

# SB1601



## 100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB1601

Introduced 2/9/2017, by Sen. Don Harmon

### SYNOPSIS AS INTRODUCED:

220 ILCS 5/8-103  
220 ILCS 5/8-103B  
220 ILCS 5/8-104

Amends the Public Utilities Act. Modifies Sections concerning energy efficiency and demand-response measures to require a utility under those Sections to develop a program that provides residential and small commercial customers a rebate for customer investment in technologies which result in at least a 3% reduction in the customers' energy usage from the previous calendar year. Provides accompanying requirements for the developed programs. Effective immediately or on the date that specified provisions of Public Act 99-906 take effect, whichever is later.

LRB100 06859 RJF 16908 b

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Public Utilities Act is amended by changing  
5 Sections 8-103, 8-103B, and 8-104 as follows:

6 (220 ILCS 5/8-103)

7 (Text of Section before amendment by P.A. 99-906)

8 Sec. 8-103. Energy efficiency and demand-response  
9 measures.

10 (a) It is the policy of the State that electric utilities  
11 are required to use cost-effective energy efficiency and  
12 demand-response measures to reduce delivery load. Requiring  
13 investment in cost-effective energy efficiency and  
14 demand-response measures will reduce direct and indirect costs  
15 to consumers by decreasing environmental impacts and by  
16 avoiding or delaying the need for new generation, transmission,  
17 and distribution infrastructure. It serves the public interest  
18 to allow electric utilities to recover costs for reasonably and  
19 prudently incurred expenses for energy efficiency and  
20 demand-response measures. As used in this Section,  
21 "cost-effective" means that the measures satisfy the total  
22 resource cost test. The low-income measures described in  
23 subsection (f) (4) of this Section shall not be required to meet

1 the total resource cost test. For purposes of this Section, the  
2 terms "energy-efficiency", "demand-response", "electric  
3 utility", and "total resource cost test" shall have the  
4 meanings set forth in the Illinois Power Agency Act. For  
5 purposes of this Section, the amount per kilowatthour means the  
6 total amount paid for electric service expressed on a per  
7 kilowatthour basis. For purposes of this Section, the total  
8 amount paid for electric service includes without limitation  
9 estimated amounts paid for supply, transmission, distribution,  
10 surcharges, and add-on-taxes.

11 (b) Electric utilities shall implement cost-effective  
12 energy efficiency measures to meet the following incremental  
13 annual energy savings goals:

14 (1) 0.2% of energy delivered in the year commencing  
15 June 1, 2008;

16 (2) 0.4% of energy delivered in the year commencing  
17 June 1, 2009;

18 (3) 0.6% of energy delivered in the year commencing  
19 June 1, 2010;

20 (4) 0.8% of energy delivered in the year commencing  
21 June 1, 2011;

22 (5) 1% of energy delivered in the year commencing June  
23 1, 2012;

24 (6) 1.4% of energy delivered in the year commencing  
25 June 1, 2013;

26 (7) 1.8% of energy delivered in the year commencing

1 June 1, 2014; and

2 (8) 2% of energy delivered in the year commencing June  
3 1, 2015 and each year thereafter.

4 Electric utilities may comply with this subsection (b) by  
5 meeting the annual incremental savings goal in the applicable  
6 year or by showing that the total cumulative annual savings  
7 within a 3-year planning period associated with measures  
8 implemented after May 31, 2014 was equal to the sum of each  
9 annual incremental savings requirement from May 31, 2014  
10 through the end of the applicable year.

11 (c) Electric utilities shall implement cost-effective  
12 demand-response measures to reduce peak demand by 0.1% over the  
13 prior year for eligible retail customers, as defined in Section  
14 16-111.5 of this Act, and for customers that elect hourly  
15 service from the utility pursuant to Section 16-107 of this  
16 Act, provided those customers have not been declared  
17 competitive. This requirement commences June 1, 2008 and  
18 continues for 10 years.

19 (d) Notwithstanding the requirements of subsections (b)  
20 and (c) of this Section, an electric utility shall reduce the  
21 amount of energy efficiency and demand-response measures  
22 implemented over a 3-year planning period by an amount  
23 necessary to limit the estimated average annual increase in the  
24 amounts paid by retail customers in connection with electric  
25 service due to the cost of those measures to:

26 (1) in 2008, no more than 0.5% of the amount paid per

1 kilowatthour by those customers during the year ending May  
2 31, 2007;

3 (2) in 2009, the greater of an additional 0.5% of the  
4 amount paid per kilowatthour by those customers during the  
5 year ending May 31, 2008 or 1% of the amount paid per  
6 kilowatthour by those customers during the year ending May  
7 31, 2007;

8 (3) in 2010, the greater of an additional 0.5% of the  
9 amount paid per kilowatthour by those customers during the  
10 year ending May 31, 2009 or 1.5% of the amount paid per  
11 kilowatthour by those customers during the year ending May  
12 31, 2007;

13 (4) in 2011, the greater of an additional 0.5% of the  
14 amount paid per kilowatthour by those customers during the  
15 year ending May 31, 2010 or 2% of the amount paid per  
16 kilowatthour by those customers during the year ending May  
17 31, 2007; and

18 (5) thereafter, the amount of energy efficiency and  
19 demand-response measures implemented for any single year  
20 shall be reduced by an amount necessary to limit the  
21 estimated average net increase due to the cost of these  
22 measures included in the amounts paid by eligible retail  
23 customers in connection with electric service to no more  
24 than the greater of 2.015% of the amount paid per  
25 kilowatthour by those customers during the year ending May  
26 31, 2007 or the incremental amount per kilowatthour paid

1 for these measures in 2011.

2 No later than June 30, 2011, the Commission shall review  
3 the limitation on the amount of energy efficiency and  
4 demand-response measures implemented pursuant to this Section  
5 and report to the General Assembly its findings as to whether  
6 that limitation unduly constrains the procurement of energy  
7 efficiency and demand-response measures.

8 (e) Electric utilities shall be responsible for overseeing  
9 the design, development, and filing of energy efficiency and  
10 demand-response plans with the Commission. Electric utilities  
11 shall implement 100% of the demand-response measures in the  
12 plans. Electric utilities shall implement 75% of the energy  
13 efficiency measures approved by the Commission, and may, as  
14 part of that implementation, outsource various aspects of  
15 program development and implementation. The remaining 25% of  
16 those energy efficiency measures approved by the Commission  
17 shall be implemented by the Department of Commerce and Economic  
18 Opportunity, and must be designed in conjunction with the  
19 utility and the filing process. The Department may outsource  
20 development and implementation of energy efficiency measures.  
21 A minimum of 10% of the entire portfolio of cost-effective  
22 energy efficiency measures shall be procured from units of  
23 local government, municipal corporations, school districts,  
24 and community college districts. The Department shall  
25 coordinate the implementation of these measures.

26 The apportionment of the dollars to cover the costs to

1 implement the Department's share of the portfolio of energy  
2 efficiency measures shall be made to the Department once the  
3 Department has executed rebate agreements, grants, or  
4 contracts for energy efficiency measures and provided  
5 supporting documentation for those rebate agreements, grants,  
6 and contracts to the utility. The Department is authorized to  
7 adopt any rules necessary and prescribe procedures in order to  
8 ensure compliance by applicants in carrying out the purposes of  
9 rebate agreements for energy efficiency measures implemented  
10 by the Department made under this Section.

11 The details of the measures implemented by the Department  
12 shall be submitted by the Department to the Commission in  
13 connection with the utility's filing regarding the energy  
14 efficiency and demand-response measures that the utility  
15 implements.

16 A utility providing approved energy efficiency and  
17 demand-response measures in the State shall be permitted to  
18 recover costs of those measures through an automatic adjustment  
19 clause tariff filed with and approved by the Commission. The  
20 tariff shall be established outside the context of a general  
21 rate case. Each year the Commission shall initiate a review to  
22 reconcile any amounts collected with the actual costs and to  
23 determine the required adjustment to the annual tariff factor  
24 to match annual expenditures.

25 Each utility shall include, in its recovery of costs, the  
26 costs estimated for both the utility's and the Department's

1 implementation of energy efficiency and demand-response  
2 measures. Costs collected by the utility for measures  
3 implemented by the Department shall be submitted to the  
4 Department pursuant to Section 605-323 of the Civil  
5 Administrative Code of Illinois, shall be deposited into the  
6 Energy Efficiency Portfolio Standards Fund, and shall be used  
7 by the Department solely for the purpose of implementing these  
8 measures. A utility shall not be required to advance any moneys  
9 to the Department but only to forward such funds as it has  
10 collected. The Department shall report to the Commission on an  
11 annual basis regarding the costs actually incurred by the  
12 Department in the implementation of the measures. Any changes  
13 to the costs of energy efficiency measures as a result of plan  
14 modifications shall be appropriately reflected in amounts  
15 recovered by the utility and turned over to the Department.

16 The portfolio of measures, administered by both the  
17 utilities and the Department, shall, in combination, be  
18 designed to achieve the annual savings targets described in  
19 subsections (b) and (c) of this Section, as modified by  
20 subsection (d) of this Section.

21 The utility and the Department shall agree upon a  
22 reasonable portfolio of measures and determine the measurable  
23 corresponding percentage of the savings goals associated with  
24 measures implemented by the utility or Department.

25 No utility shall be assessed a penalty under subsection (f)  
26 of this Section for failure to make a timely filing if that

1 failure is the result of a lack of agreement with the  
2 Department with respect to the allocation of responsibilities  
3 or related costs or target assignments. In that case, the  
4 Department and the utility shall file their respective plans  
5 with the Commission and the Commission shall determine an  
6 appropriate division of measures and programs that meets the  
7 requirements of this Section.

8 If the Department is unable to meet incremental annual  
9 performance goals for the portion of the portfolio implemented  
10 by the Department, then the utility and the Department shall  
11 jointly submit a modified filing to the Commission explaining  
12 the performance shortfall and recommending an appropriate  
13 course going forward, including any program modifications that  
14 may be appropriate in light of the evaluations conducted under  
15 item (7) of subsection (f) of this Section. In this case, the  
16 utility obligation to collect the Department's costs and turn  
17 over those funds to the Department under this subsection (e)  
18 shall continue only if the Commission approves the  
19 modifications to the plan proposed by the Department.

20 (f) No later than November 15, 2007, each electric utility  
21 shall file an energy efficiency and demand-response plan with  
22 the Commission to meet the energy efficiency and  
23 demand-response standards for 2008 through 2010. No later than  
24 October 1, 2010, each electric utility shall file an energy  
25 efficiency and demand-response plan with the Commission to meet  
26 the energy efficiency and demand-response standards for 2011

1 through 2013. Every 3 years thereafter, each electric utility  
2 shall file, no later than September 1, an energy efficiency and  
3 demand-response plan with the Commission. If a utility does not  
4 file such a plan by September 1 of an applicable year, it shall  
5 face a penalty of \$100,000 per day until the plan is filed.  
6 Each utility's plan shall set forth the utility's proposals to  
7 meet the utility's portion of the energy efficiency standards  
8 identified in subsection (b) and the demand-response standards  
9 identified in subsection (c) of this Section as modified by  
10 subsections (d) and (e), taking into account the unique  
11 circumstances of the utility's service territory. The  
12 Commission shall seek public comment on the utility's plan and  
13 shall issue an order approving or disapproving each plan within  
14 5 months after its submission. If the Commission disapproves a  
15 plan, the Commission shall, within 30 days, describe in detail  
16 the reasons for the disapproval and describe a path by which  
17 the utility may file a revised draft of the plan to address the  
18 Commission's concerns satisfactorily. If the utility does not  
19 refile with the Commission within 60 days, the utility shall be  
20 subject to penalties at a rate of \$100,000 per day until the  
21 plan is filed. This process shall continue, and penalties shall  
22 accrue, until the utility has successfully filed a portfolio of  
23 energy efficiency and demand-response measures. Penalties  
24 shall be deposited into the Energy Efficiency Trust Fund. In  
25 submitting proposed energy efficiency and demand-response  
26 plans and funding levels to meet the savings goals adopted by

1 this Act the utility shall:

2 (1) Demonstrate that its proposed energy efficiency  
3 and demand-response measures will achieve the requirements  
4 that are identified in subsections (b) and (c) of this  
5 Section, as modified by subsections (d) and (e).

6 (2) Present specific proposals to implement new  
7 building and appliance standards that have been placed into  
8 effect.

9 (3) Present estimates of the total amount paid for  
10 electric service expressed on a per kilowatthour basis  
11 associated with the proposed portfolio of measures  
12 designed to meet the requirements that are identified in  
13 subsections (b) and (c) of this Section, as modified by  
14 subsections (d) and (e).

15 (4) Coordinate with the Department to present a  
16 portfolio of energy efficiency measures proportionate to  
17 the share of total annual utility revenues in Illinois from  
18 households at or below 150% of the poverty level. The  
19 energy efficiency programs shall be targeted to households  
20 with incomes at or below 80% of area median income.

21 (5) Demonstrate that its overall portfolio of energy  
22 efficiency and demand-response measures, not including  
23 programs covered by item (4) of this subsection (f), are  
24 cost-effective using the total resource cost test and  
25 represent a diverse cross-section of opportunities for  
26 customers of all rate classes to participate in the

1 programs.

2 (6) Include a proposed cost-recovery tariff mechanism  
3 to fund the proposed energy efficiency and demand-response  
4 measures and to ensure the recovery of the prudently and  
5 reasonably incurred costs of Commission-approved programs.

6 (7) Provide for an annual independent evaluation of the  
7 performance of the cost-effectiveness of the utility's  
8 portfolio of measures and the Department's portfolio of  
9 measures, as well as a full review of the 3-year results of  
10 the broader net program impacts and, to the extent  
11 practical, for adjustment of the measures on a  
12 going-forward basis as a result of the evaluations. The  
13 resources dedicated to evaluation shall not exceed 3% of  
14 portfolio resources in any given year.

15 (g) No more than 3% of energy efficiency and  
16 demand-response program revenue may be allocated for  
17 demonstration of breakthrough equipment and devices.

18 (h) This Section does not apply to an electric utility that  
19 on December 31, 2005 provided electric service to fewer than  
20 100,000 customers in Illinois.

21 (i) If, after 2 years, an electric utility fails to meet  
22 the efficiency standard specified in subsection (b) of this  
23 Section, as modified by subsections (d) and (e), it shall make  
24 a contribution to the Low-Income Home Energy Assistance  
25 Program. The combined total liability for failure to meet the  
26 goal shall be \$1,000,000, which shall be assessed as follows: a

1 large electric utility shall pay \$665,000, and a medium  
2 electric utility shall pay \$335,000. If, after 3 years, an  
3 electric utility fails to meet the efficiency standard  
4 specified in subsection (b) of this Section, as modified by  
5 subsections (d) and (e), it shall make a contribution to the  
6 Low-Income Home Energy Assistance Program. The combined total  
7 liability for failure to meet the goal shall be \$1,000,000,  
8 which shall be assessed as follows: a large electric utility  
9 shall pay \$665,000, and a medium electric utility shall pay  
10 \$335,000. In addition, the responsibility for implementing the  
11 energy efficiency measures of the utility making the payment  
12 shall be transferred to the Illinois Power Agency if, after 3  
13 years, or in any subsequent 3-year period, the utility fails to  
14 meet the efficiency standard specified in subsection (b) of  
15 this Section, as modified by subsections (d) and (e). The  
16 Agency shall implement a competitive procurement program to  
17 procure resources necessary to meet the standards specified in  
18 this Section as modified by subsections (d) and (e), with costs  
19 for those resources to be recovered in the same manner as  
20 products purchased through the procurement plan as provided in  
21 Section 16-111.5. The Director shall implement this  
22 requirement in connection with the procurement plan as provided  
23 in Section 16-111.5.

24 For purposes of this Section, (i) a "large electric  
25 utility" is an electric utility that, on December 31, 2005,  
26 served more than 2,000,000 electric customers in Illinois; (ii)

1 a "medium electric utility" is an electric utility that, on  
2 December 31, 2005, served 2,000,000 or fewer but more than  
3 100,000 electric customers in Illinois; and (iii) Illinois  
4 electric utilities that are affiliated by virtue of a common  
5 parent company are considered a single electric utility.

6 (j) If, after 3 years, or any subsequent 3-year period, the  
7 Department fails to implement the Department's share of energy  
8 efficiency measures required by the standards in subsection  
9 (b), then the Illinois Power Agency may assume responsibility  
10 for and control of the Department's share of the required  
11 energy efficiency measures. The Agency shall implement a  
12 competitive procurement program to procure resources necessary  
13 to meet the standards specified in this Section, with the costs  
14 of these resources to be recovered in the same manner as  
15 provided for the Department in this Section.

