.

11 The utility shall file, together with its tariff, final
12 data based on its most recently filed FERC Form 1, plus
13 projected plant additions and correspondingly updated
14 depreciation reserve and expense for the calendar year in which
15 the tariff and data are filed, that shall populate the
16 performance-based formula rate and set the initial delivery
17 services rates under the formula. For purposes of this Section,
18 "FERC Form 1" means the Annual Report of Major Electric
19 Utilities, Licensees and Others that electric utilities are
20 required to file with the Federal Energy Regulatory Commission
21 under the Federal Power Act, Sections 3, 4(a), 304 and 209,
22 modified as necessary to be consistent with 83 Ill. Admin. Code
23 Part 415 as of May 1, 2011. Nothing in this Section is intended
24 to allow costs that are not otherwise recoverable to be
25 recoverable by virtue of inclusion in FERC Form 1.

26 After the utility files its proposed performance-based

1 formula rate structure and protocols and initial rates, the
2 Commission shall initiate a docket to review the filing. The
3 Commission shall enter an order approving, or approving as
4 modified, the performance-based formula rate, including the
5 initial rates, as just and reasonable within 270 days after the
6 date on which the tariff was filed, or, if the tariff is filed
7 within 14 days after the effective date of this amendatory Act
8 of the 97th General Assembly, then by May 31, 2012. Such review
9 shall be based on the same evidentiary standards, including,
10 but not limited to, those concerning the prudence and
11 reasonableness of the costs incurred by the utility, the
12 Commission applies in a hearing to review a filing for a
13 general increase in rates under Article IX of this Act. The
14 initial rates shall take effect within 30 days after the
15 Commission's order approving the performance-based formula
16 rate tariff.

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

23 Subsequent changes to the performance-based formula rate
24 structure or protocols shall be made as set forth in Section
25 9-201 of this Act, but nothing in this subsection (c) is
26 intended to limit the Commission's authority under Article IX

1 and other provisions of this Act to initiate an investigation
2 of a participating utility's performance-based formula rate
3 tariff, provided that any such changes shall be consistent with
4 paragraphs (1) through (6) of this subsection (c). Any change
5 ordered by the Commission shall be made at the same time new
6 rates take effect following the Commission's next order
7 pursuant to subsection (d) of this Section, provided that the
8 new rates take effect no less than 30 days after the date on
9 which the Commission issues an order adopting the change.

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

14 In the event the performance-based formula rate is
15 terminated, the then current rates shall remain in effect until
16 such time as new rates are set pursuant to Article IX of this
17 Act, subject to retroactive rate adjustment, with interest, to
18 reconcile rates charged with actual costs. At such time that
19 the performance-based formula rate is terminated, the
20 participating utility's voluntary commitments and obligations
21 under subsection (b) of this Section shall immediately
22 terminate, except for the utility's obligation to pay an amount
23 already owed to the fund for training grants pursuant to a
24 Commission order issued under subsection (b) of this Section.

25 (d) Subsequent to the Commission's issuance of an order
26 approving the utility's performance-based formula rate

1 structure and protocols, and initial rates under subsection (c)
2 of this Section, the utility shall file, on or before May 1 of
3 each year, with the Chief Clerk of the Commission its updated
4 cost inputs to the performance-based formula rate for the
5 applicable rate year and the corresponding new charges. Each
6 such filing shall conform to the following requirements and
7 include the following information:

8 (1) The inputs to the performance-based formula rate
9 for the applicable rate year shall be based on final
10 historical data reflected in the utility's most recently
11 filed annual FERC Form 1 plus projected plant additions and
12 correspondingly updated depreciation reserve and expense
13 for the calendar year in which the inputs are filed. The
14 filing shall also include a reconciliation of the revenue
15 requirement that was in effect for the prior rate year (as
16 set by the cost inputs for the prior rate year) with the
17 actual revenue requirement for the prior rate year
18 (determined using a year-end rate base) that uses amounts
19 reflected in the applicable FERC Form 1 that reports the
20 actual costs for the prior rate year. Any over-collection
21 or under-collection indicated by such reconciliation shall
22 be reflected as a credit against, or recovered as an
23 additional charge to, respectively, with interest
24 calculated at a rate equal to the utility's weighted
25 average cost of capital approved by the Commission for the
26 prior rate year, the charges for the applicable rate year.

