



Sen. John J. Cullerton

Filed: 2/13/2013

09800SB0009sam001

LRB098 04269 JLS 40869 a

1 AMENDMENT TO SENATE BILL 9

2 AMENDMENT NO. _____. Amend Senate Bill 9 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Intent; orders preempted and superseded. The
5 changes made in subsections (c) and (d) of Section 16-108.5 of
6 the Public Utilities Act by this Act are intended to be a
7 restatement and clarification of existing law, and intended to
8 give binding effect to the legislative intent expressed in
9 House Resolution 1157 adopted by the House of Representatives
10 of the 97th General Assembly and Senate Resolution 821 adopted
11 by the Senate of the 97th General Assembly.

12 This Act preempts and supersedes any final Commission
13 orders entered in Docket Nos. 11-0721, 12-0001, 12-0293, and
14 12-0321 to the extent inconsistent with the amendatory language
15 in subsections (c) and (d) of Section 16-108.5 of the Public
16 Utilities Act.

1 Section 5. The Public Utilities Act is amended by changing
2 Sections 4-301 and 16-108.5 as follows:

3 (220 ILCS 5/4-301) (from Ch. 111 2/3, par. 4-301)

4 Sec. 4-301. The Commission may confer in person, or by
5 correspondence, by attending conventions, or in any other way,
6 with Commissions and any and all agencies dealing with public
7 utilities of other states and of the United States on any
8 matters relating to public utilities.

9 The Commission shall have full power and authority to make
10 joint investigations, hold joint hearings within or without the
11 State, and issue joint or concurrent orders in conjunction with
12 any official, board, commission or agency of any state or of
13 the United States. In the holding of such investigations or
14 hearings, or in the making of such orders, the Commission shall
15 function under agreements or compacts between states or under
16 the concurrent power of states to regulate the interstate
17 commerce, or as an agency of the United States, or otherwise.

18 The Commission shall make whenever requested by the
19 Governor, the General Assembly, or either branch of the General
20 Assembly a report within 90 days or any other time period
21 specified within ~~of~~ such request, which shall contain copies of
22 all orders issued by the Commission which it deems of special
23 importance or general significance, and any information in the
24 possession of the Commission which it shall deem of value to
25 the people of the State.

1 The Commission shall conduct a hearing and take testimony
2 relative to any pending legislation with respect to any person,
3 corporation or matter within its jurisdiction, if requested to
4 do so by the Governor, the General Assembly, or by either
5 branch of the General Assembly thereof, and shall report its
6 conclusions to the Governor or the General Assembly, as the
7 case may be. The Commission may also recommend the enactment of
8 such legislation with respect to any matter within its
9 jurisdiction as it deems wise or necessary in the public
10 interest. The Commission shall, at such times as the Governor, the
11 General Assembly, or either branch of the General Assembly
12 shall direct, examine any particular subject connected with the
13 condition and management of public utilities, and report to the
14 Governor or the General Assembly, as the case may be, him in
15 writing its opinion thereon with its reasons therefor.

16 (Source: P.A. 84-617.)

17 (220 ILCS 5/16-108.5)

18 Sec. 16-108.5. Infrastructure investment and
19 modernization; regulatory reform.

20 (a) (Blank).

21 (b) For purposes of this Section, "participating utility"
22 means an electric utility or a combination utility serving more
23 than 1,000,000 customers in Illinois that voluntarily elects
24 and commits to undertake (i) the infrastructure investment
25 program consisting of the commitments and obligations

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

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

1 amendatory Act of the 97th General Assembly and that has not
2 yet been fulfilled. A portion of the full-time equivalent jobs
3 created by each participating utility shall include
4 incremental personnel hired subsequent to the effective date of
5 this amendatory Act of the 97th General Assembly. For purposes
6 of this Section, "peak program year" means the consecutive
7 12-month period with the highest number of full-time equivalent
8 jobs that occurs between the beginning of investment year 2 and
9 the end of investment year 4.