16 (k) No electric utility shall be deemed to have failed to  
17 meet the energy efficiency standards to the extent any such  
18 failure is due to a failure of the Department or the Agency.

19 (Source: P.A. 97-616, eff. 10-26-11; 97-841, eff. 7-20-12;  
20 98-90, eff. 7-15-13.)

21 (Text of Section after amendment by P.A. 99-906)

22 Sec. 8-103. Energy efficiency and demand-response  
23 measures.

24 (a) It is the policy of the State that electric utilities  
25 are required to use cost-effective energy efficiency and

1 demand-response measures to reduce delivery load. Requiring  
2 investment in cost-effective energy efficiency and  
3 demand-response measures will reduce direct and indirect costs  
4 to consumers by decreasing environmental impacts and by  
5 avoiding or delaying the need for new generation, transmission,  
6 and distribution infrastructure. It serves the public interest  
7 to allow electric utilities to recover costs for reasonably and  
8 prudently incurred expenses for energy efficiency and  
9 demand-response measures. As used in this Section,  
10 "cost-effective" means that the measures satisfy the total  
11 resource cost test. The low-income measures described in  
12 subsection (f) (4) of this Section shall not be required to meet  
13 the total resource cost test. For purposes of this Section, the  
14 terms "energy-efficiency", "demand-response", "electric  
15 utility", and "total resource cost test" shall have the  
16 meanings set forth in the Illinois Power Agency Act. For  
17 purposes of this Section, the amount per kilowatthour means the  
18 total amount paid for electric service expressed on a per  
19 kilowatthour basis. For purposes of this Section, the total  
20 amount paid for electric service includes without limitation  
21 estimated amounts paid for supply, transmission, distribution,  
22 surcharges, and add-on-taxes.

23 (a-5) This Section applies to electric utilities serving  
24 500,000 or less but more than 200,000 retail customers in this  
25 State. Through December 31, 2017, this Section also applies to  
26 electric utilities serving more than 500,000 retail customers

1 in the State.

2 (b) Electric utilities shall implement cost-effective  
3 energy efficiency measures to meet the following incremental  
4 annual energy savings goals:

5 (1) 0.2% of energy delivered in the year commencing  
6 June 1, 2008;

7 (2) 0.4% of energy delivered in the year commencing  
8 June 1, 2009;

9 (3) 0.6% of energy delivered in the year commencing  
10 June 1, 2010;

11 (4) 0.8% of energy delivered in the year commencing  
12 June 1, 2011;

13 (5) 1% of energy delivered in the year commencing June  
14 1, 2012;

15 (6) 1.4% of energy delivered in the year commencing  
16 June 1, 2013;

17 (7) 1.8% of energy delivered in the year commencing  
18 June 1, 2014; and

19 (8) 2% of energy delivered in the year commencing June  
20 1, 2015 and each year thereafter.

21 Electric utilities may comply with this subsection (b) by  
22 meeting the annual incremental savings goal in the applicable  
23 year or by showing that the total cumulative annual savings  
24 within a 3-year planning period associated with measures  
25 implemented after May 31, 2014 was equal to the sum of each  
26 annual incremental savings requirement from May 31, 2014

1 through the end of the applicable year.

2 (c) Electric utilities shall implement cost-effective  
3 demand-response measures to reduce peak demand by 0.1% over the  
4 prior year for eligible retail customers, as defined in Section  
5 16-111.5 of this Act, and for customers that elect hourly  
6 service from the utility pursuant to Section 16-107 of this  
7 Act, provided those customers have not been declared  
8 competitive. This requirement commences June 1, 2008 and  
9 continues for 10 years.

10 (d) Notwithstanding the requirements of subsections (b)  
11 and (c) of this Section, an electric utility shall reduce the  
12 amount of energy efficiency and demand-response measures  
13 implemented over a 3-year planning period by an amount  
14 necessary to limit the estimated average annual increase in the  
15 amounts paid by retail customers in connection with electric  
16 service due to the cost of those measures to:

17 (1) in 2008, no more than 0.5% of the amount paid per  
18 kilowatthour by those customers during the year ending May  
19 31, 2007;

20 (2) in 2009, the greater of an additional 0.5% of the  
21 amount paid per kilowatthour by those customers during the  
22 year ending May 31, 2008 or 1% of the amount paid per  
23 kilowatthour by those customers during the year ending May  
24 31, 2007;

25 (3) in 2010, the greater of an additional 0.5% of the  
26 amount paid per kilowatthour by those customers during the

1 year ending May 31, 2009 or 1.5% of the amount paid per  
2 kilowatthour by those customers during the year ending May  
3 31, 2007;

4 (4) in 2011, the greater of an additional 0.5% of the  
5 amount paid per kilowatthour by those customers during the  
6 year ending May 31, 2010 or 2% of the amount paid per  
7 kilowatthour by those customers during the year ending May  
8 31, 2007; and

9 (5) thereafter, the amount of energy efficiency and  
10 demand-response measures implemented for any single year  
11 shall be reduced by an amount necessary to limit the  
12 estimated average net increase due to the cost of these  
13 measures included in the amounts paid by eligible retail  
14 customers in connection with electric service to no more  
15 than the greater of 2.015% of the amount paid per  
16 kilowatthour by those customers during the year ending May  
17 31, 2007 or the incremental amount per kilowatthour paid  
18 for these measures in 2011.

19 No later than June 30, 2011, the Commission shall review  
20 the limitation on the amount of energy efficiency and  
21 demand-response measures implemented pursuant to this Section  
22 and report to the General Assembly its findings as to whether  
23 that limitation unduly constrains the procurement of energy  
24 efficiency and demand-response measures.

25 (e) Electric utilities shall be responsible for overseeing  
26 the design, development, and filing of energy efficiency and

1 demand-response plans with the Commission. Electric utilities  
2 shall implement 100% of the demand-response measures in the  
3 plans. Electric utilities shall implement 75% of the energy  
4 efficiency measures approved by the Commission, and may, as  
5 part of that implementation, outsource various aspects of  
6 program development and implementation. The remaining 25% of  
7 those energy efficiency measures approved by the Commission  
8 shall be implemented by the Department of Commerce and Economic  
9 Opportunity, and must be designed in conjunction with the  
10 utility and the filing process. The Department may outsource  
11 development and implementation of energy efficiency measures.  
12 A minimum of 10% of the entire portfolio of cost-effective  
13 energy efficiency measures shall be procured from units of  
14 local government, municipal corporations, school districts,  
15 and community college districts. The Department shall  
16 coordinate the implementation of these measures.

17 The apportionment of the dollars to cover the costs to  
18 implement the Department's share of the portfolio of energy  
19 efficiency measures shall be made to the Department once the  
20 Department has executed rebate agreements, grants, or  
21 contracts for energy efficiency measures and provided  
22 supporting documentation for those rebate agreements, grants,  
23 and contracts to the utility. The Department is authorized to  
24 adopt any rules necessary and prescribe procedures in order to  
25 ensure compliance by applicants in carrying out the purposes of  
26 rebate agreements for energy efficiency measures implemented

1 by the Department made under this Section.

2 The details of the measures implemented by the Department  
3 shall be submitted by the Department to the Commission in  
4 connection with the utility's filing regarding the energy  
5 efficiency and demand-response measures that the utility  
6 implements.

7 A utility providing approved energy efficiency and  
8 demand-response measures in the State shall be permitted to  
9 recover costs of those measures through an automatic adjustment  
10 clause tariff filed with and approved by the Commission. The  
11 tariff shall be established outside the context of a general  
12 rate case. Each year the Commission shall initiate a review to  
13 reconcile any amounts collected with the actual costs and to  
14 determine the required adjustment to the annual tariff factor  
15 to match annual expenditures.

16 Each utility shall include, in its recovery of costs, the  
17 costs estimated for both the utility's and the Department's  
18 implementation of energy efficiency and demand-response  
19 measures. Costs collected by the utility for measures  
20 implemented by the Department shall be submitted to the  
21 Department pursuant to Section 605-323 of the Civil  
22 Administrative Code of Illinois, shall be deposited into the  
23 Energy Efficiency Portfolio Standards Fund, and shall be used  
24 by the Department solely for the purpose of implementing these  
25 measures. A utility shall not be required to advance any moneys  
26 to the Department but only to forward such funds as it has

1 collected. The Department shall report to the Commission on an  
2 annual basis regarding the costs actually incurred by the  
3 Department in the implementation of the measures. Any changes  
4 to the costs of energy efficiency measures as a result of plan  
5 modifications shall be appropriately reflected in amounts  
6 recovered by the utility and turned over to the Department.

7 The portfolio of measures, administered by both the  
8 utilities and the Department, shall, in combination, be  
9 designed to achieve the annual savings targets described in  
10 subsections (b) and (c) of this Section, as modified by  
11 subsection (d) of this Section.

12 The utility and the Department shall agree upon a  
13 reasonable portfolio of measures and determine the measurable  
14 corresponding percentage of the savings goals associated with  
15 measures implemented by the utility or Department.

16 No utility shall be assessed a penalty under subsection (f)  
17 of this Section for failure to make a timely filing if that  
18 failure is the result of a lack of agreement with the  
19 Department with respect to the allocation of responsibilities  
20 or related costs or target assignments. In that case, the  
21 Department and the utility shall file their respective plans  
22 with the Commission and the Commission shall determine an  
23 appropriate division of measures and programs that meets the  
24 requirements of this Section.

25 If the Department is unable to meet incremental annual  
26 performance goals for the portion of the portfolio implemented

1 by the Department, then the utility and the Department shall  
2 jointly submit a modified filing to the Commission explaining  
3 the performance shortfall and recommending an appropriate  
4 course going forward, including any program modifications that  
5 may be appropriate in light of the evaluations conducted under  
6 item (7) of subsection (f) of this Section. In this case, the  
7 utility obligation to collect the Department's costs and turn  
8 over those funds to the Department under this subsection (e)  
9 shall continue only if the Commission approves the  
10 modifications to the plan proposed by the Department.

11 (f) No later than November 15, 2007, each electric utility  
12 shall file an energy efficiency and demand-response plan with  
13 the Commission to meet the energy efficiency and  
14 demand-response standards for 2008 through 2010. No later than  
15 October 1, 2010, each electric utility shall file an energy  
16 efficiency and demand-response plan with the Commission to meet  
17 the energy efficiency and demand-response standards for 2011  
18 through 2013. Every 3 years thereafter, each electric utility  
19 shall file, no later than September 1, an energy efficiency and  
20 demand-response plan with the Commission. If a utility does not  
21 file such a plan by September 1 of an applicable year, it shall  
22 face a penalty of \$100,000 per day until the plan is filed.  
23 Each utility's plan shall set forth the utility's proposals to  
24 meet the utility's portion of the energy efficiency standards  
25 identified in subsection (b) and the demand-response standards  
26 identified in subsection (c) of this Section as modified by

1 subsections (d) and (e), taking into account the unique  
2 circumstances of the utility's service territory. The  
3 Commission shall seek public comment on the utility's plan and  
4 shall issue an order approving or disapproving each plan within  
5 5 months after its submission. If the Commission disapproves a  
6 plan, the Commission shall, within 30 days, describe in detail  
7 the reasons for the disapproval and describe a path by which  
8 the utility may file a revised draft of the plan to address the  
9 Commission's concerns satisfactorily. If the utility does not  
10 refile with the Commission within 60 days, the utility shall be  
11 subject to penalties at a rate of \$100,000 per day until the  
12 plan is filed. This process shall continue, and penalties shall  
13 accrue, until the utility has successfully filed a portfolio of  
14 energy efficiency and demand-response measures. Penalties  
15 shall be deposited into the Energy Efficiency Trust Fund. In  
16 submitting proposed energy efficiency and demand-response  
17 plans and funding levels to meet the savings goals adopted by  
18 this Act the utility shall:

19 (1) Demonstrate that its proposed energy efficiency  
20 and demand-response measures will achieve the requirements  
21 that are identified in subsections (b) and (c) of this  
22 Section, as modified by subsections (d) and (e).

23 (2) Present specific proposals to implement new  
24 building and appliance standards that have been placed into  
25 effect.

26 (3) Present estimates of the total amount paid for

1 electric service expressed on a per kilowatthour basis  
2 associated with the proposed portfolio of measures  
3 designed to meet the requirements that are identified in  
4 subsections (b) and (c) of this Section, as modified by  
5 subsections (d) and (e).

6 (4) Coordinate with the Department to present a  
7 portfolio of energy efficiency measures proportionate to  
8 the share of total annual utility revenues in Illinois from  
9 households at or below 150% of the poverty level. The  
10 energy efficiency programs shall be targeted to households  
11 with incomes at or below 80% of area median income.

12 (5) Demonstrate that its overall portfolio of energy  
13 efficiency and demand-response measures, not including  
14 programs covered by item (4) of this subsection (f), are  
15 cost-effective using the total resource cost test and  
16 represent a diverse cross-section of opportunities for  
17 customers of all rate classes to participate in the  
18 programs.

19 (6) Include a proposed cost-recovery tariff mechanism  
20 to fund the proposed energy efficiency and demand-response  
21 measures and to ensure the recovery of the prudently and  
22 reasonably incurred costs of Commission-approved programs.

23 (7) Provide for an annual independent evaluation of the  
24 performance of the cost-effectiveness of the utility's  
25 portfolio of measures and the Department's portfolio of  
26 measures, as well as a full review of the 3-year results of

1 the broader net program impacts and, to the extent  
2 practical, for adjustment of the measures on a  
3 going-forward basis as a result of the evaluations. The  
4 resources dedicated to evaluation shall not exceed 3% of  
5 portfolio resources in any given year.

6 (g) No more than 3% of energy efficiency and  
7 demand-response program revenue may be allocated for  
8 demonstration of breakthrough equipment and devices.

9 (g-5) The utility shall develop a program that provides  
10 residential and small commercial customers a rebate for  
11 customer investment in technologies which result in at least a  
12 3% reduction in the customers' energy usage from the previous  
13 calendar year on a weather normalized basis. The approved  
14 methodology shall be specific to the technology used. The  
15 program shall provide an option for the technology vendor or  
16 alternative retail electric supplier to conduct the  
17 verification calculation and submit rebates on behalf of the  
18 customer. A customer may not receive recovery under more than  
19 one utility energy efficiency program, as defined in this  
20 Section, per technology.

21 (h) This Section does not apply to an electric utility that  
22 on December 31, 2005 provided electric service to fewer than  
23 100,000 customers in Illinois.

24 (i) If, after 2 years, an electric utility fails to meet  
25 the efficiency standard specified in subsection (b) of this  
26 Section, as modified by subsections (d) and (e), it shall make

1 a contribution to the Low-Income Home Energy Assistance  
2 Program. The combined total liability for failure to meet the  
3 goal shall be \$1,000,000, which shall be assessed as follows: a  
4 large electric utility shall pay \$665,000, and a medium  
5 electric utility shall pay \$335,000. If, after 3 years, an  
6 electric utility fails to meet the efficiency standard  
7 specified in subsection (b) of this Section, as modified by  
8 subsections (d) and (e), it shall make a contribution to the  
9 Low-Income Home Energy Assistance Program. The combined total  
10 liability for failure to meet the goal shall be \$1,000,000,  
11 which shall be assessed as follows: a large electric utility  
12 shall pay \$665,000, and a medium electric utility shall pay  
13 \$335,000. In addition, the responsibility for implementing the  
14 energy efficiency measures of the utility making the payment  
15 shall be transferred to the Illinois Power Agency if, after 3  
16 years, or in any subsequent 3-year period, the utility fails to  
17 meet the efficiency standard specified in subsection (b) of  
18 this Section, as modified by subsections (d) and (e). The  
19 Agency shall implement a competitive procurement program to  
20 procure resources necessary to meet the standards specified in  
21 this Section as modified by subsections (d) and (e), with costs  
22 for those resources to be recovered in the same manner as  
23 products purchased through the procurement plan as provided in  
24 Section 16-111.5. The Director shall implement this  
25 requirement in connection with the procurement plan as provided  
26 in Section 16-111.5.

1           For purposes of this Section, (i) a "large electric  
2 utility" is an electric utility that, on December 31, 2005,  
3 served more than 2,000,000 electric customers in Illinois; (ii)  
4 a "medium electric utility" is an electric utility that, on  
5 December 31, 2005, served 2,000,000 or fewer but more than  
6 100,000 electric customers in Illinois; and (iii) Illinois  
7 electric utilities that are affiliated by virtue of a common  
8 parent company are considered a single electric utility.

9           (j) If, after 3 years, or any subsequent 3-year period, the  
10 Department fails to implement the Department's share of energy  
11 efficiency measures required by the standards in subsection  
12 (b), then the Illinois Power Agency may assume responsibility  
13 for and control of the Department's share of the required  
14 energy efficiency measures. The Agency shall implement a  
15 competitive procurement program to procure resources necessary  
16 to meet the standards specified in this Section, with the costs  
17 of these resources to be recovered in the same manner as  
18 provided for the Department in this Section.