1 Provided, however, that the first such reconciliation
2 shall be for the calendar year in which the utility files
3 its performance-based formula rate tariff pursuant to
4 subsection (c) of this Section and shall reconcile (i) the
5 revenue requirement or requirements established by the
6 rate order or orders in effect from time to time during
7 such calendar year (weighted, as applicable) with (ii) the
8 revenue requirement determined using a year-end rate base
9 for that calendar year calculated pursuant to the
10 performance-based formula rate using (A) actual costs for
11 that year as reflected in the applicable FERC Form 1, and
12 (B) for the first such reconciliation only, the cost of
13 equity, which shall be calculated as the sum of 590 basis
14 points plus the average for the applicable calendar year of
15 the monthly average yields of 30-year U.S. Treasury bonds
16 published by the Board of Governors of the Federal Reserve
17 System in its weekly H.15 Statistical Release or successor
18 publication. The first such reconciliation is not intended
19 to provide for the recovery of costs previously excluded
20 from rates based on a prior Commission order finding of
21 imprudence or unreasonableness. Each reconciliation shall
22 be certified by the participating utility in the same
23 manner that FERC Form 1 is certified. The filing shall also
24 include the charge or credit, if any, resulting from the
25 calculation required by paragraph (6) of subsection (c) of
26 this Section.

1 Notwithstanding anything that may be to the contrary,
2 the intent of the reconciliation is to ultimately reconcile
3 the revenue requirement reflected in rates for each
4 calendar year, beginning with the calendar year in which
5 the utility files its performance-based formula rate
6 tariff pursuant to subsection (c) of this Section, with
7 what the revenue requirement determined using a year-end
8 rate base for the applicable calendar year would have been
9 had the actual cost information for the applicable calendar
10 year been available at the filing date.

11 (2) The new charges shall take effect beginning on the
12 first billing day of the following January billing period
13 and remain in effect through the last billing day of the
14 next December billing period regardless of whether the
15 Commission enters upon a hearing pursuant to this
16 subsection (d).

17 (3) The filing shall include relevant and necessary
18 data and documentation for the applicable rate year that is
19 consistent with the Commission's rules applicable to a
20 filing for a general increase in rates or any rules adopted
21 by the Commission to implement this Section. Normalization
22 adjustments shall not be required. Notwithstanding any
23 other provision of this Section or Act or any rule or other
24 requirement adopted by the Commission, a participating
25 utility that is a combination utility with more than one
26 rate zone shall not be required to file a separate set of

1 such data and documentation for each rate zone and may
2 combine such data and documentation into a single set of
3 schedules.

4 Within 45 days after the utility files its annual update of
5 cost inputs to the performance-based formula rate, the
6 Commission shall have the authority, either upon complaint or
7 its own initiative, but with reasonable notice, to enter upon a
8 hearing concerning the prudence and reasonableness of the costs
9 incurred by the utility to be recovered during the applicable
10 rate year that are reflected in the inputs to the
11 performance-based formula rate derived from the utility's FERC
12 Form 1. During the course of the hearing, each objection shall
13 be stated with particularity and evidence provided in support
14 thereof, after which the utility shall have the opportunity to
15 rebut the evidence. Discovery shall be allowed consistent with
16 the Commission's Rules of Practice, which Rules shall be
17 enforced by the Commission or the assigned hearing examiner.
18 The Commission shall apply the same evidentiary standards,
19 including, but not limited to, those concerning the prudence
20 and reasonableness of the costs incurred by the utility, in the
21 hearing as it would apply in a hearing to review a filing for a
22 general increase in rates under Article IX of this Act. The
23 Commission shall not, however, have the authority in a
24 proceeding under this subsection (d) to consider or order any
25 changes to the structure or protocols of the performance-based
26 formula rate approved pursuant to subsection (c) of this

1 Section. In a proceeding under this subsection (d), the
2 Commission shall enter its order no later than the earlier of
3 240 days after the utility's filing of its annual update of
4 cost inputs to the performance-based formula rate or December
5 31. The Commission's determinations of the prudence and
6 reasonableness of the costs incurred for the applicable
7 calendar year shall be final upon entry of the Commission's
8 order and shall not be subject to reopening, reexamination, or
9 collateral attack in any other Commission proceeding, case,
10 docket, order, rule or regulation, provided, however, that
11 nothing in this subsection (d) shall prohibit a party from
12 petitioning the Commission to rehear or appeal to the courts
13 the order pursuant to the provisions of this Act.