10 A participating utility shall meet one of the following
11 commitments, as applicable:

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

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

25 (i) distribution infrastructure improvements
26 totaling an estimated \$1,000,000,000, including

1 underground residential distribution cable
2 injection and replacement and mainline cable
3 system refurbishment and replacement projects;

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

19 (iii) wood pole inspection, treatment, and
20 replacement programs;

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

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

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

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

22 (2) Beginning no later than 180 days after a
23 participating utility that is a combination utility files a
24 performance-based formula rate tariff pursuant to
25 subsection (c) of this Section, or, beginning no later than
26 January 1, 2012 if such utility files such

1 performance-based formula rate tariff within 14 days of the
2 effective date of this amendatory Act of the 97th General
3 Assembly, the participating utility shall, except as
4 provided in subsection (b-5):

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

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

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

25 (iii) wood pole inspection, treatment, and
26 replacement programs; and

1 (B) over a 10-year period, invest an estimated
2 \$360,000,000 to upgrade and modernize its transmission
3 and distribution infrastructure and in Smart Grid
4 electric system upgrades, including, but not limited
5 to:

6 (i) additional smart meters;

7 (ii) distribution automation;

8 (iii) associated cyber secure data
9 communication network; and

10 (iv) substation micro-processor relay
11 upgrades.

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

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

1 investment periods specified in this subsection (b). For each
2 such investment period, the ramp-up and ramp-down time shall
3 not exceed a total of 6 months.

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

1 investment program, plan, or schedule. Further, no later than
2 45 days following the last day of the first, second, and third
3 quarters of each year of the plan, a participating utility
4 shall submit to the Commission a verified quarterly report for
5 the prior quarter that includes (i) the total number of
6 full-time equivalent jobs created during the prior quarter,
7 (ii) the total number of employees as of the last day of the
8 prior quarter, (iii) the total number of full-time equivalent
9 hours in each job classification or job title, (iv) the total
10 number of incremental employees and contractors in support of
11 the investments undertaken pursuant to this subsection (b) for
12 the prior quarter, and (v) any other information that the
13 Commission may require by rule.

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

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

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

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

1 terminate, except for the utility's obligation to pay an amount
2 already owed to the fund for training grants pursuant to a
3 Commission order.

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

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

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

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

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

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

6 (b-10) All participating utilities shall make
7 contributions for an energy low-income and support program in
8 accordance with this subsection. Beginning no later than 180
9 days after a participating utility files a performance-based
10 formula rate tariff pursuant to subsection (c) of this Section,
11 or beginning no later than January 1, 2012 if such utility
12 files such performance-based formula rate tariff within 14 days
13 of the effective date of this amendatory Act of the 97th
14 General Assembly, and without obtaining any approvals from the
15 Commission or any other agency other than as set forth in this
16 Section, regardless of whether any such approval would
17 otherwise be required, a participating utility other than a
18 combination utility shall pay \$10,000,000 per year for 5 years
19 and a participating utility that is a combination utility shall
20 pay \$1,000,000 per year for 10 years to the energy low-income
21 and support program, which is intended to fund customer
22 assistance programs with the primary purpose being avoidance of
23 imminent disconnection. Such programs may 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 disabled veterans who demonstrate a
5 hardship and members of the armed services or reserve
6 forces of the United States or members of the Illinois
7 National Guard who are on active duty pursuant to an
8 executive order of the President of the United States, an
9 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 and
12 education to low-income senior citizens to assist them with
13 obtaining information regarding energy usage and effective
14 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 by
6 the Commission. If a utility elects to file tariffs with the
7 Commission to implement all or a portion of the programs, those
8 tariffs shall, regardless of the date actually filed, be deemed
9 accepted and approved, and shall become effective on the
10 effective date of this amendatory Act of the 97th General
11 Assembly. The participating utilities whose customers benefit
12 from the funds that are disbursed as contemplated in this
13 Section shall file annual reports documenting the disbursement
14 of those funds with the Commission. The Commission has the
15 authority to audit disbursement of the funds to ensure they
16 were disbursed 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 customers
2 with sufficient specificity to operate in a standardized manner
3 and be updated annually with transparent information that
4 reflects the utility's actual costs to be recovered during the
5 applicable rate year, which is the period beginning with the
6 first billing day of January and extending through the last
7 billing day of the following December. In the event the utility
8 recovers a portion of its costs through automatic adjustment
9 clause tariffs on the effective date of this amendatory Act of
10 the 97th General Assembly, the utility may elect to continue to
11 recover these costs through such tariffs, but then these costs
12 shall not be recovered through the performance-based formula
13 rate. In the event the participating utility, prior to the
14 effective date of this amendatory Act of the 97th General
15 Assembly, filed electric delivery services tariffs with the
16 Commission pursuant to Section 9-201 of this Act that are
17 related to the recovery of its electric delivery services costs
18 that are still pending on the effective date of this amendatory
19 Act of the 97th General Assembly, the participating utility
20 shall, at the time it files its performance-based formula rate
21 tariff with the Commission, also file a notice of withdrawal
22 with the Commission to withdraw the electric delivery services
23 tariffs previously filed pursuant to Section 9-201 of this Act.
24 Upon receipt of such notice, the Commission shall dismiss with
25 prejudice any docket that had been initiated to investigate the
26 electric delivery services tariffs filed pursuant to Section