19           (k) No electric utility shall be deemed to have failed to  
20 meet the energy efficiency standards to the extent any such  
21 failure is due to a failure of the Department or the Agency.

22           (l) (1) The energy efficiency and demand-response plans of  
23 electric utilities serving more than 500,000 retail customers  
24 in the State that were approved by the Commission on or before  
25 the effective date of this amendatory Act of the 99th General  
26 Assembly for the period June 1, 2014 through May 31, 2017 shall

1 continue to be in force and effect through December 31, 2017 so  
2 that the energy efficiency programs set forth in those plans  
3 continue to be offered during the period June 1, 2017 through  
4 December 31, 2017. Each such utility is authorized to increase,  
5 on a pro rata basis, the energy savings goals and budgets  
6 approved in its plan to reflect the additional 7 months of the  
7 plan's operation, provided that such increase shall also  
8 incorporate reductions to goals and budgets to reflect the  
9 proportion of the utility's load attributable to customers who  
10 are exempt from this Section under subsection (m) of this  
11 Section.

12 (2) If an electric utility serving more than 500,000 retail  
13 customers in the State filed with the Commission, under  
14 subsection (f) of this Section, its proposed energy efficiency  
15 and demand-response plan for the period June 1, 2017 through  
16 May 31, 2020, and the Commission has not yet entered its final  
17 order approving such plan on or before the effective date of  
18 this amendatory Act of the 99th General Assembly, then the  
19 utility shall file a notice of withdrawal with the Commission,  
20 following such effective date, to withdraw the proposed energy  
21 efficiency and demand-response plan. Upon receipt of such  
22 notice, the Commission shall dismiss with prejudice any docket  
23 that had been initiated to investigate such plan, and the plan  
24 and the record related thereto shall not be the subject of any  
25 further hearing, investigation, or proceeding of any kind.

26 (3) For those electric utilities that serve more than

1 500,000 retail customers in the State, this amendatory Act of  
2 the 99th General Assembly preempts and supersedes any orders  
3 entered by the Commission that approved such utilities' energy  
4 efficiency and demand response plans for the period commencing  
5 June 1, 2017 and ending May 31, 2020. Any such orders shall be  
6 void, and the provisions of paragraph (1) of this subsection  
7 (1) shall apply.

8 (m) Notwithstanding anything to the contrary, after May 31,  
9 2017, this Section does not apply to any retail customers of an  
10 electric utility that serves more than 3,000,000 retail  
11 customers in the State and whose total highest 30 minute demand  
12 was more than 10,000 kilowatts, or any retail customers of an  
13 electric utility that serves less than 3,000,000 retail  
14 customers but more than 500,000 retail customers in the State  
15 and whose total highest 15 minute demand was more than 10,000  
16 kilowatts. For purposes of this subsection (m), "retail  
17 customer" has the meaning set forth in Section 16-102 of this  
18 Act. The criteria for determining whether this subsection (m)  
19 is applicable to a retail customer shall be based on the 12  
20 consecutive billing periods prior to the start of the first  
21 year of each such multi-year plan.

22 (Source: P.A. 98-90, eff. 7-15-13; 99-906, eff. 6-1-17.)

23 (220 ILCS 5/8-103B)

24 (This Section may contain text from a Public Act with a  
25 delayed effective date)

1           Sec. 8-103B. Energy efficiency and demand-response  
2 measures.

3           (a) It is the policy of the State that electric utilities  
4 are required to use cost-effective energy efficiency and  
5 demand-response measures to reduce delivery load. Requiring  
6 investment in cost-effective energy efficiency and  
7 demand-response measures will reduce direct and indirect costs  
8 to consumers by decreasing environmental impacts and by  
9 avoiding or delaying the need for new generation, transmission,  
10 and distribution infrastructure. It serves the public interest  
11 to allow electric utilities to recover costs for reasonably and  
12 prudently incurred expenditures for energy efficiency and  
13 demand-response measures. As used in this Section,  
14 "cost-effective" means that the measures satisfy the total  
15 resource cost test. The low-income measures described in  
16 subsection (c) of this Section shall not be required to meet  
17 the total resource cost test. For purposes of this Section, the  
18 terms "energy-efficiency", "demand-response", "electric  
19 utility", and "total resource cost test" have the meanings set  
20 forth in the Illinois Power Agency Act.

21           (a-5) This Section applies to electric utilities serving  
22 more than 500,000 retail customers in the State for those  
23 multi-year plans commencing after December 31, 2017.

24           (b) For purposes of this Section, electric utilities  
25 subject to this Section that serve more than 3,000,000 retail  
26 customers in the State shall be deemed to have achieved a

1 cumulative persisting annual savings of 6.6% from energy  
2 efficiency measures and programs implemented during the period  
3 beginning January 1, 2012 and ending December 31, 2017, which  
4 percent is based on the deemed average weather normalized sales  
5 of electric power and energy during calendar years 2014, 2015,  
6 and 2016 of 88,000,000 MWhs. For the purposes of this  
7 subsection (b) and subsection (b-5), the 88,000,000 MWhs of  
8 deemed electric power and energy sales shall be reduced by the  
9 number of MWhs equal to the sum of the annual consumption of  
10 customers that are exempt from subsections (a) through (j) of  
11 this Section under subsection (l) of this Section, as averaged  
12 across the calendar years 2014, 2015, and 2016. After 2017, the  
13 deemed value of cumulative persisting annual savings from  
14 energy efficiency measures and programs implemented during the  
15 period beginning January 1, 2012 and ending December 31, 2017,  
16 shall be reduced each year, as follows, and the applicable  
17 value shall be applied to and count toward the utility's  
18 achievement of the cumulative persisting annual savings goals  
19 set forth in subsection (b-5):

20 (1) 5.8% deemed cumulative persisting annual savings  
21 for the year ending December 31, 2018;

22 (2) 5.2% deemed cumulative persisting annual savings  
23 for the year ending December 31, 2019;

24 (3) 4.5% deemed cumulative persisting annual savings  
25 for the year ending December 31, 2020;

26 (4) 4.0% deemed cumulative persisting annual savings

1 for the year ending December 31, 2021;

2 (5) 3.5% deemed cumulative persisting annual savings  
3 for the year ending December 31, 2022;

4 (6) 3.1% deemed cumulative persisting annual savings  
5 for the year ending December 31, 2023;

6 (7) 2.8% deemed cumulative persisting annual savings  
7 for the year ending December 31, 2024;

8 (8) 2.5% deemed cumulative persisting annual savings  
9 for the year ending December 31, 2025;

10 (9) 2.3% deemed cumulative persisting annual savings  
11 for the year ending December 31, 2026;

12 (10) 2.1% deemed cumulative persisting annual savings  
13 for the year ending December 31, 2027;

14 (11) 1.8% deemed cumulative persisting annual savings  
15 for the year ending December 31, 2028;

16 (12) 1.7% deemed cumulative persisting annual savings  
17 for the year ending December 31, 2029; and

18 (13) 1.5% deemed cumulative persisting annual savings  
19 for the year ending December 31, 2030.

20 For purposes of this Section, "cumulative persisting  
21 annual savings" means the total electric energy savings in a  
22 given year from measures installed in that year or in previous  
23 years, but no earlier than January 1, 2012, that are still  
24 operational and providing savings in that year because the  
25 measures have not yet reached the end of their useful lives.

26 (b-5) Beginning in 2018, electric utilities subject to this

1 Section that serve more than 3,000,000 retail customers in the  
2 State shall achieve the following cumulative persisting annual  
3 savings goals, as modified by subsection (f) of this Section  
4 and as compared to the deemed baseline of 88,000,000 MWhs of  
5 electric power and energy sales set forth in subsection (b), as  
6 reduced by the number of MWhs equal to the sum of the annual  
7 consumption of customers that are exempt from subsections (a)  
8 through (j) of this Section under subsection (l) of this  
9 Section as averaged across the calendar years 2014, 2015, and  
10 2016, through the implementation of energy efficiency measures  
11 during the applicable year and in prior years, but no earlier  
12 than January 1, 2012:

13 (1) 7.8% cumulative persisting annual savings for the  
14 year ending December 31, 2018;

15 (2) 9.1% cumulative persisting annual savings for the  
16 year ending December 31, 2019;

17 (3) 10.4% cumulative persisting annual savings for the  
18 year ending December 31, 2020;

19 (4) 11.8% cumulative persisting annual savings for the  
20 year ending December 31, 2021;

21 (5) 13.1% cumulative persisting annual savings for the  
22 year ending December 31, 2022;

23 (6) 14.4% cumulative persisting annual savings for the  
24 year ending December 31, 2023;

25 (7) 15.7% cumulative persisting annual savings for the  
26 year ending December 31, 2024;

1 (8) 17% cumulative persisting annual savings for the  
2 year ending December 31, 2025;

3 (9) 17.9% cumulative persisting annual savings for the  
4 year ending December 31, 2026;

5 (10) 18.8% cumulative persisting annual savings for  
6 the year ending December 31, 2027;

7 (11) 19.7% cumulative persisting annual savings for  
8 the year ending December 31, 2028;

9 (12) 20.6% cumulative persisting annual savings for  
10 the year ending December 31, 2029; and

11 (13) 21.5% cumulative persisting annual savings for  
12 the year ending December 31, 2030.

13 (b-10) For purposes of this Section, electric utilities  
14 subject to this Section that serve less than 3,000,000 retail  
15 customers but more than 500,000 retail customers in the State  
16 shall be deemed to have achieved a cumulative persisting annual  
17 savings of 6.6% from energy efficiency measures and programs  
18 implemented during the period beginning January 1, 2012 and  
19 ending December 31, 2017, which is based on the deemed average  
20 weather normalized sales of electric power and energy during  
21 calendar years 2014, 2015, and 2016 of 36,900,000 MWhs. For the  
22 purposes of this subsection (b-10) and subsection (b-15), the  
23 36,900,000 MWhs of deemed electric power and energy sales shall  
24 be reduced by the number of MWhs equal to the sum of the annual  
25 consumption of customers that are exempt from subsections (a)  
26 through (j) of this Section under subsection (1) of this

1 Section, as averaged across the calendar years 2014, 2015, and  
2 2016. After 2017, the deemed value of cumulative persisting  
3 annual savings from energy efficiency measures and programs  
4 implemented during the period beginning January 1, 2012 and  
5 ending December 31, 2017, shall be reduced each year, as  
6 follows, and the applicable value shall be applied to and count  
7 toward the utility's achievement of the cumulative persisting  
8 annual savings goals set forth in subsection (b-15):

9 (1) 5.8% deemed cumulative persisting annual savings  
10 for the year ending December 31, 2018;

11 (2) 5.2% deemed cumulative persisting annual savings  
12 for the year ending December 31, 2019;

13 (3) 4.5% deemed cumulative persisting annual savings  
14 for the year ending December 31, 2020;

15 (4) 4.0% deemed cumulative persisting annual savings  
16 for the year ending December 31, 2021;

17 (5) 3.5% deemed cumulative persisting annual savings  
18 for the year ending December 31, 2022;

19 (6) 3.1% deemed cumulative persisting annual savings  
20 for the year ending December 31, 2023;

21 (7) 2.8% deemed cumulative persisting annual savings  
22 for the year ending December 31, 2024;

23 (8) 2.5% deemed cumulative persisting annual savings  
24 for the year ending December 31, 2025;

25 (9) 2.3% deemed cumulative persisting annual savings  
26 for the year ending December 31, 2026;

1           (10) 2.1% deemed cumulative persisting annual savings  
2           for the year ending December 31, 2027;

3           (11) 1.8% deemed cumulative persisting annual savings  
4           for the year ending December 31, 2028;

5           (12) 1.7% deemed cumulative persisting annual savings  
6           for the year ending December 31, 2029; and

7           (13) 1.5% deemed cumulative persisting annual savings  
8           for the year ending December 31, 2030.

9           (b-15) Beginning in 2018, electric utilities subject to  
10          this Section that serve less than 3,000,000 retail customers  
11          but more than 500,000 retail customers in the State shall  
12          achieve the following cumulative persisting annual savings  
13          goals, as modified by subsection (b-20) and subsection (f) of  
14          this Section and as compared to the deemed baseline as reduced  
15          by the number of MWhs equal to the sum of the annual  
16          consumption of customers that are exempt from subsections (a)  
17          through (j) of this Section under subsection (l) of this  
18          Section as averaged across the calendar years 2014, 2015, and  
19          2016, through the implementation of energy efficiency measures  
20          during the applicable year and in prior years, but no earlier  
21          than January 1, 2012:

22                 (1) 7.4% cumulative persisting annual savings for the  
23                 year ending December 31, 2018;

24                 (2) 8.2% cumulative persisting annual savings for the  
25                 year ending December 31, 2019;

26                 (3) 9.0% cumulative persisting annual savings for the

1 year ending December 31, 2020;

2 (4) 9.8% cumulative persisting annual savings for the  
3 year ending December 31, 2021;

4 (5) 10.6% cumulative persisting annual savings for the  
5 year ending December 31, 2022;

6 (6) 11.4% cumulative persisting annual savings for the  
7 year ending December 31, 2023;

8 (7) 12.2% cumulative persisting annual savings for the  
9 year ending December 31, 2024;

10 (8) 13% cumulative persisting annual savings for the  
11 year ending December 31, 2025;

12 (9) 13.6% cumulative persisting annual savings for the  
13 year ending December 31, 2026;

14 (10) 14.2% cumulative persisting annual savings for  
15 the year ending December 31, 2027;

16 (11) 14.8% cumulative persisting annual savings for  
17 the year ending December 31, 2028;

18 (12) 15.4% cumulative persisting annual savings for  
19 the year ending December 31, 2029; and

20 (13) 16% cumulative persisting annual savings for the  
21 year ending December 31, 2030.

22 The difference between the cumulative persisting annual  
23 savings goal for the applicable calendar year and the  
24 cumulative persisting annual savings goal for the immediately  
25 preceding calendar year is 0.8% for the period of January 1,  
26 2018 through December 31, 2025 and 0.6% for the period of

1 January 1, 2026 through December 31, 2030.

2 (b-20) Each electric utility subject to this Section may  
3 include cost-effective voltage optimization measures in its  
4 plans submitted under subsections (f) and (g) of this Section,  
5 and the costs incurred by a utility to implement the measures  
6 under a Commission-approved plan shall be recovered under the  
7 provisions of Article IX or Section 16-108.5 of this Act. For  
8 purposes of this Section, the measure life of voltage  
9 optimization measures shall be 15 years. The measure life  
10 period is independent of the depreciation rate of the voltage  
11 optimization assets deployed.

12 Within 270 days after the effective date of this amendatory  
13 Act of the 99th General Assembly, an electric utility that  
14 serves less than 3,000,000 retail customers but more than  
15 500,000 retail customers in the State shall file a plan with  
16 the Commission that identifies the cost-effective voltage  
17 optimization investment the electric utility plans to  
18 undertake through December 31, 2024. The Commission, after  
19 notice and hearing, shall approve or approve with modification  
20 the plan within 120 days after the plan's filing and, in the  
21 order approving or approving with modification the plan, the  
22 Commission shall adjust the applicable cumulative persisting  
23 annual savings goals set forth in subsection (b-15) to reflect  
24 any amount of cost-effective energy savings approved by the  
25 Commission that is greater than or less than the following  
26 cumulative persisting annual savings values attributable to

1 voltage optimization for the applicable year:

2 (1) 0.0% of cumulative persisting annual savings for  
3 the year ending December 31, 2018;

4 (2) 0.17% of cumulative persisting annual savings for  
5 the year ending December 31, 2019;

6 (3) 0.17% of cumulative persisting annual savings for  
7 the year ending December 31, 2020;

8 (4) 0.33% of cumulative persisting annual savings for  
9 the year ending December 31, 2021;

10 (5) 0.5% of cumulative persisting annual savings for  
11 the year ending December 31, 2022;

12 (6) 0.67% of cumulative persisting annual savings for  
13 the year ending December 31, 2023;

14 (7) 0.83% of cumulative persisting annual savings for  
15 the year ending December 31, 2024; and

16 (8) 1.0% of cumulative persisting annual savings for  
17 the year ending December 31, 2025.

18 (b-25) In the event an electric utility jointly offers an  
19 energy efficiency measure or program with a gas utility under  
20 plans approved under this Section and Section 8-104 of this  
21 Act, the electric utility may continue offering the program,  
22 including the gas energy efficiency measures, in the event the  
23 gas utility discontinues funding the program. In that event,  
24 the energy savings value associated with such other fuels shall  
25 be converted to electric energy savings on an equivalent Btu  
26 basis for the premises. However, the electric utility shall

1 prioritize programs for low-income residential customers to  
2 the extent practicable. An electric utility may recover the  
3 costs of offering the gas energy efficiency measures under this  
4 subsection (b-25).