14 In the event the Commission does not, either upon complaint
15 or its own initiative, enter upon a hearing within 45 days
16 after the utility files the annual update of cost inputs to its
17 performance-based formula rate, then the costs incurred for the
18 applicable calendar year shall be deemed prudent and
19 reasonable, and the filed charges shall not be subject to
20 reopening, reexamination, or collateral attack in any other
21 proceeding, case, docket, order, rule, or regulation.

22 A participating utility's first filing of the updated cost
23 inputs, and any Commission investigation of such inputs
24 pursuant to this subsection (d) shall proceed notwithstanding
25 the fact that the Commission's investigation under subsection
26 (c) of this Section is still pending and notwithstanding any

1 other law, order, rule, or Commission practice to the contrary.

2 (e) Nothing in subsections (c) or (d) of this Section shall
3 prohibit the Commission from investigating, or a participating
4 utility from filing, revenue-neutral tariff changes related to
5 rate design of a performance-based formula rate that has been
6 placed into effect for the utility. Following approval of a
7 participating utility's performance-based formula rate tariff
8 pursuant to subsection (c) of this Section, the utility shall
9 make a filing with the Commission within one year after the
10 effective date of the performance-based formula rate tariff
11 that proposes changes to the tariff to incorporate the findings
12 of any final rate design orders of the Commission applicable to
13 the participating utility and entered subsequent to the
14 Commission's approval of the tariff. The Commission shall,
15 after notice and hearing, enter its order approving, or
16 approving with modification, the proposed changes to the
17 performance-based formula rate tariff within 240 days after the
18 utility's filing. Following such approval, the utility shall
19 make a filing with the Commission during each subsequent 3-year
20 period that either proposes revenue-neutral tariff changes or
21 re-files the existing tariffs without change, which shall
22 present the Commission with an opportunity to suspend the
23 tariffs and consider revenue-neutral tariff changes related to
24 rate design.

25 (f) Within 30 days after the filing of a tariff pursuant to
26 subsection (c) of this Section, each participating utility

1 shall develop and file with the Commission multi-year metrics
2 designed to achieve, ratably (i.e., in equal segments) over a
3 10-year period, improvement over baseline performance values
4 as follows:

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

8 (2) Fifteen percent improvement in the system Customer
9 Average Interruption Duration Index, using a baseline of
10 the average of the data from 2001 through 2010.

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

19 (3.5) For a participating utility other than a
20 combination utility, 20% improvement in the System Average
21 Interruption Frequency Index for its Northeastern Region,
22 using a baseline of the average of the data from 2001
23 through 2010. For purposes of this paragraph (3.5),
24 Northeastern Region shall have the meaning set forth in the
25 participating utility's most recent report filed pursuant
26 to Section 16-125 of this Act.

1 (4) Seventy-five percent improvement in the total
2 number of customers who exceed the service reliability
3 targets as set forth in subparagraphs (A) through (C) of
4 paragraph (4) of subsection (b) of 83 Ill. Admin. Code Part
5 411.140 as of May 1, 2011, using 2010 as the baseline year.

6 (5) Reduction in issuance of estimated electric bills:
7 90% improvement for a participating utility other than a
8 combination utility, and 56% improvement for a
9 participating utility that is a combination utility, using
10 a baseline of the average number of estimated bills for the
11 years 2008 through 2010.

12 (6) Consumption on inactive meters: 90% improvement
13 for a participating utility other than a combination
14 utility, and 56% improvement for a participating utility
15 that is a combination utility, using a baseline of the
16 average unbilled kilowatthours for the years 2009 and 2010.

17 (7) Unaccounted for energy: 50% improvement for a
18 participating utility other than a combination utility
19 using a baseline of the non-technical line loss unaccounted
20 for energy kilowatthours for the year 2009.

21 (8) Uncollectible expense: reduce uncollectible
22 expense by at least \$30,000,000 for a participating utility
23 other than a combination utility and by at least \$3,500,000
24 for a participating utility that is a combination utility,
25 using a baseline of the average uncollectible expense for
26 the years 2008 through 2010.

1 (9) Opportunities for minority-owned and female-owned
2 business enterprises: design a performance metric
3 regarding the creation of opportunities for minority-owned
4 and female-owned business enterprises consistent with
5 State and federal law using a base performance value of the
6 percentage of the participating utility's capital
7 expenditures that were paid to minority-owned and
8 female-owned business enterprises in 2010.

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

1 under paragraphs (1) through (3.5) of this subsection (f).