1 9-201 of this Act, and such tariffs and the record related
2 thereto shall not be the subject of any further hearing,
3 investigation, or proceeding of any kind related to rates for
4 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 the
13 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 not
25 imply the imprudence or unreasonableness of that cost or
26 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.

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

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

13 (B) 580 basis points.

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

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

25 (A) recovery of incentive compensation expense
26 that is based on the achievement of operational

1 metrics, including metrics related to budget controls,
2 outage duration and frequency, safety, customer
3 service, efficiency and productivity, and
4 environmental compliance. Incentive compensation
5 expense that is based on net income or an affiliate's
6 earnings per share shall not be recoverable under the
7 performance-based formula rate;

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

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

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

1 (E) recovery of the expenses related to the
2 Commission proceeding under this subsection (c) to
3 approve this performance-based formula rate and
4 initial rates or to subsequent proceedings related to
5 the formula, provided that the recovery shall be
6 amortized over a 3-year period; recovery of expenses
7 related to the annual Commission proceedings under
8 subsection (d) of this Section to review the inputs to
9 the performance-based formula rate shall be expensed
10 and recovered through the performance-based formula
11 rate;

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

1 accounting, or to environmental matters, or in the
2 interpretation or application thereof by any
3 governmental authority occurring after the effective
4 date of this amendatory Act of the 97th General
5 Assembly;

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

8 (H) historical weather normalized billing
9 determinants; and

10 (I) allocation methods for common costs.

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

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

1 pursuant to paragraph (3) of this subsection (c) (after
2 adjusting for any penalties to the rate of return on common
3 equity applied pursuant to the performance metrics
4 provision of subsection (f) of this Section) for the prior
5 rate year, adjusted for taxes.

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

16 The utility shall file, together with its tariff, final
17 data based on its most recently filed FERC Form 1, plus
18 projected plant additions and correspondingly updated
19 depreciation reserve and expense for the calendar year in which
20 the tariff and data are filed, that shall populate the
21 performance-based formula rate and set the initial delivery
22 services rates under the formula. For purposes of this Section,
23 "FERC Form 1" means the Annual Report of Major Electric
24 Utilities, Licensees and Others that electric utilities are
25 required to file with the Federal Energy Regulatory Commission
26 under the Federal Power Act, Sections 3, 4(a), 304 and 209,

1 modified as necessary to be consistent with 83 Ill. Admin. Code
2 Part 415 as of May 1, 2011. Nothing in this Section is intended
3 to allow costs that are not otherwise recoverable to be
4 recoverable by virtue of inclusion in FERC Form 1.

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

22 Until such time as the Commission approves a different rate
23 design and cost allocation pursuant to subsection (e) of this
24 Section, rate design and cost allocation across customer
25 classes shall be consistent with the Commission's most recent
26 order regarding the participating utility's request for a

1 general increase in its delivery services rates.

2 Subsequent changes to the performance-based formula rate
3 structure or protocols shall be made as set forth in Section
4 9-201 of this Act, but nothing in this subsection (c) is
5 intended to limit the Commission's authority under Article IX
6 and other provisions of this Act to initiate an investigation
7 of a participating utility's performance-based formula rate
8 tariff, provided that any such changes shall be consistent with
9 paragraphs (1) through (6) of this subsection (c). Any change
10 ordered by the Commission shall be made at the same time new
11 rates take effect following the Commission's next order
12 pursuant to subsection (d) of this Section, provided that the
13 new rates take effect no less than 30 days after the date on
14 which the Commission issues an order adopting the change.