5 For those energy efficiency measures or programs that save  
6 both electricity and other fuels but are not jointly offered  
7 with a gas utility under plans approved under this Section and  
8 Section 8-104 or not offered with an affiliated gas utility  
9 under paragraph (6) of subsection (f) of Section 8-104 of this  
10 Act, the electric utility may count savings of fuels other than  
11 electricity toward the achievement of its annual savings goal,  
12 and the energy savings value associated with such other fuels  
13 shall be converted to electric energy savings on an equivalent  
14 Btu basis at the premises.

15 In no event shall more than 10% of each year's applicable  
16 annual incremental goal as defined in paragraph (7) of  
17 subsection (g) of this Section be met through savings of fuels  
18 other than electricity.

19 (c) Electric utilities shall be responsible for overseeing  
20 the design, development, and filing of energy efficiency plans  
21 with the Commission and may, as part of that implementation,  
22 outsource various aspects of program development and  
23 implementation. A minimum of 10%, for electric utilities that  
24 serve more than 3,000,000 retail customers in the State, and a  
25 minimum of 7%, for electric utilities that serve less than  
26 3,000,000 retail customers but more than 500,000 retail

1 customers in the State, of the utility's entire portfolio  
2 funding level for a given year shall be used to procure  
3 cost-effective energy efficiency measures from units of local  
4 government, municipal corporations, school districts, public  
5 housing, and community college districts, provided that a  
6 minimum percentage of available funds shall be used to procure  
7 energy efficiency from public housing, which percentage shall  
8 be equal to public housing's share of public building energy  
9 consumption.

10 The utilities shall also implement energy efficiency  
11 measures targeted at low-income households, which, for  
12 purposes of this Section, shall be defined as households at or  
13 below 80% of area median income, and expenditures to implement  
14 the measures shall be no less than \$25,000,000 per year for  
15 electric utilities that serve more than 3,000,000 retail  
16 customers in the State and no less than \$8,350,000 per year for  
17 electric utilities that serve less than 3,000,000 retail  
18 customers but more than 500,000 retail customers in the State.

19 Each electric utility shall assess opportunities to  
20 implement cost-effective energy efficiency measures and  
21 programs through a public housing authority or authorities  
22 located in its service territory. If such opportunities are  
23 identified, the utility shall propose such measures and  
24 programs to address the opportunities. Expenditures to address  
25 such opportunities shall be credited toward the minimum  
26 procurement and expenditure requirements set forth in this

1 subsection (c).

2 Implementation of energy efficiency measures and programs  
3 targeted at low-income households should be contracted, when it  
4 is practicable, to independent third parties that have  
5 demonstrated capabilities to serve such households, with a  
6 preference for not-for-profit entities and government agencies  
7 that have existing relationships with or experience serving  
8 low-income communities in the State.

9 Each electric utility shall develop and implement  
10 reporting procedures that address and assist in determining the  
11 amount of energy savings that can be applied to the low-income  
12 procurement and expenditure requirements set forth in this  
13 subsection (c).

14 The electric utilities shall also convene a low-income  
15 energy efficiency advisory committee to assist in the design  
16 and evaluation of the low-income energy efficiency programs.  
17 The committee shall be comprised of the electric utilities  
18 subject to the requirements of this Section, the gas utilities  
19 subject to the requirements of Section 8-104 of this Act, the  
20 utilities' low-income energy efficiency implementation  
21 contractors, and representatives of community-based  
22 organizations.

23 (d) Notwithstanding any other provision of law to the  
24 contrary, a utility providing approved energy efficiency  
25 measures and, if applicable, demand-response measures in the  
26 State shall be permitted to recover all reasonable and

1 prudently incurred costs of those measures from all retail  
2 customers, except as provided in subsection (l) of this  
3 Section, as follows, provided that nothing in this subsection  
4 (d) permits the double recovery of such costs from customers:

5 (1) The utility may recover its costs through an  
6 automatic adjustment clause tariff filed with and approved  
7 by the Commission. The tariff shall be established outside  
8 the context of a general rate case. Each year the  
9 Commission shall initiate a review to reconcile any amounts  
10 collected with the actual costs and to determine the  
11 required adjustment to the annual tariff factor to match  
12 annual expenditures. To enable the financing of the  
13 incremental capital expenditures, including regulatory  
14 assets, for electric utilities that serve less than  
15 3,000,000 retail customers but more than 500,000 retail  
16 customers in the State, the utility's actual year-end  
17 capital structure that includes a common equity ratio,  
18 excluding goodwill, of up to and including 50% of the total  
19 capital structure shall be deemed reasonable and used to  
20 set rates.

21 (2) A utility may recover its costs through an energy  
22 efficiency formula rate approved by the Commission under a  
23 filing under subsections (f) and (g) of this Section, which  
24 shall specify the cost components that form the basis of  
25 the rate charged to customers with sufficient specificity  
26 to operate in a standardized manner and be updated annually

1 with transparent information that reflects the utility's  
2 actual costs to be recovered during the applicable rate  
3 year, which is the period beginning with the first billing  
4 day of January and extending through the last billing day  
5 of the following December. The energy efficiency formula  
6 rate shall be implemented through a tariff filed with the  
7 Commission under subsections (f) and (g) of this Section  
8 that is consistent with the provisions of this paragraph  
9 (2) and that shall be applicable to all delivery services  
10 customers. The Commission shall conduct an investigation  
11 of the tariff in a manner consistent with the provisions of  
12 this paragraph (2), subsections (f) and (g) of this  
13 Section, and the provisions of Article IX of this Act to  
14 the extent they do not conflict with this paragraph (2).  
15 The energy efficiency formula rate approved by the  
16 Commission shall remain in effect at the discretion of the  
17 utility and shall do the following:

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

26 (B) Reflect the utility's actual year-end capital

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

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

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

20 (ii) 580 basis points.

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

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

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

8 (i) recovery of incentive compensation expense  
9 that is based on the achievement of operational  
10 metrics, including metrics related to budget  
11 controls, outage duration and frequency, safety,  
12 customer service, efficiency and productivity, and  
13 environmental compliance; however, this protocol  
14 shall not apply if such expense related to costs  
15 incurred under this Section is recovered under  
16 Article IX or Section 16-108.5 of this Act;  
17 incentive compensation expense that is based on  
18 net income or an affiliate's earnings per share  
19 shall not be recoverable under the energy  
20 efficiency formula rate;

21 (ii) recovery of pension and other  
22 post-employment benefits expense, provided that  
23 such costs are supported by an actuarial study;  
24 however, this protocol shall not apply if such  
25 expense related to costs incurred under this  
26 Section is recovered under Article IX or Section

1 16-108.5 of this Act;

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

5 (iv) as described in subsection (e),  
6 amortization of costs incurred under this Section;  
7 and

8 (v) projected, weather normalized billing  
9 determinants for the applicable rate year.

10 (E) Provide for an annual reconciliation, as  
11 described in paragraph (3) of this subsection (d), less  
12 any deferred taxes related to the reconciliation, with  
13 interest at an annual rate of return equal to the  
14 utility's weighted average cost of capital, including  
15 a revenue conversion factor calculated to recover or  
16 refund all additional income taxes that may be payable  
17 or receivable as a result of that return, of the energy  
18 efficiency revenue requirement reflected in rates for  
19 each calendar year, beginning with the calendar year in  
20 which the utility files its energy efficiency formula  
21 rate tariff under this paragraph (2), with what the  
22 revenue requirement would have been had the actual cost  
23 information for the applicable calendar year been  
24 available at the filing date.

25 The utility shall file, together with its tariff, the  
26 projected costs to be incurred by the utility during the

1 rate year under the utility's multi-year plan approved  
2 under subsections (f) and (g) of this Section, including,  
3 but not limited to, the projected capital investment costs  
4 and projected regulatory asset balances with  
5 correspondingly updated depreciation and amortization  
6 reserves and expense, that shall populate the energy  
7 efficiency formula rate and set the initial rates under the  
8 formula.

9 The Commission shall review the proposed tariff in  
10 conjunction with its review of a proposed multi-year plan,  
11 as specified in paragraph (5) of subsection (g) of this  
12 Section. The review shall be based on the same evidentiary  
13 standards, including, but not limited to, those concerning  
14 the prudence and reasonableness of the costs incurred by  
15 the utility, the Commission applies in a hearing to review  
16 a filing for a general increase in rates under Article IX  
17 of this Act. The initial rates shall take effect beginning  
18 with the January monthly billing period following the  
19 Commission's approval.

20 The tariff's rate design and cost allocation across  
21 customer classes shall be consistent with the utility's  
22 automatic adjustment clause tariff in effect on the  
23 effective date of this amendatory Act of the 99th General  
24 Assembly; however, the Commission may revise the tariff's  
25 rate design and cost allocation in subsequent proceedings  
26 under paragraph (3) of this subsection (d).

1           If the energy efficiency formula rate is terminated,  
2           the then current rates shall remain in effect until such  
3           time as the energy efficiency costs are incorporated into  
4           new rates that are set under this subsection (d) or Article  
5           IX of this Act, subject to retroactive rate adjustment,  
6           with interest, to reconcile rates charged with actual  
7           costs.

8           (3) The provisions of this paragraph (3) shall only  
9           apply to an electric utility that has elected to file an  
10          energy efficiency formula rate under paragraph (2) of this  
11          subsection (d). Subsequent to the Commission's issuance of  
12          an order approving the utility's energy efficiency formula  
13          rate structure and protocols, and initial rates under  
14          paragraph (2) of this subsection (d), the utility shall  
15          file, on or before June 1 of each year, with the Chief  
16          Clerk of the Commission its updated cost inputs to the  
17          energy efficiency formula rate for the applicable rate year  
18          and the corresponding new charges, as well as the  
19          information described in paragraph (9) of subsection (g) of  
20          this Section. Each such filing shall conform to the  
21          following requirements and include the following  
22          information:

23                (A) The inputs to the energy efficiency formula  
24                rate for the applicable rate year shall be based on the  
25                projected costs to be incurred by the utility during  
26                the rate year under the utility's multi-year plan

1 approved under subsections (f) and (g) of this Section,  
2 including, but not limited to, projected capital  
3 investment costs and projected regulatory asset  
4 balances with correspondingly updated depreciation and  
5 amortization reserves and expense. The filing shall  
6 also include a reconciliation of the energy efficiency  
7 revenue requirement that was in effect for the prior  
8 rate year (as set by the cost inputs for the prior rate  
9 year) with the actual revenue requirement for the prior  
10 rate year (determined using a year-end rate base) that  
11 uses amounts reflected in the applicable FERC Form 1  
12 that reports the actual costs for the prior rate year.  
13 Any over-collection or under-collection indicated by  
14 such reconciliation shall be reflected as a credit  
15 against, or recovered as an additional charge to,  
16 respectively, with interest calculated at a rate equal  
17 to the utility's weighted average cost of capital  
18 approved by the Commission for the prior rate year, the  
19 charges for the applicable rate year. Such  
20 over-collection or under-collection shall be adjusted  
21 to remove any deferred taxes related to the  
22 reconciliation, for purposes of calculating interest  
23 at an annual rate of return equal to the utility's  
24 weighted average cost of capital approved by the  
25 Commission for the prior rate year, including a revenue  
26 conversion factor calculated to recover or refund all

1 additional income taxes that may be payable or  
2 receivable as a result of that return. Each  
3 reconciliation shall be certified by the participating  
4 utility in the same manner that FERC Form 1 is  
5 certified. The filing shall also include the charge or  
6 credit, if any, resulting from the calculation  
7 required by subparagraph (E) of paragraph (2) of this  
8 subsection (d).

9 Notwithstanding any other provision of law to the  
10 contrary, the intent of the reconciliation is to  
11 ultimately reconcile both the revenue requirement  
12 reflected in rates for each calendar year, beginning  
13 with the calendar year in which the utility files its  
14 energy efficiency formula rate tariff under paragraph  
15 (2) of this subsection (d), with what the revenue  
16 requirement determined using a year-end rate base for  
17 the applicable calendar year would have been had the  
18 actual cost information for the applicable calendar  
19 year been available at the filing date.

20 For purposes of this Section, "FERC Form 1" means  
21 the Annual Report of Major Electric Utilities,  
22 Licensees and Others that electric utilities are  
23 required to file with the Federal Energy Regulatory  
24 Commission under the Federal Power Act, Sections 3,  
25 4(a), 304 and 209, modified as necessary to be  
26 consistent with 83 Ill. Admin. Code Part 415 as of May

1           1, 2011. Nothing in this Section is intended to allow  
2           costs that are not otherwise recoverable to be  
3           recoverable by virtue of inclusion in FERC Form 1.

4           (B) The new charges shall take effect beginning on  
5           the first billing day of the following January billing  
6           period and remain in effect through the last billing  
7           day of the next December billing period regardless of  
8           whether the Commission enters upon a hearing under this  
9           paragraph (3).

10          (C) The filing shall include relevant and  
11          necessary data and documentation for the applicable  
12          rate year. Normalization adjustments shall not be  
13          required.

14          Within 45 days after the utility files its annual  
15          update of cost inputs to the energy efficiency formula  
16          rate, the Commission shall with reasonable notice,  
17          initiate a proceeding concerning whether the projected  
18          costs to be incurred by the utility and recovered during  
19          the applicable rate year, and that are reflected in the  
20          inputs to the energy efficiency formula rate, are  
21          consistent with the utility's approved multi-year plan  
22          under subsections (f) and (g) of this Section and whether  
23          the costs incurred by the utility during the prior rate  
24          year were prudent and reasonable. The Commission shall also  
25          have the authority to investigate the information and data  
26          described in paragraph (9) of subsection (g) of this

1 Section, including the proposed adjustment to the  
2 utility's return on equity component of its weighted  
3 average cost of capital. During the course of the  
4 proceeding, each objection shall be stated with  
5 particularity and evidence provided in support thereof,  
6 after which the utility shall have the opportunity to rebut  
7 the evidence. Discovery shall be allowed consistent with  
8 the Commission's Rules of Practice, which Rules of Practice  
9 shall be enforced by the Commission or the assigned hearing  
10 examiner. The Commission shall apply the same evidentiary  
11 standards, including, but not limited to, those concerning  
12 the prudence and reasonableness of the costs incurred by  
13 the utility, during the proceeding as it would apply in a  
14 proceeding to review a filing for a general increase in  
15 rates under Article IX of this Act. The Commission shall  
16 not, however, have the authority in a proceeding under this  
17 paragraph (3) to consider or order any changes to the  
18 structure or protocols of the energy efficiency formula  
19 rate approved under paragraph (2) of this subsection (d).  
20 In a proceeding under this paragraph (3), the Commission  
21 shall enter its order no later than the earlier of 195 days  
22 after the utility's filing of its annual update of cost  
23 inputs to the energy efficiency formula rate or December  
24 15. The utility's proposed return on equity calculation, as  
25 described in paragraphs (7) through (9) of subsection (g)  
26 of this Section, shall be deemed the final, approved

1 calculation on December 15 of the year in which it is filed  
2 unless the Commission enters an order on or before December  
3 15, after notice and hearing, that modifies such  
4 calculation consistent with this Section. The Commission's  
5 determinations of the prudence and reasonableness of the  
6 costs incurred, and determination of such return on equity  
7 calculation, for the applicable calendar year shall be  
8 final upon entry of the Commission's order and shall not be  
9 subject to reopening, reexamination, or collateral attack  
10 in any other Commission proceeding, case, docket, order,  
11 rule, or regulation; however, nothing in this paragraph (3)  
12 shall prohibit a party from petitioning the Commission to  
13 rehear or appeal to the courts the order under the  
14 provisions of this Act.