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

17 The metrics and performance goals set forth in
18 subparagraphs (5) through (8) of this subsection (f) are based
19 on the assumptions that the participating utility may fully
20 implement the technology described in subsection (b) of this
21 Section, including utilizing the full functionality of such
22 technology and that there is no requirement for personal
23 on-site notification. If the utility is unable to meet the
24 metrics and performance goals set forth in subparagraphs (5)
25 through (8) of this subsection (f) for such reasons, and the
26 Commission so finds after notice and hearing, then the utility

1 shall be excused from compliance, but only to the limited
2 extent achievement of the affected metrics and performance
3 goals was hindered by the less than full implementation.

4 (f-5) The financial penalties applicable to the metrics
5 described in subparagraphs (1) through (8) of subsection (f) of
6 this Section, as applicable, shall be applied through an
7 adjustment to the participating utility's return on equity of
8 no more than a total of 30 basis points in each of the first 3
9 years, of no more than a total of 34 basis points in each of the
10 3 years thereafter, and of no more than a total of 38 basis
11 points in each of the 4 years thereafter, as follows:

12 (1) With respect to each of the incremental annual
13 performance goals established pursuant to paragraph (1) of
14 subsection (f) of this Section,

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

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

1 basis points; and during years 7 through 10, by 14
2 basis points.

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

11 (3) With respect to each of the incremental annual
12 performance goals established pursuant to paragraphs (3)
13 and (3.5) of subsection (f) of this Section, for each year
14 that a participating utility other than a combination
15 utility does not achieve both such goals, the participating
16 utility's return on equity shall be reduced as follows:
17 during years 1 through 3, by 5 basis points; during years 4
18 through 6, by 6 basis points; and during years 7 through
19 10, by 7 basis points.

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

1 years 7 through 10, by 7 basis points.

2 (5) With respect to each of the incremental annual
3 performance goals established pursuant to subparagraph (5)
4 of subsection (f) of this Section, for each year that the
5 participating utility does not achieve at least 95% of each
6 such goal, the participating utility's return on equity
7 shall be reduced by 5 basis points for each such unachieved
8 goal.

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

24 The financial penalties shall be applied as described in
25 this subsection (f-5) for the 12-month period in which the
26 deficiency occurred through a separate tariff mechanism, which

1 shall be filed by the utility together with its metrics. In the
2 event the formula rate tariff established pursuant to
3 subsection (c) of this Section terminates, the utility's
4 obligations under subsection (f) of this Section and this
5 subsection (f-5) shall also terminate, provided, however, that
6 the tariff mechanism established pursuant to subsection (f) of
7 this Section and this subsection (f-5) shall remain in effect
8 until any penalties due and owing at the time of such
9 termination are applied.

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

1 the imposition of financial penalties for failing to achieve
2 one or more of the metrics established pursuant to subparagraph
3 (1) through (4) of subsection (f) of this Section.

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

22 In the event that the average annual increase exceeds 2.5%
23 as calculated pursuant to this subsection (g), then Sections
24 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of this Act, other
25 than this subsection, shall be inoperative as they relate to
26 the utility and its service area as of the date of the report

1 due to be submitted pursuant to this subsection and the utility
2 shall no longer be eligible to annually update the
3 performance-based formula rate tariff pursuant to subsection
4 (d) of this Section. In such event, the then current rates
5 shall remain in effect until such time as new rates are set
6 pursuant to Article IX of this Act, subject to retroactive
7 adjustment, with interest, to reconcile rates charged with
8 actual costs, and the participating utility's voluntary
9 commitments and obligations under subsection (b) of this
10 Section shall immediately terminate, except for the utility's
11 obligation to pay an amount already owed to the fund for
12 training grants pursuant to a Commission order issued under
13 subsection (b) of this Section.

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

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

1 of this Act.

2 The fact that this Section becomes inoperative as set forth
3 in this subsection shall not be construed to mean that the
4 Commission may reexamine or otherwise reopen prudence or
5 reasonableness determinations already made.

6 (h) Sections 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of
7 this Act, other than this subsection, are inoperative after
8 December 31, 2019 ~~2017~~ for every participating utility, after
9 which time a participating utility shall no longer be eligible
10 to annually update the performance-based formula rate tariff
11 pursuant to subsection (d) of this Section. At such time, the
12 then current rates shall remain in effect until such time as
13 new rates are set pursuant to Article IX of this Act, subject
14 to retroactive adjustment, with interest, to reconcile rates
15 charged with actual costs.