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

19 In the event the performance-based formula rate is
20 terminated, the then current rates shall remain in effect until
21 such time as new rates are set pursuant to Article IX of this
22 Act, subject to retroactive rate adjustment, with interest, to
23 reconcile rates charged with actual costs. At such time that
24 the performance-based formula rate is terminated, the
25 participating utility's voluntary commitments and obligations
26 under subsection (b) of this Section shall immediately

1 terminate, except for the utility's obligation to pay an amount
2 already owed to the fund for training grants pursuant to a
3 Commission order issued under subsection (b) of this Section.

4 (d) Subsequent to the Commission's issuance of an order
5 approving the utility's performance-based formula rate
6 structure and protocols, and initial rates under subsection (c)
7 of this Section, the utility shall file, on or before May 1 of
8 each year, with the Chief Clerk of the Commission its updated
9 cost inputs to the performance-based formula rate for the
10 applicable rate year and the corresponding new charges. Each
11 such filing shall conform to the following requirements and
12 include the following information:

13 (1) The inputs to the performance-based formula rate
14 for the applicable rate year shall be based on final
15 historical data reflected in the utility's most recently
16 filed annual FERC Form 1 plus projected plant additions and
17 correspondingly updated depreciation reserve and expense
18 for the calendar year in which the inputs are filed. The
19 filing shall also include a reconciliation of the revenue
20 requirement that was in effect for the prior rate year (as
21 set by the cost inputs for the prior rate year) with the
22 actual revenue requirement for the prior rate year
23 (determined using a year-end rate base) that uses amounts
24 ~~as~~ reflected in the applicable FERC Form 1 that reports the
25 actual costs for the prior rate year). Any over-collection
26 or under-collection indicated by such reconciliation shall

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

1 be certified by the participating utility in the same
2 manner that FERC Form 1 is certified. The filing shall also
3 include the charge or credit, if any, resulting from the
4 calculation required by paragraph (6) of subsection (c) of
5 this Section.

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

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

22 (3) The filing shall include relevant and necessary
23 data and documentation for the applicable rate year that is
24 consistent with the Commission's rules applicable to a
25 filing for a general increase in rates or any rules adopted
26 by the Commission to implement this Section. Normalization

1 adjustments shall not be required. Notwithstanding any
2 other provision of this Section or Act or any rule or other
3 requirement adopted by the Commission, a participating
4 utility that is a combination utility with more than one
5 rate zone shall not be required to file a separate set of
6 such data and documentation for each rate zone and may
7 combine such data and documentation into a single set of
8 schedules.

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

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

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

1 A participating utility's first filing of the updated cost
2 inputs, and any Commission investigation of such inputs
3 pursuant to this subsection (d) shall proceed notwithstanding
4 the fact that the Commission's investigation under subsection
5 (c) of this Section is still pending and notwithstanding any
6 other law, order, rule, or Commission practice to the contrary.

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

1 present the Commission with an opportunity to suspend the
2 tariffs and consider revenue-neutral tariff changes related to
3 rate design.

4 (f) Within 30 days after the filing of a tariff pursuant to
5 subsection (c) of this Section, each participating utility
6 shall develop and file with the Commission multi-year metrics
7 designed to achieve, ratably (i.e., in equal segments) over a
8 10-year period, improvement over baseline performance values
9 as follows:

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

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

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

24 (3.5) For a participating utility other than a
25 combination utility, 20% improvement in the System Average
26 Interruption Frequency Index for its Northeastern Region,

1 using a baseline of the average of the data from 2001
2 through 2010. For purposes of this paragraph (3.5),
3 Northeastern Region shall have the meaning set forth in the
4 participating utility's most recent report filed pursuant
5 to Section 16-125 of this Act.

6 (4) Seventy-five percent improvement in the total
7 number of customers who exceed the service reliability
8 targets as set forth in subparagraphs (A) through (C) of
9 paragraph (4) of subsection (b) of 83 Ill. Admin. Code Part
10 411.140 as of May 1, 2011, using 2010 as the baseline year.

11 (5) Reduction in issuance of estimated electric bills:
12 90% improvement for a participating utility other than a
13 combination utility, and 56% improvement for a
14 participating utility that is a combination utility, using
15 a baseline of the average number of estimated bills for the
16 years 2008 through 2010.

17 (6) Consumption on inactive meters: 90% improvement
18 for a participating utility other than a combination
19 utility, and 56% improvement for a participating utility
20 that is a combination utility, using a baseline of the
21 average unbilled kilowatthours for the years 2009 and 2010.