15 (e) Beginning on the effective date of this amendatory Act  
16 of the 99th General Assembly, a utility subject to the  
17 requirements of this Section may elect to defer, as a  
18 regulatory asset, up to the full amount of its expenditures  
19 incurred under this Section for each annual period, including,  
20 but not limited to, any expenditures incurred above the funding  
21 level set by subsection (f) of this Section for a given year.  
22 The total expenditures deferred as a regulatory asset in a  
23 given year shall be amortized and recovered over a period that  
24 is equal to the weighted average of the energy efficiency  
25 measure lives implemented for that year that are reflected in  
26 the regulatory asset. The unamortized balance shall be

1 recognized as of December 31 for a given year. The utility  
2 shall also earn a return on the total of the unamortized  
3 balances of all of the energy efficiency regulatory assets,  
4 less any deferred taxes related to those unamortized balances,  
5 at an annual rate equal to the utility's weighted average cost  
6 of capital that includes, based on a year-end capital  
7 structure, the utility's actual cost of debt for the applicable  
8 calendar year and a cost of equity, which shall be calculated  
9 as the sum of the (i) the average for the applicable calendar  
10 year of the monthly average yields of 30-year U.S. Treasury  
11 bonds published by the Board of Governors of the Federal  
12 Reserve System in its weekly H.15 Statistical Release or  
13 successor publication; and (ii) 580 basis points, including a  
14 revenue conversion factor calculated to recover or refund all  
15 additional income taxes that may be payable or receivable as a  
16 result of that return. Capital investment costs shall be  
17 depreciated and recovered over their useful lives consistent  
18 with generally accepted accounting principles. The weighted  
19 average cost of capital shall be applied to the capital  
20 investment cost balance, less any accumulated depreciation and  
21 accumulated deferred income taxes, as of December 31 for a  
22 given year.

23 When an electric utility creates a regulatory asset under  
24 the provisions of this Section, the costs are recovered over a  
25 period during which customers also receive a benefit which is  
26 in the public interest. Accordingly, it is the intent of the

1 General Assembly that an electric utility that elects to create  
2 a regulatory asset under the provisions of this Section shall  
3 recover all of the associated costs as set forth in this  
4 Section. After the Commission has approved the prudence and  
5 reasonableness of the costs that comprise the regulatory asset,  
6 the electric utility shall be permitted to recover all such  
7 costs, and the value and recoverability through rates of the  
8 associated regulatory asset shall not be limited, altered,  
9 impaired, or reduced.

10 (f) Beginning in 2017, each electric utility shall file an  
11 energy efficiency plan with the Commission to meet the energy  
12 efficiency standards for the next applicable multi-year period  
13 beginning January 1 of the year following the filing, according  
14 to the schedule set forth in paragraphs (1) through (3) of this  
15 subsection (f). If a utility does not file such a plan on or  
16 before the applicable filing deadline for the plan, it shall  
17 face a penalty of \$100,000 per day until the plan is filed.

18 (1) No later than 30 days after the effective date of  
19 this amendatory Act of the 99th General Assembly or May 1,  
20 2017, whichever is later, each electric utility shall file  
21 a 4-year energy efficiency plan commencing on January 1,  
22 2018 that is designed to achieve the cumulative persisting  
23 annual savings goals specified in paragraphs (1) through  
24 (4) of subsection (b-5) of this Section or in paragraphs  
25 (1) through (4) of subsection (b-15) of this Section, as  
26 applicable, through implementation of energy efficiency

1 measures; however, the goals may be reduced if the  
2 utility's expenditures are limited pursuant to subsection  
3 (m) of this Section or, for a utility that serves less than  
4 3,000,000 retail customers, if each of the following  
5 conditions are met: (A) the plan's analysis and forecasts  
6 of the utility's ability to acquire energy savings  
7 demonstrate that achievement of such goals is not cost  
8 effective; and (B) the amount of energy savings achieved by  
9 the utility as determined by the independent evaluator for  
10 the most recent year for which savings have been evaluated  
11 preceding the plan filing was less than the average annual  
12 amount of savings required to achieve the goals for the  
13 applicable 4-year plan period. Except as provided in  
14 subsection (m) of this Section, annual increases in  
15 cumulative persisting annual savings goals during the  
16 applicable 4-year plan period shall not be reduced to  
17 amounts that are less than the maximum amount of cumulative  
18 persisting annual savings that is forecast to be  
19 cost-effectively achievable during the 4-year plan period.  
20 The Commission shall review any proposed goal reduction as  
21 part of its review and approval of the utility's proposed  
22 plan.

23 (2) No later than March 1, 2021, each electric utility  
24 shall file a 4-year energy efficiency plan commencing on  
25 January 1, 2022 that is designed to achieve the cumulative  
26 persisting annual savings goals specified in paragraphs

1 (5) through (8) of subsection (b-5) of this Section or in  
2 paragraphs (5) through (8) of subsection (b-15) of this  
3 Section, as applicable, through implementation of energy  
4 efficiency measures; however, the goals may be reduced if  
5 the utility's expenditures are limited pursuant to  
6 subsection (m) of this Section or, each of the following  
7 conditions are met: (A) the plan's analysis and forecasts  
8 of the utility's ability to acquire energy savings  
9 demonstrate that achievement of such goals is not cost  
10 effective; and (B) the amount of energy savings achieved by  
11 the utility as determined by the independent evaluator for  
12 the most recent year for which savings have been evaluated  
13 preceding the plan filing was less than the average annual  
14 amount of savings required to achieve the goals for the  
15 applicable 4-year plan period. Except as provided in  
16 subsection (m) of this Section, annual increases in  
17 cumulative persisting annual savings goals during the  
18 applicable 4-year plan period shall not be reduced to  
19 amounts that are less than the maximum amount of cumulative  
20 persisting annual savings that is forecast to be  
21 cost-effectively achievable during the 4-year plan period.  
22 The Commission shall review any proposed goal reduction as  
23 part of its review and approval of the utility's proposed  
24 plan.

25 (3) No later than March 1, 2025, each electric utility  
26 shall file a 5-year energy efficiency plan commencing on

1 January 1, 2026 that is designed to achieve the cumulative  
2 persisting annual savings goals specified in paragraphs  
3 (9) through (13) of subsection (b-5) of this Section or in  
4 paragraphs (9) through (13) of subsection (b-15) of this  
5 Section, as applicable, through implementation of energy  
6 efficiency measures; however, the goals may be reduced if  
7 the utility's expenditures are limited pursuant to  
8 subsection (m) of this Section or, each of the following  
9 conditions are met: (A) the plan's analysis and forecasts  
10 of the utility's ability to acquire energy savings  
11 demonstrate that achievement of such goals is not cost  
12 effective; and (B) the amount of energy savings achieved by  
13 the utility as determined by the independent evaluator for  
14 the most recent year for which savings have been evaluated  
15 preceding the plan filing was less than the average annual  
16 amount of savings required to achieve the goals for the  
17 applicable 5-year plan period. Except as provided in  
18 subsection (m) of this Section, annual increases in  
19 cumulative persisting annual savings goals during the  
20 applicable 5-year plan period shall not be reduced to  
21 amounts that are less than the maximum amount of cumulative  
22 persisting annual savings that is forecast to be  
23 cost-effectively achievable during the 5-year plan period.  
24 The Commission shall review any proposed goal reduction as  
25 part of its review and approval of the utility's proposed  
26 plan.

1           Each utility's plan shall set forth the utility's proposals  
2 to meet the energy efficiency standards identified in  
3 subsection (b-5) or (b-15), as applicable and as such standards  
4 may have been modified under this subsection (f), taking into  
5 account the unique circumstances of the utility's service  
6 territory. For those plans commencing on January 1, 2018, the  
7 Commission shall seek public comment on the utility's plan and  
8 shall issue an order approving or disapproving each plan no  
9 later than August 31, 2017, or 105 days after the effective  
10 date of this amendatory Act of the 99th General Assembly,  
11 whichever is later. For those plans commencing after December  
12 31, 2021, the Commission shall seek public comment on the  
13 utility's plan and shall issue an order approving or  
14 disapproving each plan within 6 months after its submission. If  
15 the Commission disapproves a plan, the Commission shall, within  
16 30 days, describe in detail the reasons for the disapproval and  
17 describe a path by which the utility may file a revised draft  
18 of the plan to address the Commission's concerns  
19 satisfactorily. If the utility does not refile with the  
20 Commission within 60 days, the utility shall be subject to  
21 penalties at a rate of \$100,000 per day until the plan is  
22 filed. This process shall continue, and penalties shall accrue,  
23 until the utility has successfully filed a portfolio of energy  
24 efficiency and demand-response measures. Penalties shall be  
25 deposited into the Energy Efficiency Trust Fund.

26           (g) In submitting proposed plans and funding levels under

1 subsection (f) of this Section to meet the savings goals  
2 identified in subsection (b-5) or (b-15) of this Section, as  
3 applicable, the utility shall:

4 (1) Demonstrate that its proposed energy efficiency  
5 measures will achieve the applicable requirements that are  
6 identified in subsection (b-5) or (b-15) of this Section,  
7 as modified by subsection (f) of this Section.

8 (2) Present specific proposals to implement new  
9 building and appliance standards that have been placed into  
10 effect.

11 (3) Demonstrate that its overall portfolio of  
12 measures, not including low-income programs described in  
13 subsection (c) of this Section, is cost-effective using the  
14 total resource cost test or complies with paragraphs (1)  
15 through (3) of subsection (f) of this Section and  
16 represents a diverse cross-section of opportunities for  
17 customers of all rate classes, other than those customers  
18 described in subsection (1) of this Section, to participate  
19 in the programs. Individual measures need not be cost  
20 effective.

21 (4) Present a third-party energy efficiency  
22 implementation program subject to the following  
23 requirements:

24 (A) beginning with the year commencing January 1,  
25 2019, electric utilities that serve more than  
26 3,000,000 retail customers in the State shall fund

1 third-party energy efficiency programs in an amount  
2 that is no less than \$25,000,000 per year, and electric  
3 utilities that serve less than 3,000,000 retail  
4 customers but more than 500,000 retail customers in the  
5 State shall fund third-party energy efficiency  
6 programs in an amount that is no less than \$8,350,000  
7 per year;

8 (B) during 2018, the utility shall conduct a  
9 solicitation process for purposes of requesting  
10 proposals from third-party vendors for those  
11 third-party energy efficiency programs to be offered  
12 during one or more of the years commencing January 1,  
13 2019, January 1, 2020, and January 1, 2021; for those  
14 multi-year plans commencing on January 1, 2022 and  
15 January 1, 2026, the utility shall conduct a  
16 solicitation process during 2021 and 2025,  
17 respectively, for purposes of requesting proposals  
18 from third-party vendors for those third-party energy  
19 efficiency programs to be offered during one or more  
20 years of the respective multi-year plan period; for  
21 each solicitation process, the utility shall identify  
22 the sector, technology, or geographical area for which  
23 it is seeking requests for proposals;

24 (C) the utility shall propose the bidder  
25 qualifications, performance measurement process, and  
26 contract structure, which must include a performance

1 payment mechanism and general terms and conditions;  
2 the proposed qualifications, process, and structure  
3 shall be subject to Commission approval; and

4 (D) the utility shall retain an independent third  
5 party to score the proposals received through the  
6 solicitation process described in this paragraph (4),  
7 rank them according to their cost per lifetime  
8 kilowatt-hours saved, and assemble the portfolio of  
9 third-party programs.

10 The electric utility shall recover all costs  
11 associated with Commission-approved, third-party  
12 administered programs regardless of the success of those  
13 programs.

14 (4.5) Implement cost-effective demand-response measures  
15 to reduce peak demand by 0.1% over the prior year for  
16 eligible retail customers, as defined in Section 16-111.5  
17 of this Act, and for customers that elect hourly service  
18 from the utility pursuant to Section 16-107 of this Act,  
19 provided those customers have not been declared  
20 competitive. This requirement continues until December 31,  
21 2026.

22 (5) Include a proposed or revised cost-recovery tariff  
23 mechanism, as provided for under subsection (d) of this  
24 Section, to fund the proposed energy efficiency and  
25 demand-response measures and to ensure the recovery of the  
26 prudently and reasonably incurred costs of

1 Commission-approved programs.

2 (6) Provide for an annual independent evaluation of the  
3 performance of the cost-effectiveness of the utility's  
4 portfolio of measures, as well as a full review of the  
5 multi-year plan results of the broader net program impacts  
6 and, to the extent practical, for adjustment of the  
7 measures on a going-forward basis as a result of the  
8 evaluations. The resources dedicated to evaluation shall  
9 not exceed 3% of portfolio resources in any given year.

10 (7) For electric utilities that serve more than  
11 3,000,000 retail customers in the State:

12 (A) Through December 31, 2025, provide for an  
13 adjustment to the return on equity component of the  
14 utility's weighted average cost of capital calculated  
15 under subsection (d) of this Section:

16 (i) If the independent evaluator determines  
17 that the utility achieved a cumulative persisting  
18 annual savings that is less than the applicable  
19 annual incremental goal, then the return on equity  
20 component shall be reduced by a maximum of 200  
21 basis points in the event that the utility achieved  
22 no more than 75% of such goal. If the utility  
23 achieved more than 75% of the applicable annual  
24 incremental goal but less than 100% of such goal,  
25 then the return on equity component shall be  
26 reduced by 8 basis points for each percent by which

1 the utility failed to achieve the goal.

2 (ii) If the independent evaluator determines  
3 that the utility achieved a cumulative persisting  
4 annual savings that is more than the applicable  
5 annual incremental goal, then the return on equity  
6 component shall be increased by a maximum of 200  
7 basis points in the event that the utility achieved  
8 at least 125% of such goal. If the utility achieved  
9 more than 100% of the applicable annual  
10 incremental goal but less than 125% of such goal,  
11 then the return on equity component shall be  
12 increased by 8 basis points for each percent by  
13 which the utility achieved above the goal. If the  
14 applicable annual incremental goal was reduced  
15 under paragraphs (1) or (2) of subsection (f) of  
16 this Section, then the following adjustments shall  
17 be made to the calculations described in this item  
18 (ii):

19 (aa) the calculation for determining  
20 achievement that is at least 125% of the  
21 applicable annual incremental goal shall use  
22 the unreduced applicable annual incremental  
23 goal to set the value; and

24 (bb) the calculation for determining  
25 achievement that is less than 125% but more  
26 than 100% of the applicable annual incremental

1 goal shall use the reduced applicable annual  
2 incremental goal to set the value for 100%  
3 achievement of the goal and shall use the  
4 unreduced goal to set the value for 125%  
5 achievement. The 8 basis point value shall also  
6 be modified, as necessary, so that the 200  
7 basis points are evenly apportioned among each  
8 percentage point value between 100% and 125%  
9 achievement.

10 (B) For the period January 1, 2026 through December  
11 31, 2030, provide for an adjustment to the return on  
12 equity component of the utility's weighted average  
13 cost of capital calculated under subsection (d) of this  
14 Section:

15 (i) If the independent evaluator determines  
16 that the utility achieved a cumulative persisting  
17 annual savings that is less than the applicable  
18 annual incremental goal, then the return on equity  
19 component shall be reduced by a maximum of 200  
20 basis points in the event that the utility achieved  
21 no more than 66% of such goal. If the utility  
22 achieved more than 66% of the applicable annual  
23 incremental goal but less than 100% of such goal,  
24 then the return on equity component shall be  
25 reduced by 6 basis points for each percent by which  
26 the utility failed to achieve the goal.

1 (ii) If the independent evaluator determines  
2 that the utility achieved a cumulative persisting  
3 annual savings that is more than the applicable  
4 annual incremental goal, then the return on equity  
5 component shall be increased by a maximum of 200  
6 basis points in the event that the utility achieved  
7 at least 134% of such goal. If the utility achieved  
8 more than 100% of the applicable annual  
9 incremental goal but less than 134% of such goal,  
10 then the return on equity component shall be  
11 increased by 6 basis points for each percent by  
12 which the utility achieved above the goal. If the  
13 applicable annual incremental goal was reduced  
14 under paragraph (3) of subsection (f) of this  
15 Section, then the following adjustments shall be  
16 made to the calculations described in this item  
17 (ii):

18 (aa) the calculation for determining  
19 achievement that is at least 134% of the  
20 applicable annual incremental goal shall use  
21 the unreduced applicable annual incremental  
22 goal to set the value; and

23 (bb) the calculation for determining  
24 achievement that is less than 134% but more  
25 than 100% of the applicable annual incremental  
26 goal shall use the reduced applicable annual

1 incremental goal to set the value for 100%  
2 achievement of the goal and shall use the  
3 unreduced goal to set the value for 134%  
4 achievement. The 6 basis point value shall also  
5 be modified, as necessary, so that the 200  
6 basis points are evenly apportioned among each  
7 percentage point value between 100% and 134%  
8 achievement.

9 (7.5) For purposes of this Section, the term  
10 "applicable annual incremental goal" means the difference  
11 between the cumulative persisting annual savings goal for  
12 the calendar year that is the subject of the independent  
13 evaluator's determination and the cumulative persisting  
14 annual savings goal for the immediately preceding calendar  
15 year, as such goals are defined in subsections (b-5) and  
16 (b-15) of this Section and as these goals may have been  
17 modified as provided for under subsection (b-20) and  
18 paragraphs (1) through (3) of subsection (f) of this  
19 Section. Under subsections (b), (b-5), (b-10), and (b-15)  
20 of this Section, a utility must first replace energy  
21 savings from measures that have reached the end of their  
22 measure lives and would otherwise have to be replaced to  
23 meet the applicable savings goals identified in subsection  
24 (b-5) or (b-15) of this Section before any progress towards  
25 achievement of its applicable annual incremental goal may  
26 be counted. Notwithstanding anything else set forth in this

1 Section, the difference between the actual annual  
2 incremental savings achieved in any given year, including  
3 the replacement of energy savings from measures that have  
4 expired, and the applicable annual incremental goal shall  
5 not affect adjustments to the return on equity for  
6 subsequent calendar years under this subsection (g).