16 By December 31, 2017, the Commission shall prepare and file
17 with the General Assembly a report on the infrastructure
18 program and the performance-based formula rate. The report
19 shall include the change in the average amount per kilowatthour
20 paid by residential customers between June 1, 2011 and May 31,
21 2017. If the change in the total average rate paid exceeds 2.5%
22 compounded annually, the Commission shall include in the report
23 an analysis that shows the portion of the change due to the
24 delivery services component and the portion of the change due
25 to the supply component of the rate. The report shall include
26 separate sections for each participating utility.

1 In the event Sections 16-108.5, 16-108.6, 16-108.7, and
2 16-108.8 of this Act do not become inoperative after December
3 31, 2019 ~~2017~~, then these Sections are inoperative after
4 December 31, 2022 for every participating utility, after which
5 time a participating utility shall no longer be eligible to
6 annually update the performance-based formula rate tariff
7 pursuant to subsection (d) of this Section. At such time, the
8 then current rates shall remain in effect until such time as
9 new rates are set pursuant to Article IX of this Act, subject
10 to retroactive adjustment, with interest, to reconcile rates
11 charged with actual costs.

12 The fact that this Section becomes inoperative as set forth
13 in this subsection shall not be construed to mean that the
14 Commission may reexamine or otherwise reopen prudence or
15 reasonableness determinations already made.

16 (i) While a participating utility may use, develop, and
17 maintain broadband systems and the delivery of broadband
18 services, voice-over-internet-protocol services,
19 telecommunications services, and cable and video programming
20 services for use in providing delivery services and Smart Grid
21 functionality or application to its retail customers,
22 including, but not limited to, the installation,
23 implementation and maintenance of Smart Grid electric system
24 upgrades as defined in Section 16-108.6 of this Act, a
25 participating utility is prohibited from offering to its retail
26 customers broadband services or the delivery of broadband

1 services, voice-over-internet-protocol services,
2 telecommunications services, or cable or video programming
3 services, unless they are part of a service directly related to
4 delivery services or Smart Grid functionality or applications
5 as defined in Section 16-108.6 of this Act, and from recovering
6 the costs of such offerings from retail customers.

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

16 (k) The changes made in subsections (c) and (d) of this
17 Section by this amendatory Act of the 98th General Assembly are
18 intended to be a restatement and clarification of existing law,
19 and intended to give binding effect to the provisions of House
20 Resolution 1157 adopted by the House of Representatives of the
21 97th General Assembly and Senate Resolution 821 adopted by the
22 Senate of the 97th General Assembly that are reflected in
23 paragraph (3) of this subsection. In addition, this amendatory
24 Act of the 98th General Assembly preempts and supersedes any
25 final Commission orders entered in Docket Nos. 11-0721,
26 12-0001, 12-0293, and 12-0321 to the extent inconsistent with

1 the amendatory language added to subsections (c) and (d).

2 (1) No earlier than 5 business days after the effective
3 date of this amendatory Act of the 98th General Assembly,
4 each participating utility shall file any tariff changes
5 necessary to implement the amendatory language set forth in
6 subsections (c) and (d) of this Section by this amendatory
7 Act of the 98th General Assembly and a revised revenue
8 requirement under the participating utility's
9 performance-based formula rate. The Commission shall enter
10 a final order approving such tariff changes and revised
11 revenue requirement within 21 days after the participating
12 utility's filing.

13 (2) Notwithstanding anything that may be to the
14 contrary, a participating utility may file a tariff to
15 retroactively recover its previously unrecovered actual
16 costs of delivery service that are no longer subject to
17 recovery through a reconciliation adjustment under
18 subsection (d) of this Section. This retroactive recovery
19 shall include any derivative adjustments resulting from
20 the changes to subsections (c) and (d) of this Section by
21 this amendatory Act of the 98th General Assembly. Such
22 tariff shall allow the utility to assess, on current
23 customer bills over a period of 12 monthly billing periods,
24 a charge or credit related to those unrecovered costs with
25 interest at the utility's weighted average cost of capital
26 during the period in which those costs were unrecovered. A

1 participating utility may file a tariff that implements a
2 retroactive charge or credit as described in this paragraph
3 for amounts not otherwise included in the tariff filing
4 provided for in paragraph (1) of this subsection (k). The
5 Commission shall enter a final order approving such tariff
6 within 21 days after the participating utility's filing.

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

17 (4) Nothing in this subsection is intended to effect a
18 dismissal of or otherwise affect an appeal from any final
19 Commission orders entered in Docket Nos. 11-0721, 12-0001,
20 12-0293, and 12-0321 other than to the extent of the
21 amendatory language contained in subsections (c) and (d) of
22 this amendatory Act of the 98th General Assembly.