22 (7) Unaccounted for energy: 50% improvement for a
23 participating utility other than a combination utility
24 using a baseline of the non-technical line loss unaccounted
25 for energy kilowatthours for the year 2009.

26 (8) Uncollectible expense: reduce uncollectible

1 expense by at least \$30,000,000 for a participating utility
2 other than a combination utility and by at least \$3,500,000
3 for a participating utility that is a combination utility,
4 using a baseline of the average uncollectible expense for
5 the years 2008 through 2010.

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

14 The definitions set forth in 83 Ill. Admin. Code Part
15 411.20 as of May 1, 2011 shall be used for purposes of
16 calculating performance under paragraphs (1) through (3.5) of
17 this subsection (f), provided, however, that the participating
18 utility may exclude up to 9 extreme weather event days from
19 such calculation for each year, and provided further that the
20 participating utility shall exclude 9 extreme weather event
21 days when calculating each year of the baseline period to the
22 extent that there are 9 such days in a given year of the
23 baseline period. For purposes of this Section, an extreme
24 weather event day is a 24-hour calendar day (beginning at 12:00
25 a.m. and ending at 11:59 p.m.) during which any weather event
26 (e.g., storm, tornado) caused interruptions for 10,000 or more

1 of the participating utility's customers for 3 hours or more.
2 If there are more than 9 extreme weather event days in a year,
3 then the utility may choose no more than 9 extreme weather
4 event days to exclude, provided that the same extreme weather
5 event days are excluded from each of the calculations performed
6 under paragraphs (1) through (3.5) of this subsection (f).

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

22 The metrics and performance goals set forth in
23 subparagraphs (5) through (8) of this subsection (f) are based
24 on the assumptions that the participating utility may fully
25 implement the technology described in subsection (b) of this
26 Section, including utilizing the full functionality of such

1 technology and that there is no requirement for personal
2 on-site notification. If the utility is unable to meet the
3 metrics and performance goals set forth in subparagraphs (5)
4 through (8) of this subsection (f) for such reasons, and the
5 Commission so finds after notice and hearing, then the utility
6 shall be excused from compliance, but only to the limited
7 extent achievement of the affected metrics and performance
8 goals was hindered by the less than full implementation.

9 (f-5) The financial penalties applicable to the metrics
10 described in subparagraphs (1) through (8) of subsection (f) of
11 this Section, as applicable, shall be applied through an
12 adjustment to the participating utility's return on equity of
13 no more than a total of 30 basis points in each of the first 3
14 years, of no more than a total of 34 basis points in each of the
15 3 years thereafter, and of no more than a total of 38 basis
16 points in each of the 4 years thereafter, as follows:

17 (1) With respect to each of the incremental annual
18 performance goals established pursuant to paragraph (1) of
19 subsection (f) of this Section,

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

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

8 (2) With respect to each of the incremental annual
9 performance goals established pursuant to paragraph (2) of
10 subsection (f) of this Section, for each year that the
11 participating utility does not achieve each such goal, 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 (3) With respect to each of the incremental annual
17 performance goals established pursuant to paragraphs (3)
18 and (3.5) of subsection (f) of this Section, for each year
19 that a participating utility other than a combination
20 utility does not achieve both such goals, the participating
21 utility's return on equity shall be reduced as follows:
22 during years 1 through 3, by 5 basis points; during years 4
23 through 6, by 6 basis points; and during years 7 through
24 10, by 7 basis points.

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

14 (6) With respect to each of the incremental annual
15 performance goals established pursuant to paragraphs (6),
16 (7), and (8) of subsection (f) of this Section, as
17 applicable, which together measure non-operational
18 customer savings and benefits relating to the
19 implementation of the Advanced Metering Infrastructure
20 Deployment Plan, as defined in Section 16-108.6 of this
21 Act, the performance under each such goal shall be
22 calculated in terms of the percentage of the goal achieved.
23 The percentage of goal achieved for each of the goals shall
24 be aggregated, and an average percentage value calculated,
25 for each year of the 10-year period. If the utility does
26 not achieve an average percentage value in a given year of

1 at least 95%, the participating utility's return on equity
2 shall be reduced by 5 basis points.