7 (8) For electric utilities that serve less than  
8 3,000,000 retail customers but more than 500,000 retail  
9 customers in the State:

10 (A) Through December 31, 2025, the applicable  
11 annual incremental goal shall be compared to the annual  
12 incremental savings as determined by the independent  
13 evaluator.

14 (i) The return on equity component shall be  
15 reduced by 8 basis points for each percent by which  
16 the utility did not achieve 84.4% of the applicable  
17 annual incremental goal.

18 (ii) The return on equity component shall be  
19 increased by 8 basis points for each percent by  
20 which the utility exceeded 100% of the applicable  
21 annual incremental goal.

22 (iii) The return on equity component shall not  
23 be increased or decreased if the annual  
24 incremental savings as determined by the  
25 independent evaluator is greater than 84.4% of the  
26 applicable annual incremental goal and less than

1 100% of the applicable annual incremental goal.

2 (iv) The return on equity component shall not  
3 be increased or decreased by an amount greater than  
4 200 basis points pursuant to this subparagraph  
5 (A).

6 (B) For the period of January 1, 2026 through  
7 December 31, 2030, the applicable annual incremental  
8 goal shall be compared to the annual incremental  
9 savings as determined by the independent evaluator.

10 (i) The return on equity component shall be  
11 reduced by 6 basis points for each percent by which  
12 the utility did not achieve 100% of the applicable  
13 annual incremental goal.

14 (ii) The return on equity component shall be  
15 increased by 6 basis points for each percent by  
16 which the utility exceeded 100% of the applicable  
17 annual incremental goal.

18 (iii) The return on equity component shall not  
19 be increased or decreased by an amount greater than  
20 200 basis points pursuant to this subparagraph  
21 (B).

22 (C) If the applicable annual incremental goal was  
23 reduced under paragraphs (1), (2) or (3) of subsection  
24 (f) of this Section, then the following adjustments  
25 shall be made to the calculations described in  
26 subparagraphs (A) and (B) of this paragraph (8):

1           (i)     The     calculation     for     determining  
2     achievement     that     is     at     least     125%     or     134%,     as  
3     applicable,     of     the     applicable     annual     incremental  
4     goal     shall     use     the     unreduced     applicable     annual  
5     incremental     goal     to     set     the     value.

6           (ii)    For     the     period     through     December     31,     2025,  
7     the     calculation     for     determining     achievement     that  
8     is     less     than     125%     but     more     than     100%     of     the  
9     applicable     annual     incremental     goal     shall     use     the  
10    reduced     applicable     annual     incremental     goal     to     set  
11    the     value     for     100%     achievement     of     the     goal     and  
12    shall     use     the     unreduced     goal     to     set     the     value     for  
13    125%     achievement.     The     8     basis     point     value     shall  
14    also     be     modified,     as     necessary,     so     that     the     200  
15    basis     points     are     evenly     apportioned     among     each  
16    percentage     point     value     between     100%     and     125%  
17    achievement.

18           (iii)   For     the     period     of     January     1,     2026     through  
19    December     31,     2030,     the     calculation     for     determining  
20    achievement     that     is     less     than     134%     but     more     than  
21    100%     of     the     applicable     annual     incremental     goal  
22    shall     use     the     reduced     applicable     annual  
23    incremental     goal     to     set     the     value     for     100%  
24    achievement     of     the     goal     and     shall     use     the     unreduced  
25    goal     to     set     the     value     for     125%     achievement.     The     6  
26    basis     point     value     shall     also     be     modified,     as

1           necessary, so that the 200 basis points are evenly  
2           apportioned among each percentage point value  
3           between 100% and 134% achievement.

4           (9) The utility shall submit the energy savings data to  
5           the independent evaluator no later than 30 days after the  
6           close of the plan year. The independent evaluator shall  
7           determine the cumulative persisting annual savings for a  
8           given plan year no later than 120 days after the close of  
9           the plan year. The utility shall submit an informational  
10          filing to the Commission no later than 160 days after the  
11          close of the plan year that attaches the independent  
12          evaluator's final report identifying the cumulative  
13          persisting annual savings for the year and calculates,  
14          under paragraph (7) or (8) of this subsection (g), as  
15          applicable, any resulting change to the utility's return on  
16          equity component of the weighted average cost of capital  
17          applicable to the next plan year beginning with the January  
18          monthly billing period and extending through the December  
19          monthly billing period. However, if the utility recovers  
20          the costs incurred under this Section under paragraphs (2)  
21          and (3) of subsection (d) of this Section, then the utility  
22          shall not be required to submit such informational filing,  
23          and shall instead submit the information that would  
24          otherwise be included in the informational filing as part  
25          of its filing under paragraph (3) of such subsection (d)  
26          that is due on or before June 1 of each year.

1           For those utilities that must submit the informational  
2           filing, the Commission may, on its own motion or by  
3           petition, initiate an investigation of such filing,  
4           provided, however, that the utility's proposed return on  
5           equity calculation shall be deemed the final, approved  
6           calculation on December 15 of the year in which it is filed  
7           unless the Commission enters an order on or before December  
8           15, after notice and hearing, that modifies such  
9           calculation consistent with this Section.

10           The adjustments to the return on equity component  
11           described in paragraphs (7) and (8) of this subsection (g)  
12           shall be applied as described in such paragraphs through a  
13           separate tariff mechanism, which shall be filed by the  
14           utility under subsections (f) and (g) of this Section.

15           (h) No more than 6% of energy efficiency and  
16           demand-response program revenue may be allocated for research,  
17           development, or pilot deployment of new equipment or measures.

18           (h-5) The utility shall develop a program that provides  
19           residential and small commercial customers a rebate for  
20           customer investment in technologies which result in at least a  
21           3% reduction in the customers' energy usage from the previous  
22           calendar year on a weather normalized basis. The approved  
23           methodology shall be specific to the technology used. The  
24           program shall provide an option for the technology vendor or  
25           alternative retail electric supplier to conduct the  
26           verification calculation and submit rebates on behalf of the

1 customer. A customer may not receive recovery under more than  
2 one utility energy efficiency program, as defined in this  
3 Section, per technology.

4 (i) When practicable, electric utilities shall incorporate  
5 advanced metering infrastructure data into the planning,  
6 implementation, and evaluation of energy efficiency measures  
7 and programs, subject to the data privacy and confidentiality  
8 protections of applicable law.

9 (j) The independent evaluator shall follow the guidelines  
10 and use the savings set forth in Commission-approved energy  
11 efficiency policy manuals and technical reference manuals, as  
12 each may be updated from time to time. Until such time as  
13 measure life values for energy efficiency measures implemented  
14 for low-income households under subsection (c) of this Section  
15 are incorporated into such Commission-approved manuals, the  
16 low-income measures shall have the same measure life values  
17 that are established for same measures implemented in  
18 households that are not low-income households.

19 (k) Notwithstanding any provision of law to the contrary,  
20 an electric utility subject to the requirements of this Section  
21 may file a tariff cancelling an automatic adjustment clause  
22 tariff in effect under this Section or Section 8-103, which  
23 shall take effect no later than one business day after the date  
24 such tariff is filed. Thereafter, the utility shall be  
25 authorized to defer and recover its expenditures incurred under  
26 this Section through a new tariff authorized under subsection

1 (d) of this Section or in the utility's next rate case under  
2 Article IX or Section 16-108.5 of this Act, with interest at an  
3 annual rate equal to the utility's weighted average cost of  
4 capital as approved by the Commission in such case. If the  
5 utility elects to file a new tariff under subsection (d) of  
6 this Section, the utility may file the tariff within 10 days  
7 after the effective date of this amendatory Act of the 99th  
8 General Assembly, and the cost inputs to such tariff shall be  
9 based on the projected costs to be incurred by the utility  
10 during the calendar year in which the new tariff is filed and  
11 that were not recovered under the tariff that was cancelled as  
12 provided for in this subsection. Such costs shall include those  
13 incurred or to be incurred by the utility under its multi-year  
14 plan approved under subsections (f) and (g) of this Section,  
15 including, but not limited to, projected capital investment  
16 costs and projected regulatory asset balances with  
17 correspondingly updated depreciation and amortization reserves  
18 and expense. The Commission shall, after notice and hearing,  
19 approve, or approve with modification, such tariff and cost  
20 inputs no later than 75 days after the utility filed the  
21 tariff, provided that such approval, or approval with  
22 modification, shall be consistent with the provisions of this  
23 Section to the extent they do not conflict with this subsection  
24 (k). The tariff approved by the Commission shall take effect no  
25 later than 5 days after the Commission enters its order  
26 approving the tariff.

1           No later than 60 days after the effective date of the  
2 tariff cancelling the utility's automatic adjustment clause  
3 tariff, the utility shall file a reconciliation that reconciles  
4 the moneys collected under its automatic adjustment clause  
5 tariff with the costs incurred during the period beginning June  
6 1, 2016 and ending on the date that the electric utility's  
7 automatic adjustment clause tariff was cancelled. In the event  
8 the reconciliation reflects an under-collection, the utility  
9 shall recover the costs as specified in this subsection (k). If  
10 the reconciliation reflects an over-collection, the utility  
11 shall apply the amount of such over-collection as a one-time  
12 credit to retail customers' bills.

13           (1) For the calendar years covered by a multi-year plan  
14 commencing after December 31, 2017, subsections (a) through (j)  
15 of this Section do not apply to any retail customers of an  
16 electric utility that serves more than 3,000,000 retail  
17 customers in the State and whose total highest 30 minute demand  
18 was more than 10,000 kilowatts, or any retail customers of an  
19 electric utility that serves less than 3,000,000 retail  
20 customers but more than 500,000 retail customers in the State  
21 and whose total highest 15 minute demand was more than 10,000  
22 kilowatts. For purposes of this subsection (1), "retail  
23 customer" has the meaning set forth in Section 16-102 of this  
24 Act. A determination of whether this subsection is applicable  
25 to a customer shall be made for each multi-year plan beginning  
26 after December 31, 2017. The criteria for determining whether

1 this subsection (l) is applicable to a retail customer shall be  
2 based on the 12 consecutive billing periods prior to the start  
3 of the first year of each such multi-year plan.

4 (m) Notwithstanding the requirements of this Section, as  
5 part of a proceeding to approve a multi-year plan under  
6 subsections (f) and (g) of this Section, the Commission shall  
7 reduce the amount of energy efficiency measures implemented for  
8 any single year, and whose costs are recovered under subsection  
9 (d) of this Section, by an amount necessary to limit the  
10 estimated average net increase due to the cost of the measures  
11 to no more than

12 (1) 3.5% for the each of the 4 years beginning January  
13 1, 2018,

14 (2) 3.75% for each of the 4 years beginning January 1,  
15 2022, and

16 (3) 4% for each of the 5 years beginning January 1,  
17 2026,

18 of the average amount paid per kilowatthour by residential  
19 eligible retail customers during calendar year 2015. To  
20 determine the total amount that may be spent by an electric  
21 utility in any single year, the applicable percentage of the  
22 average amount paid per kilowatthour shall be multiplied by the  
23 total amount of energy delivered by such electric utility in  
24 the calendar year 2015, adjusted to reflect the proportion of  
25 the utility's load attributable to customers who are exempt  
26 from subsections (a) through (j) of this Section under

1 subsection (l) of this Section. For purposes of this subsection  
2 (m), the amount paid per kilowatthour includes, without  
3 limitation, estimated amounts paid for supply, transmission,  
4 distribution, surcharges, and add-on taxes. For purposes of  
5 this Section, "eligible retail customers" shall have the  
6 meaning set forth in Section 16-111.5 of this Act. Once the  
7 Commission has approved a plan under subsections (f) and (g) of  
8 this Section, no subsequent rate impact determinations shall be  
9 made.

10 (Source: P.A. 99-906, eff. 6-1-17.)

11 (220 ILCS 5/8-104)

12 (Text of Section before amendment by P.A. 99-906)

13 Sec. 8-104. Natural gas energy efficiency programs.

14 (a) It is the policy of the State that natural gas  
15 utilities and the Department of Commerce and Economic  
16 Opportunity are required to use cost-effective energy  
17 efficiency to reduce direct and indirect costs to consumers. It  
18 serves the public interest to allow natural gas utilities to  
19 recover costs for reasonably and prudently incurred expenses  
20 for cost-effective energy efficiency measures.

21 (b) For purposes of this Section, "energy efficiency" means  
22 measures that reduce the amount of energy required to achieve a  
23 given end use. "Energy efficiency" also includes measures that  
24 reduce the total Btus of electricity and natural gas needed to  
25 meet the end use or uses. "Cost-effective" means that the

1 measures satisfy the total resource cost test which, for  
2 purposes of this Section, means a standard that is met if, for  
3 an investment in energy efficiency, the benefit-cost ratio is  
4 greater than one. The benefit-cost ratio is the ratio of the  
5 net present value of the total benefits of the measures to the  
6 net present value of the total costs as calculated over the  
7 lifetime of the measures. The total resource cost test compares  
8 the sum of avoided natural gas utility costs, representing the  
9 benefits that accrue to the system and the participant in the  
10 delivery of those efficiency measures, as well as other  
11 quantifiable societal benefits, including avoided electric  
12 utility costs, to the sum of all incremental costs of end use  
13 measures (including both utility and participant  
14 contributions), plus costs to administer, deliver, and  
15 evaluate each demand-side measure, to quantify the net savings  
16 obtained by substituting demand-side measures for supply  
17 resources. In calculating avoided costs, reasonable estimates  
18 shall be included for financial costs likely to be imposed by  
19 future regulation of emissions of greenhouse gases. The  
20 low-income programs described in item (4) of subsection (f) of  
21 this Section shall not be required to meet the total resource  
22 cost test.

23 (c) Natural gas utilities shall implement cost-effective  
24 energy efficiency measures to meet at least the following  
25 natural gas savings requirements, which shall be based upon the  
26 total amount of gas delivered to retail customers, other than

1 the customers described in subsection (m) of this Section,  
2 during calendar year 2009 multiplied by the applicable  
3 percentage. Natural gas utilities may comply with this Section  
4 by meeting the annual incremental savings goal in the  
5 applicable year or by showing that total cumulative annual  
6 savings within a 3-year planning period associated with  
7 measures implemented after May 31, 2011 were equal to the sum  
8 of each annual incremental savings requirement from May 31,  
9 2011 through the end of the applicable year:

10 (1) 0.2% by May 31, 2012;

11 (2) an additional 0.4% by May 31, 2013, increasing  
12 total savings to .6%;

13 (3) an additional 0.6% by May 31, 2014, increasing  
14 total savings to 1.2%;

15 (4) an additional 0.8% by May 31, 2015, increasing  
16 total savings to 2.0%;

17 (5) an additional 1% by May 31, 2016, increasing total  
18 savings to 3.0%;

19 (6) an additional 1.2% by May 31, 2017, increasing  
20 total savings to 4.2%;

21 (7) an additional 1.4% by May 31, 2018, increasing  
22 total savings to 5.6%;

23 (8) an additional 1.5% by May 31, 2019, increasing  
24 total savings to 7.1%; and

25 (9) an additional 1.5% in each 12-month period  
26 thereafter.

1           (d) Notwithstanding the requirements of subsection (c) of  
2 this Section, a natural gas utility shall limit the amount of  
3 energy efficiency implemented in any 3-year reporting period  
4 established by subsection (f) of Section 8-104 of this Act, by  
5 an amount necessary to limit the estimated average increase in  
6 the amounts paid by retail customers in connection with natural  
7 gas service to no more than 2% in the applicable 3-year  
8 reporting period. The energy savings requirements in  
9 subsection (c) of this Section may be reduced by the Commission  
10 for the subject plan, if the utility demonstrates by  
11 substantial evidence that it is highly unlikely that the  
12 requirements could be achieved without exceeding the  
13 applicable spending limits in any 3-year reporting period. No  
14 later than September 1, 2013, the Commission shall review the  
15 limitation on the amount of energy efficiency measures  
16 implemented pursuant to this Section and report to the General  
17 Assembly, in the report required by subsection (k) of this  
18 Section, its findings as to whether that limitation unduly  
19 constrains the procurement of energy efficiency measures.