23 (1) Each participating utility shall be deemed to have been
24 in full compliance with all requirements of subsection (b) of
25 this Section, subsection (c) of this Section, Section 16-108.6
26 of this Act, and all Commission orders entered pursuant to

1 Sections 16-108.5 and 16-108.6 of this Act, up to and including
2 the effective date of this amendatory Act of the 98th General
3 Assembly. The Commission shall not undertake any investigation
4 of such compliance and no penalty shall be assessed or adverse
5 action taken against a participating utility for noncompliance
6 with Commission orders associated with subsection (b) of this
7 Section, subsection (c) of this Section, and Section 16-108.6
8 of this Act prior to such date. Each participating utility
9 other than a combination utility shall be permitted, without
10 penalty, a period of 12 months after such effective date to
11 take actions required to ensure its infrastructure investment
12 program is in compliance with subsection (b) of this Section
13 and with Section 16-108.6 of this Act. Provided further:

14 (1) if this amendatory Act of the 98th General Assembly
15 takes effect on or before June 15, 2013, the following
16 subparagraphs shall apply to a participating utility other
17 than a combination utility:

18 (A) if the Commission has initiated a proceeding
19 pursuant to subsection (e) of Section 16-108.6 of this
20 Act that is pending as of the effective date of this
21 amendatory Act of the 98th General Assembly, then the
22 order entered in such proceeding shall, after notice
23 and hearing, accelerate the commencement of the meter
24 deployment schedule approved in the final Commission
25 order on rehearing entered in Docket No. 12-0298;

26 (B) if the Commission has entered an order pursuant

1 to subsection (e) of Section 16-108.6 of this Act prior
2 to the effective date of this amendatory Act of the
3 98th General Assembly that does not accelerate the
4 commencement of the meter deployment schedule approved
5 in the final Commission order on rehearing entered in
6 Docket No. 12-0298, then the utility shall file with
7 the Commission, within 45 days after such effective
8 date, a plan for accelerating the commencement of the
9 utility's meter deployment schedule approved in the
10 final Commission order on rehearing entered in Docket
11 No. 12-0298; the Commission shall reopen the
12 proceeding in which it entered its order pursuant to
13 subsection (e) of Section 16-108.6 of this Act and
14 shall, after notice and hearing, enter an amendatory
15 order that approves or approves as modified such
16 accelerated plan within 90 days after the utility's
17 filing; or

18 (C) if the Commission has not initiated a
19 proceeding pursuant to subsection (e) of Section
20 16-108.6 of this Act prior to the effective date of
21 this amendatory Act of the 98th General Assembly, then
22 the utility shall file with the Commission, within 45
23 days after such effective date, a plan for accelerating
24 the commencement of the utility's meter deployment
25 schedule approved in the final Commission order on
26 rehearing entered in Docket No. 12-0298 and the

1 Commission shall, after notice and hearing, approve or
2 approve as modified such plan within 90 days after the
3 utility's filing;

4 (2) if this amendatory Act of the 98th General Assembly
5 takes effect after June 15, 2013, then each participating
6 utility other than a combination utility shall file with
7 the Commission, within 45 days after such effective date, a
8 plan for accelerating the commencement of the utility's
9 meter deployment schedule approved in the final Commission
10 order on rehearing entered in Docket No. 12-0298; the
11 Commission shall reopen the most recent proceeding in which
12 it entered an order pursuant to subsection (e) of Section
13 16-108.6 of this Act and within 90 days after the utility's
14 filing shall, after notice and hearing, enter an amendatory
15 order that approves or approves as modified such
16 accelerated plan, provided that if there was no such prior
17 proceeding the Commission shall open a new proceeding and
18 within 90 days after the utility's filing shall, after
19 notice and hearing, enter an order that approves or
20 approves as modified such accelerated plan.

21 Any schedule for meter deployment approved by the
22 Commission pursuant to subparagraphs (1) or (2) of this
23 subsection (1) shall take into consideration procurement times
24 for meters and other equipment and operational issues. Nothing
25 in this amendatory Act of the 98th General Assembly shall
26 shorten or extend the end dates for the 5-year or 10-year

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

6 (m) The provisions of this amendatory Act of the 98th
7 General Assembly are severable under Section 1.31 of the
8 Statute on Statutes.

9 (Source: P.A. 97-616, eff. 10-26-11; 97-646, eff. 12-30-11;
10 98-15, eff. 5-22-13.)

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