3 The financial penalties shall be applied as described in
4 this subsection (f-5) for the 12-month period in which the
5 deficiency occurred through a separate tariff mechanism, which
6 shall be filed by the utility together with its metrics. In the
7 event the formula rate tariff established pursuant to
8 subsection (c) of this Section terminates, the utility's
9 obligations under subsection (f) of this Section and this
10 subsection (f-5) shall also terminate, provided, however, that
11 the tariff mechanism established pursuant to subsection (f) of
12 this Section and this subsection (f-5) shall remain in effect
13 until any penalties due and owing at the time of such
14 termination are applied.

15 The Commission shall, after notice and hearing, enter an
16 order within 120 days after the metrics are filed approving, or
17 approving with modification, a participating utility's tariff
18 or mechanism to satisfy the metrics set forth in subsection (f)
19 of this Section. On June 1 of each subsequent year, each
20 participating utility shall file a report with the Commission
21 that includes, among other things, a description of how the
22 participating utility performed under each metric and an
23 identification of any extraordinary events that adversely
24 impacted the utility's performance. Whenever a participating
25 utility does not satisfy the metrics required pursuant to
26 subsection (f) of this Section, the Commission shall, after

1 notice and hearing, enter an order approving financial
2 penalties in accordance with this subsection (f-5). The
3 Commission-approved financial penalties shall be applied
4 beginning with the next rate year. Nothing in this Section
5 shall authorize the Commission to reduce or otherwise obviate
6 the imposition of financial penalties for failing to achieve
7 one or more of the metrics established pursuant to subparagraph
8 (1) through (4) of subsection (f) of this Section.

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

1 In the event that the average annual increase exceeds 2.5%
2 as calculated pursuant to this subsection (g), then Sections
3 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of this Act, other
4 than this subsection, shall be inoperative as they relate to
5 the utility and its service area as of the date of the report
6 due to be submitted pursuant to this subsection and the utility
7 shall no longer be eligible to annually update the
8 performance-based formula rate tariff pursuant to subsection
9 (d) of this Section. In such event, the then current rates
10 shall remain in effect until such time as new rates are set
11 pursuant to Article IX of this Act, subject to retroactive
12 adjustment, with interest, to reconcile rates charged with
13 actual costs, and the participating utility's voluntary
14 commitments and obligations under subsection (b) of this
15 Section shall immediately terminate, except for the utility's
16 obligation to pay an amount already owed to the fund for
17 training grants pursuant to a Commission order issued under
18 subsection (b) of this Section.

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

23 For purposes of this Section, the amount per kilowatthour
24 means the total amount paid for electric service expressed on a
25 per kilowatthour basis, and the total amount paid for electric
26 service includes without limitation amounts paid for supply,

1 transmission, distribution, surcharges, and add-on taxes
2 exclusive of any increases in taxes or new taxes imposed after
3 the effective date of this amendatory Act of the 97th General
4 Assembly. For purposes of this Section, "eligible retail
5 customers" shall have the meaning set forth in Section 16-111.5
6 of this Act.

7 The fact that this Section becomes inoperative as set forth
8 in this subsection shall not be construed to mean that the
9 Commission may reexamine or otherwise reopen prudence or
10 reasonableness determinations already made.

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

21 By December 31, 2017, the Commission shall prepare and file
22 with the General Assembly a report on the infrastructure
23 program and the performance-based formula rate. The report
24 shall include the change in the average amount per kilowatthour
25 paid by residential customers between June 1, 2011 and May 31,
26 2017. If the change in the total average rate paid exceeds 2.5%

1 compounded annually, the Commission shall include in the report
2 an analysis that shows the portion of the change due to the
3 delivery services component and the portion of the change due
4 to the supply component of the rate. The report shall include
5 separate sections for each participating utility.

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

17 The fact that this Section becomes inoperative as set forth
18 in this subsection shall not be construed to mean that the
19 Commission may reexamine or otherwise reopen prudence or
20 reasonableness determinations already made.