20           (e) Natural gas utilities shall be responsible for  
21 overseeing the design, development, and filing of their  
22 efficiency plans with the Commission. The utility shall utilize  
23 75% of the available funding associated with energy efficiency  
24 programs approved by the Commission, and may outsource various  
25 aspects of program development and implementation. The  
26 remaining 25% of available funding shall be used by the

1 Department of Commerce and Economic Opportunity to implement  
2 energy efficiency measures that achieve no less than 20% of the  
3 requirements of subsection (c) of this Section. Such measures  
4 shall be designed in conjunction with the utility and approved  
5 by the Commission. The Department may outsource development and  
6 implementation of energy efficiency measures. A minimum of 10%  
7 of the entire portfolio of cost-effective energy efficiency  
8 measures shall be procured from local government, municipal  
9 corporations, school districts, and community college  
10 districts. Five percent of the entire portfolio of  
11 cost-effective energy efficiency measures may be granted to  
12 local government and municipal corporations for market  
13 transformation initiatives. The Department shall coordinate  
14 the implementation of these measures and shall integrate  
15 delivery of natural gas efficiency programs with electric  
16 efficiency programs delivered pursuant to Section 8-103 of this  
17 Act, unless the Department can show that integration is not  
18 feasible.

19 The apportionment of the dollars to cover the costs to  
20 implement the Department's share of the portfolio of energy  
21 efficiency measures shall be made to the Department once the  
22 Department has executed rebate agreements, grants, or  
23 contracts for energy efficiency measures and provided  
24 supporting documentation for those rebate agreements, grants,  
25 and contracts to the utility. The Department is authorized to  
26 adopt any rules necessary and prescribe procedures in order to

1 ensure compliance by applicants in carrying out the purposes of  
2 rebate agreements for energy efficiency measures implemented  
3 by the Department made under this Section.

4 The details of the measures implemented by the Department  
5 shall be submitted by the Department to the Commission in  
6 connection with the utility's filing regarding the energy  
7 efficiency measures that the utility implements.

8 A utility providing approved energy efficiency measures in  
9 this State shall be permitted to recover costs of those  
10 measures through an automatic adjustment clause tariff filed  
11 with and approved by the Commission. The tariff shall be  
12 established outside the context of a general rate case and  
13 shall be applicable to the utility's customers other than the  
14 customers described in subsection (m) of this Section. Each  
15 year the Commission shall initiate a review to reconcile any  
16 amounts collected with the actual costs and to determine the  
17 required adjustment to the annual tariff factor to match annual  
18 expenditures.

19 Each utility shall include, in its recovery of costs, the  
20 costs estimated for both the utility's and the Department's  
21 implementation of energy efficiency measures. Costs collected  
22 by the utility for measures implemented by the Department shall  
23 be submitted to the Department pursuant to Section 605-323 of  
24 the Civil Administrative Code of Illinois, shall be deposited  
25 into the Energy Efficiency Portfolio Standards Fund, and shall  
26 be used by the Department solely for the purpose of

1 implementing these measures. A utility shall not be required to  
2 advance any moneys to the Department but only to forward such  
3 funds as it has collected. The Department shall report to the  
4 Commission on an annual basis regarding the costs actually  
5 incurred by the Department in the implementation of the  
6 measures. Any changes to the costs of energy efficiency  
7 measures as a result of plan modifications shall be  
8 appropriately reflected in amounts recovered by the utility and  
9 turned over to the Department.

10 The portfolio of measures, administered by both the  
11 utilities and the Department, shall, in combination, be  
12 designed to achieve the annual energy savings requirements set  
13 forth in subsection (c) of this Section, as modified by  
14 subsection (d) of this Section.

15 The utility and the Department shall agree upon a  
16 reasonable portfolio of measures and determine the measurable  
17 corresponding percentage of the savings goals associated with  
18 measures implemented by the Department.

19 No utility shall be assessed a penalty under subsection (f)  
20 of this Section for failure to make a timely filing if that  
21 failure is the result of a lack of agreement with the  
22 Department with respect to the allocation of responsibilities  
23 or related costs or target assignments. In that case, the  
24 Department and the utility shall file their respective plans  
25 with the Commission and the Commission shall determine an  
26 appropriate division of measures and programs that meets the

1 requirements of this Section.

2 If the Department is unable to meet performance  
3 requirements for the portion of the portfolio implemented by  
4 the Department, then the utility and the Department shall  
5 jointly submit a modified filing to the Commission explaining  
6 the performance shortfall and recommending an appropriate  
7 course going forward, including any program modifications that  
8 may be appropriate in light of the evaluations conducted under  
9 item (8) of subsection (f) of this Section. In this case, the  
10 utility obligation to collect the Department's costs and turn  
11 over those funds to the Department under this subsection (e)  
12 shall continue only if the Commission approves the  
13 modifications to the plan proposed by the Department.

14 (f) No later than October 1, 2010, each gas utility shall  
15 file an energy efficiency plan with the Commission to meet the  
16 energy efficiency standards through May 31, 2014. Every 3 years  
17 thereafter, each utility shall file, no later than October 1,  
18 an energy efficiency plan with the Commission. If a utility  
19 does not file such a plan by October 1 of the applicable year,  
20 then it shall face a penalty of \$100,000 per day until the plan  
21 is filed. Each utility's plan shall set forth the utility's  
22 proposals to meet the utility's portion of the energy  
23 efficiency standards identified in subsection (c) of this  
24 Section, as modified by subsection (d) of this Section, taking  
25 into account the unique circumstances of the utility's service  
26 territory. The Commission shall seek public comment on the

1 utility's plan and shall issue an order approving or  
2 disapproving each plan. If the Commission disapproves a plan,  
3 the Commission shall, within 30 days, describe in detail the  
4 reasons for the disapproval and describe a path by which the  
5 utility may file a revised draft of the plan to address the  
6 Commission's concerns satisfactorily. If the utility does not  
7 refile with the Commission within 60 days after the  
8 disapproval, the utility shall be subject to penalties at a  
9 rate of \$100,000 per day until the plan is filed. This process  
10 shall continue, and penalties shall accrue, until the utility  
11 has successfully filed a portfolio of energy efficiency  
12 measures. Penalties shall be deposited into the Energy  
13 Efficiency Trust Fund and the cost of any such penalties may  
14 not be recovered from ratepayers. In submitting proposed energy  
15 efficiency plans and funding levels to meet the savings goals  
16 adopted by this Act the utility shall:

17 (1) Demonstrate that its proposed energy efficiency  
18 measures will achieve the requirements that are identified  
19 in subsection (c) of this Section, as modified by  
20 subsection (d) of this Section.

21 (2) Present specific proposals to implement new  
22 building and appliance standards that have been placed into  
23 effect.

24 (3) Present estimates of the total amount paid for gas  
25 service expressed on a per therm basis associated with the  
26 proposed portfolio of measures designed to meet the

1 requirements that are identified in subsection (c) of this  
2 Section, as modified by subsection (d) of this Section.

3 (4) Coordinate with the Department to present a  
4 portfolio of energy efficiency measures proportionate to  
5 the share of total annual utility revenues in Illinois from  
6 households at or below 150% of the poverty level. Such  
7 programs shall be targeted to households with incomes at or  
8 below 80% of area median income.

9 (5) Demonstrate that its overall portfolio of energy  
10 efficiency measures, not including programs covered by  
11 item (4) of this subsection (f), are cost-effective using  
12 the total resource cost test and represent a diverse cross  
13 section of opportunities for customers of all rate classes  
14 to participate in the programs.

15 (6) Demonstrate that a gas utility affiliated with an  
16 electric utility that is required to comply with Section  
17 8-103 of this Act has integrated gas and electric  
18 efficiency measures into a single program that reduces  
19 program or participant costs and appropriately allocates  
20 costs to gas and electric ratepayers. The Department shall  
21 integrate all gas and electric programs it delivers in any  
22 such utilities' service territories, unless the Department  
23 can show that integration is not feasible or appropriate.

24 (7) Include a proposed cost recovery tariff mechanism  
25 to fund the proposed energy efficiency measures and to  
26 ensure the recovery of the prudently and reasonably

1 incurred costs of Commission-approved programs.

2 (8) Provide for quarterly status reports tracking  
3 implementation of and expenditures for the utility's  
4 portfolio of measures and the Department's portfolio of  
5 measures, an annual independent review, and a full  
6 independent evaluation of the 3-year results of the  
7 performance and the cost-effectiveness of the utility's  
8 and Department's portfolios of measures and broader net  
9 program impacts and, to the extent practical, for  
10 adjustment of the measures on a going forward basis as a  
11 result of the evaluations. The resources dedicated to  
12 evaluation shall not exceed 3% of portfolio resources in  
13 any given 3-year period.

14 (g) No more than 3% of expenditures on energy efficiency  
15 measures may be allocated for demonstration of breakthrough  
16 equipment and devices.

17 (h) Illinois natural gas utilities that are affiliated by  
18 virtue of a common parent company may, at the utilities'  
19 request, be considered a single natural gas utility for  
20 purposes of complying with this Section.

21 (i) If, after 3 years, a gas utility fails to meet the  
22 efficiency standard specified in subsection (c) of this Section  
23 as modified by subsection (d), then it shall make a  
24 contribution to the Low-Income Home Energy Assistance Program.  
25 The total liability for failure to meet the goal shall be  
26 assessed as follows:

- 1 (1) a large gas utility shall pay \$600,000;
- 2 (2) a medium gas utility shall pay \$400,000; and
- 3 (3) a small gas utility shall pay \$200,000.

4 For purposes of this Section, (i) a "large gas utility" is  
5 a gas utility that on December 31, 2008, served more than  
6 1,500,000 gas customers in Illinois; (ii) a "medium gas  
7 utility" is a gas utility that on December 31, 2008, served  
8 fewer than 1,500,000, but more than 500,000 gas customers in  
9 Illinois; and (iii) a "small gas utility" is a gas utility that  
10 on December 31, 2008, served fewer than 500,000 and more than  
11 100,000 gas customers in Illinois. The costs of this  
12 contribution may not be recovered from ratepayers.

13 If a gas utility fails to meet the efficiency standard  
14 specified in subsection (c) of this Section, as modified by  
15 subsection (d) of this Section, in any 2 consecutive 3-year  
16 planning periods, then the responsibility for implementing the  
17 utility's energy efficiency measures shall be transferred to an  
18 independent program administrator selected by the Commission.  
19 Reasonable and prudent costs incurred by the independent  
20 program administrator to meet the efficiency standard  
21 specified in subsection (c) of this Section, as modified by  
22 subsection (d) of this Section, may be recovered from the  
23 customers of the affected gas utilities, other than customers  
24 described in subsection (m) of this Section. The utility shall  
25 provide the independent program administrator with all  
26 information and assistance necessary to perform the program

1 administrator's duties including but not limited to customer,  
2 account, and energy usage data, and shall allow the program  
3 administrator to include inserts in customer bills. The utility  
4 may recover reasonable costs associated with any such  
5 assistance.

6 (j) No utility shall be deemed to have failed to meet the  
7 energy efficiency standards to the extent any such failure is  
8 due to a failure of the Department.

9 (k) Not later than January 1, 2012, the Commission shall  
10 develop and solicit public comment on a plan to foster  
11 statewide coordination and consistency between statutorily  
12 mandated natural gas and electric energy efficiency programs to  
13 reduce program or participant costs or to improve program  
14 performance. Not later than September 1, 2013, the Commission  
15 shall issue a report to the General Assembly containing its  
16 findings and recommendations.

17 (l) This Section does not apply to a gas utility that on  
18 January 1, 2009, provided gas service to fewer than 100,000  
19 customers in Illinois.

20 (m) Subsections (a) through (k) of this Section do not  
21 apply to customers of a natural gas utility that have a North  
22 American Industry Classification System code number that is  
23 22111 or any such code number beginning with the digits 31, 32,  
24 or 33 and (i) annual usage in the aggregate of 4 million therms  
25 or more within the service territory of the affected gas  
26 utility or with aggregate usage of 8 million therms or more in

1 this State and complying with the provisions of item (l) of  
2 this subsection (m); or (ii) using natural gas as feedstock and  
3 meeting the usage requirements described in item (i) of this  
4 subsection (m), to the extent such annual feedstock usage is  
5 greater than 60% of the customer's total annual usage of  
6 natural gas.

7 (1) Customers described in this subsection (m) of this  
8 Section shall apply, on a form approved on or before  
9 October 1, 2009 by the Department, to the Department to be  
10 designated as a self-directing customer ("SDC") or as an  
11 exempt customer using natural gas as a feedstock from which  
12 other products are made, including, but not limited to,  
13 feedstock for a hydrogen plant, on or before the 1st day of  
14 February, 2010. Thereafter, application may be made not  
15 less than 6 months before the filing date of the gas  
16 utility energy efficiency plan described in subsection (f)  
17 of this Section; however, a new customer that commences  
18 taking service from a natural gas utility after February 1,  
19 2010 may apply to become a SDC or exempt customer up to 30  
20 days after beginning service. Customers described in this  
21 subsection (m) that have not already been approved by the  
22 Department may apply to be designated a self-directing  
23 customer or exempt customer, on a form approved by the  
24 Department, between September 1, 2013 and September 30,  
25 2013. Customer applications that are approved by the  
26 Department under this amendatory Act of the 98th General

1 Assembly shall be considered to be a self-directing  
2 customer or exempt customer, as applicable, for the current  
3 3-year planning period effective December 1, 2013. Such  
4 application shall contain the following:

5 (A) the customer's certification that, at the time  
6 of its application, it qualifies to be a SDC or exempt  
7 customer described in this subsection (m) of this  
8 Section;

9 (B) in the case of a SDC, the customer's  
10 certification that it has established or will  
11 establish by the beginning of the utility's 3-year  
12 planning period commencing subsequent to the  
13 application, and will maintain for accounting  
14 purposes, an energy efficiency reserve account and  
15 that the customer will accrue funds in said account to  
16 be held for the purpose of funding, in whole or in  
17 part, energy efficiency measures of the customer's  
18 choosing, which may include, but are not limited to,  
19 projects involving combined heat and power systems  
20 that use the same energy source both for the generation  
21 of electrical or mechanical power and the production of  
22 steam or another form of useful thermal energy or the  
23 use of combustible gas produced from biomass, or both;

24 (C) in the case of a SDC, the customer's  
25 certification that annual funding levels for the  
26 energy efficiency reserve account will be equal to 2%

1 of the customer's cost of natural gas, composed of the  
2 customer's commodity cost and the delivery service  
3 charges paid to the gas utility, or \$150,000, whichever  
4 is less;

5 (D) in the case of a SDC, the customer's  
6 certification that the required reserve account  
7 balance will be capped at 3 years' worth of accruals  
8 and that the customer may, at its option, make further  
9 deposits to the account to the extent such deposit  
10 would increase the reserve account balance above the  
11 designated cap level;

12 (E) in the case of a SDC, the customer's  
13 certification that by October 1 of each year, beginning  
14 no sooner than October 1, 2012, the customer will  
15 report to the Department information, for the 12-month  
16 period ending May 31 of the same year, on all deposits  
17 and reductions, if any, to the reserve account during  
18 the reporting year, and to the extent deposits to the  
19 reserve account in any year are in an amount less than  
20 \$150,000, the basis for such reduced deposits; reserve  
21 account balances by month; a description of energy  
22 efficiency measures undertaken by the customer and  
23 paid for in whole or in part with funds from the  
24 reserve account; an estimate of the energy saved, or to  
25 be saved, by the measure; and that the report shall  
26 include a verification by an officer or plant manager

1 of the customer or by a registered professional  
2 engineer or certified energy efficiency trade  
3 professional that the funds withdrawn from the reserve  
4 account were used for the energy efficiency measures;

5 (F) in the case of an exempt customer, the  
6 customer's certification of the level of gas usage as  
7 feedstock in the customer's operation in a typical year  
8 and that it will provide information establishing this  
9 level, upon request of the Department;

10 (G) in the case of either an exempt customer or a  
11 SDC, the customer's certification that it has provided  
12 the gas utility or utilities serving the customer with  
13 a copy of the application as filed with the Department;

14 (H) in the case of either an exempt customer or a  
15 SDC, certification of the natural gas utility or  
16 utilities serving the customer in Illinois including  
17 the natural gas utility accounts that are the subject  
18 of the application; and

19 (I) in the case of either an exempt customer or a  
20 SDC, a verification signed by a plant manager or an  
21 authorized corporate officer attesting to the  
22 truthfulness and accuracy of the information contained  
23 in the application.