21 (i) While a participating utility may use, develop, and
22 maintain broadband systems and the delivery of broadband
23 services, voice-over-internet-protocol services,
24 telecommunications services, and cable and video programming
25 services for use in providing delivery services and Smart Grid
26 functionality or application to its retail customers,

1 including, but not limited to, the installation,
2 implementation and maintenance of Smart Grid electric system
3 upgrades as defined in Section 16-108.6 of this Act, a
4 participating utility is prohibited from offering to its retail
5 customers broadband services or the delivery of broadband
6 services, voice-over-internet-protocol services,
7 telecommunications services, or cable or video programming
8 services, unless they are part of a service directly related to
9 delivery services or Smart Grid functionality or applications
10 as defined in Section 16-108.6 of this Act, and from recovering
11 the costs of such offerings from retail customers.

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

21 (k) The changes made in subsections (c) and (d) of this
22 Section by this amendatory Act of the 98th General Assembly are
23 intended to be a restatement and clarification of existing law,
24 and intended to give binding effect to the provisions of House
25 Resolution 1157 adopted by the House of Representatives of the
26 97th General Assembly and Senate Resolution 821 adopted by the

1 Senate of the 97th General Assembly that are reflected in
2 paragraph (3) of this subsection. In addition, this amendatory
3 Act of the 98th General Assembly preempts and supersedes any
4 final Commission orders entered in Docket Nos. 11-0721,
5 12-0001, 12-0293, and 12-0321 to the extent inconsistent with
6 the amendatory language added to subsections (c) and (d).

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

18 (2) Notwithstanding anything that may be to the
19 contrary, a participating utility may file a tariff to
20 retroactively recover its previously unrecovered actual
21 costs of delivery service that are no longer subject to
22 recovery through a reconciliation adjustment under
23 subsection (d) of this Section. This retroactive recovery
24 shall include any derivative adjustments resulting from
25 the changes to subsections (c) and (d) of this Section by
26 this amendatory Act of the 98th General Assembly. Such

1 tariff shall allow the utility to assess on current
2 customer bills over a period of 12 monthly billing periods,
3 a charge or credit related to those unrecovered costs with
4 interest at the utility's weighted average cost of capital
5 during the period in which those costs were unrecovered. A
6 participating utility may file a tariff that implements a
7 retroactive charge or credit as described in this paragraph
8 for amounts not otherwise included in the tariff filing
9 provided for in paragraph (1) of this subsection (k). The
10 Commission shall enter a final order approving such tariff
11 within 21 days after the participating utility's filing.

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

22 (4) Nothing in this subsection is intended to affect a
23 dismissal of or otherwise affect an appeal from any final
24 Commission orders entered in Docket Nos. 11-0721, 12-0001,
25 12-0293, and 12-0321 other than to the extent of the
26 amendatory language contained in subsections (c) and (d) of

1 this amendatory Act of the 98th General Assembly.

2 (1) Each participating utility shall be deemed to have been
3 in full compliance with all requirements of subsection (b) of
4 this Section, subsection (c) of this Section, Section 16-108.6
5 of this Act, and all Commission orders entered pursuant to
6 Sections 16-108.5 and 16-108.6 of this Act, up to and including
7 the effective date of this amendatory Act of the 98th General
8 Assembly. The Commission shall not undertake any investigation
9 of such compliance and no penalty shall be assessed or adverse
10 action taken against a participating utility for
11 non-compliance with Commission orders associated with
12 subsection (b) of this Section, subsection (c) of this Section,
13 and Section 16-108.6 of this Act prior to such date. Each
14 participating utility shall be permitted, without penalty, a
15 period of 18 months after such effective date to take actions
16 required to ensure its infrastructure investment program is in
17 compliance with subsection (b) of this Section and with Section
18 16-108.6 of this Act, provided that nothing in this amendatory
19 Act of the 98th General Assembly is intended to change the
20 meter deployment schedules approved in the final Commission
21 orders on rehearing entered in Docket Nos. 12-0244 and 12-0298
22 and provided further that nothing in this amendatory Act of
23 98th General Assembly shall extend the end dates for the 5-year
24 or 10-year periods set forth in subsection (b) of this Section
25 or Section 16-108.6 of this Act. Nothing in this subsection is
26 intended to address whether a participating utility has, or has

1 not, satisfied any or all of the metrics and performance goals
2 established pursuant to subsection (f) of this Section.

3 (m) The provisions of this amendatory Act of the 98th
4 General Assembly are severable under Section 1.31 of the
5 Statute on Statutes.

6 (Source: P.A. 97-616, eff. 10-26-11; 97-646, eff. 12-30-11.)

7 Section 99. Effective date. This Act takes effect upon
8 becoming law.".