24 (2) The Department shall review the application to  
25 determine that it contains the information described in  
26 provisions (A) through (I) of item (1) of this subsection

1 (m), as applicable. The review shall be completed within 30  
2 days after the date the application is filed with the  
3 Department. Absent a determination by the Department  
4 within the 30-day period, the applicant shall be considered  
5 to be a SDC or exempt customer, as applicable, for all  
6 subsequent 3-year planning periods, as of the date of  
7 filing the application described in this subsection (m). If  
8 the Department determines that the application does not  
9 contain the applicable information described in provisions  
10 (A) through (I) of item (1) of this subsection (m), it  
11 shall notify the customer, in writing, of its determination  
12 that the application does not contain the required  
13 information and identify the information that is missing,  
14 and the customer shall provide the missing information  
15 within 15 working days after the date of receipt of the  
16 Department's notification.

17 (3) The Department shall have the right to audit the  
18 information provided in the customer's application and  
19 annual reports to ensure continued compliance with the  
20 requirements of this subsection. Based on the audit, if the  
21 Department determines the customer is no longer in  
22 compliance with the requirements of items (A) through (I)  
23 of item (1) of this subsection (m), as applicable, the  
24 Department shall notify the customer in writing of the  
25 noncompliance. The customer shall have 30 days to establish  
26 its compliance, and failing to do so, may have its status

1 as a SDC or exempt customer revoked by the Department. The  
2 Department shall treat all information provided by any  
3 customer seeking SDC status or exemption from the  
4 provisions of this Section as strictly confidential.

5 (4) Upon request, or on its own motion, the Commission  
6 may open an investigation, no more than once every 3 years  
7 and not before October 1, 2014, to evaluate the  
8 effectiveness of the self-directing program described in  
9 this subsection (m).

10 Customers described in this subsection (m) that applied to  
11 the Department on January 3, 2013, were approved by the  
12 Department on February 13, 2013 to be a self-directing customer  
13 or exempt customer, and receive natural gas from a utility that  
14 provides gas service to at least 500,000 retail customers in  
15 Illinois and electric service to at least 1,000,000 retail  
16 customers in Illinois shall be considered to be a  
17 self-directing customer or exempt customer, as applicable, for  
18 the current 3-year planning period effective December 1, 2013.

19 (n) The applicability of this Section to customers  
20 described in subsection (m) of this Section is conditioned on  
21 the existence of the SDC program. In no event will any  
22 provision of this Section apply to such customers after January  
23 1, 2020.

24 (Source: P.A. 97-813, eff. 7-13-12; 97-841, eff. 7-20-12;  
25 98-90, eff. 7-15-13; 98-225, eff. 8-9-13; 98-604, eff.  
26 12-17-13.)

1 (Text of Section after amendment by P.A. 99-906)

2 Sec. 8-104. Natural gas energy efficiency programs.

3 (a) It is the policy of the State that natural gas  
4 utilities and the Department of Commerce and Economic  
5 Opportunity are required to use cost-effective energy  
6 efficiency to reduce direct and indirect costs to consumers. It  
7 serves the public interest to allow natural gas utilities to  
8 recover costs for reasonably and prudently incurred expenses  
9 for cost-effective energy efficiency measures.

10 (b) For purposes of this Section, "energy efficiency" means  
11 measures that reduce the amount of energy required to achieve a  
12 given end use. "Energy efficiency" also includes measures that  
13 reduce the total Btus of electricity and natural gas needed to  
14 meet the end use or uses. "Cost-effective" means that the  
15 measures satisfy the total resource cost test which, for  
16 purposes of this Section, means a standard that is met if, for  
17 an investment in energy efficiency, the benefit-cost ratio is  
18 greater than one. The benefit-cost ratio is the ratio of the  
19 net present value of the total benefits of the measures to the  
20 net present value of the total costs as calculated over the  
21 lifetime of the measures. The total resource cost test compares  
22 the sum of avoided natural gas utility costs, representing the  
23 benefits that accrue to the system and the participant in the  
24 delivery of those efficiency measures, as well as other  
25 quantifiable societal benefits, including avoided electric

1 utility costs, to the sum of all incremental costs of end use  
2 measures (including both utility and participant  
3 contributions), plus costs to administer, deliver, and  
4 evaluate each demand-side measure, to quantify the net savings  
5 obtained by substituting demand-side measures for supply  
6 resources. In calculating avoided costs, reasonable estimates  
7 shall be included for financial costs likely to be imposed by  
8 future regulation of emissions of greenhouse gases. The  
9 low-income programs described in item (4) of subsection (f) of  
10 this Section shall not be required to meet the total resource  
11 cost test.

12 (c) Natural gas utilities shall implement cost-effective  
13 energy efficiency measures to meet at least the following  
14 natural gas savings requirements, which shall be based upon the  
15 total amount of gas delivered to retail customers, other than  
16 the customers described in subsection (m) of this Section,  
17 during calendar year 2009 multiplied by the applicable  
18 percentage. Natural gas utilities may comply with this Section  
19 by meeting the annual incremental savings goal in the  
20 applicable year or by showing that total cumulative annual  
21 savings within a multi-year planning period associated with  
22 measures implemented after May 31, 2011 were equal to the sum  
23 of each annual incremental savings requirement from the first  
24 day of the multi-year planning period through the last day of  
25 the multi-year planning period:

26 (1) 0.2% by May 31, 2012;

1           (2) an additional 0.4% by May 31, 2013, increasing  
2 total savings to .6%;

3           (3) an additional 0.6% by May 31, 2014, increasing  
4 total savings to 1.2%;

5           (4) an additional 0.8% by May 31, 2015, increasing  
6 total savings to 2.0%;

7           (5) an additional 1% by May 31, 2016, increasing total  
8 savings to 3.0%;

9           (6) an additional 1.2% by May 31, 2017, increasing  
10 total savings to 4.2%;

11           (7) an additional 1.4% in the year commencing January  
12 1, 2018;

13           (8) an additional 1.5% in the year commencing January  
14 1, 2019; and

15           (9) an additional 1.5% in each 12-month period  
16 thereafter.

17           (d) Notwithstanding the requirements of subsection (c) of  
18 this Section, a natural gas utility shall limit the amount of  
19 energy efficiency implemented in any multi-year reporting  
20 period established by subsection (f) of Section 8-104 of this  
21 Act, by an amount necessary to limit the estimated average  
22 increase in the amounts paid by retail customers in connection  
23 with natural gas service to no more than 2% in the applicable  
24 multi-year reporting period. The energy savings requirements  
25 in subsection (c) of this Section may be reduced by the  
26 Commission for the subject plan, if the utility demonstrates by

1 substantial evidence that it is highly unlikely that the  
2 requirements could be achieved without exceeding the  
3 applicable spending limits in any multi-year reporting period.  
4 No later than September 1, 2013, the Commission shall review  
5 the limitation on the amount of energy efficiency measures  
6 implemented pursuant to this Section and report to the General  
7 Assembly, in the report required by subsection (k) of this  
8 Section, its findings as to whether that limitation unduly  
9 constrains the procurement of energy efficiency measures.

10 (e) The provisions of this subsection (e) apply to those  
11 multi-year plans that commence prior to January 1, 2018. The  
12 utility shall utilize 75% of the available funding associated  
13 with energy efficiency programs approved by the Commission, and  
14 may outsource various aspects of program development and  
15 implementation. The remaining 25% of available funding shall be  
16 used by the Department of Commerce and Economic Opportunity to  
17 implement energy efficiency measures that achieve no less than  
18 20% of the requirements of subsection (c) of this Section. Such  
19 measures shall be designed in conjunction with the utility and  
20 approved by the Commission. The Department may outsource  
21 development and implementation of energy efficiency measures.  
22 A minimum of 10% of the entire portfolio of cost-effective  
23 energy efficiency measures shall be procured from local  
24 government, municipal corporations, school districts, and  
25 community college districts. Five percent of the entire  
26 portfolio of cost-effective energy efficiency measures may be

1 granted to local government and municipal corporations for  
2 market transformation initiatives. The Department shall  
3 coordinate the implementation of these measures and shall  
4 integrate delivery of natural gas efficiency programs with  
5 electric efficiency programs delivered pursuant to Section  
6 8-103 of this Act, unless the Department can show that  
7 integration is not feasible.

8 The apportionment of the dollars to cover the costs to  
9 implement the Department's share of the portfolio of energy  
10 efficiency measures shall be made to the Department once the  
11 Department has executed rebate agreements, grants, or  
12 contracts for energy efficiency measures and provided  
13 supporting documentation for those rebate agreements, grants,  
14 and contracts to the utility. The Department is authorized to  
15 adopt any rules necessary and prescribe procedures in order to  
16 ensure compliance by applicants in carrying out the purposes of  
17 rebate agreements for energy efficiency measures implemented  
18 by the Department made under this Section.

19 The details of the measures implemented by the Department  
20 shall be submitted by the Department to the Commission in  
21 connection with the utility's filing regarding the energy  
22 efficiency measures that the utility implements.

23 The portfolio of measures, administered by both the  
24 utilities and the Department, shall, in combination, be  
25 designed to achieve the annual energy savings requirements set  
26 forth in subsection (c) of this Section, as modified by

1 subsection (d) of this Section.

2 The utility and the Department shall agree upon a  
3 reasonable portfolio of measures and determine the measurable  
4 corresponding percentage of the savings goals associated with  
5 measures implemented by the Department.

6 No utility shall be assessed a penalty under subsection (f)  
7 of this Section for failure to make a timely filing if that  
8 failure is the result of a lack of agreement with the  
9 Department with respect to the allocation of responsibilities  
10 or related costs or target assignments. In that case, the  
11 Department and the utility shall file their respective plans  
12 with the Commission and the Commission shall determine an  
13 appropriate division of measures and programs that meets the  
14 requirements of this Section.

15 (e-5) The provisions of this subsection (e-5) shall be  
16 applicable to those multi-year plans that commence after  
17 December 31, 2017. Natural gas utilities shall be responsible  
18 for overseeing the design, development, and filing of their  
19 efficiency plans with the Commission and may outsource  
20 development and implementation of energy efficiency measures.  
21 A minimum of 10% of the entire portfolio of cost-effective  
22 energy efficiency measures shall be procured from local  
23 government, municipal corporations, school districts, and  
24 community college districts. Five percent of the entire  
25 portfolio of cost-effective energy efficiency measures may be  
26 granted to local government and municipal corporations for

1 market transformation initiatives.

2 The utilities shall also present a portfolio of energy  
3 efficiency measures proportionate to the share of total annual  
4 utility revenues in Illinois from households at or below 150%  
5 of the poverty level. Such programs shall be targeted to  
6 households with incomes at or below 80% of area median income.

7 (e-10) A utility providing approved energy efficiency  
8 measures in this State shall be permitted to recover costs of  
9 those measures through an automatic adjustment clause tariff  
10 filed with and approved by the Commission. The tariff shall be  
11 established outside the context of a general rate case and  
12 shall be applicable to the utility's customers other than the  
13 customers described in subsection (m) of this Section. Each  
14 year the Commission shall initiate a review to reconcile any  
15 amounts collected with the actual costs and to determine the  
16 required adjustment to the annual tariff factor to match annual  
17 expenditures.

18 (e-15) For those multi-year plans that commence prior to  
19 January 1, 2018, each utility shall include, in its recovery of  
20 costs, the costs estimated for both the utility's and the  
21 Department's implementation of energy efficiency measures.  
22 Costs collected by the utility for measures implemented by the  
23 Department shall be submitted to the Department pursuant to  
24 Section 605-323 of the Civil Administrative Code of Illinois,  
25 shall be deposited into the Energy Efficiency Portfolio  
26 Standards Fund, and shall be used by the Department solely for

1 the purpose of implementing these measures. A utility shall not  
2 be required to advance any moneys to the Department but only to  
3 forward such funds as it has collected. The Department shall  
4 report to the Commission on an annual basis regarding the costs  
5 actually incurred by the Department in the implementation of  
6 the measures. Any changes to the costs of energy efficiency  
7 measures as a result of plan modifications shall be  
8 appropriately reflected in amounts recovered by the utility and  
9 turned over to the Department.

10 (f) No later than October 1, 2010, each gas utility shall  
11 file an energy efficiency plan with the Commission to meet the  
12 energy efficiency standards through May 31, 2014. No later than  
13 October 1, 2013, each gas utility shall file an energy  
14 efficiency plan with the Commission to meet the energy  
15 efficiency standards through May 31, 2017. Beginning in 2017  
16 and every 4 years thereafter, each utility shall file an energy  
17 efficiency plan with the Commission to meet the energy  
18 efficiency standards for the next applicable 4-year period  
19 beginning January 1 of the year following the filing. For those  
20 multi-year plans commencing on January 1, 2018, each utility  
21 shall file its proposed energy efficiency plan no later than 30  
22 days after the effective date of this amendatory Act of the  
23 99th General Assembly or May 1, 2017, whichever is later.  
24 Beginning in 2021 and every 4 years thereafter, each utility  
25 shall file its energy efficiency plan no later than March 1. If  
26 a utility does not file such a plan on or before the applicable

1 filing deadline for the plan, then it shall face a penalty of  
2 \$100,000 per day until the plan is filed.

3 Each utility's plan shall set forth the utility's proposals  
4 to meet the utility's portion of the energy efficiency  
5 standards identified in subsection (c) of this Section, as  
6 modified by subsection (d) of this Section, taking into account  
7 the unique circumstances of the utility's service territory.  
8 For those plans commencing after December 31, 2021, the  
9 Commission shall seek public comment on the utility's plan and  
10 shall issue an order approving or disapproving each plan within  
11 6 months after its submission. For those plans commencing on  
12 January 1, 2018, the Commission shall seek public comment on  
13 the utility's plan and shall issue an order approving or  
14 disapproving each plan no later than August 31, 2017, or 105  
15 days after the effective date of this amendatory Act of the  
16 99th General Assembly, whichever is later. If the Commission  
17 disapproves a plan, the Commission shall, within 30 days,  
18 describe in detail the reasons for the disapproval and describe  
19 a path by which the utility may file a revised draft of the  
20 plan to address the Commission's concerns satisfactorily. If  
21 the utility does not refile with the Commission within 60 days  
22 after the disapproval, the utility shall be subject to  
23 penalties at a rate of \$100,000 per day until the plan is  
24 filed. This process shall continue, and penalties shall accrue,  
25 until the utility has successfully filed a portfolio of energy  
26 efficiency measures. Penalties shall be deposited into the

1 Energy Efficiency Trust Fund and the cost of any such penalties  
2 may not be recovered from ratepayers. In submitting proposed  
3 energy efficiency plans and funding levels to meet the savings  
4 goals adopted by this Act the utility shall:

5 (1) Demonstrate that its proposed energy efficiency  
6 measures will achieve the requirements that are identified  
7 in subsection (c) of this Section, as modified by  
8 subsection (d) of this Section.

9 (2) Present specific proposals to implement new  
10 building and appliance standards that have been placed into  
11 effect.

12 (3) Present estimates of the total amount paid for gas  
13 service expressed on a per therm basis associated with the  
14 proposed portfolio of measures designed to meet the  
15 requirements that are identified in subsection (c) of this  
16 Section, as modified by subsection (d) of this Section.

17 (4) For those multi-year plans that commence prior to  
18 January 1, 2018, coordinate with the Department to present  
19 a portfolio of energy efficiency measures proportionate to  
20 the share of total annual utility revenues in Illinois from  
21 households at or below 150% of the poverty level. Such  
22 programs shall be targeted to households with incomes at or  
23 below 80% of area median income.

24 (5) Demonstrate that its overall portfolio of energy  
25 efficiency measures, not including low-income programs  
26 described in item (4) of this subsection (f) and subsection

1 (e-5) of this Section, are cost-effective using the total  
2 resource cost test and represent a diverse cross section of  
3 opportunities for customers of all rate classes to  
4 participate in the programs.

5 (6) Demonstrate that a gas utility affiliated with an  
6 electric utility that is required to comply with Section  
7 8-103 or 8-103B of this Act has integrated gas and electric  
8 efficiency measures into a single program that reduces  
9 program or participant costs and appropriately allocates  
10 costs to gas and electric ratepayers. For those multi-year  
11 plans that commence prior to January 1, 2018, the  
12 Department shall integrate all gas and electric programs it  
13 delivers in any such utilities' service territories,  
14 unless the Department can show that integration is not  
15 feasible or appropriate.

16 (7) Include a proposed cost recovery tariff mechanism  
17 to fund the proposed energy efficiency measures and to  
18 ensure the recovery of the prudently and reasonably  
19 incurred costs of Commission-approved programs.

20 (8) Provide for quarterly status reports tracking  
21 implementation of and expenditures for the utility's  
22 portfolio of measures and, if applicable, the Department's  
23 portfolio of measures, an annual independent review, and a  
24 full independent evaluation of the multi-year results of  
25 the performance and the cost-effectiveness of the  
26 utility's and, if applicable, Department's portfolios of

1 measures and broader net program impacts and, to the extent  
2 practical, for adjustment of the measures on a going  
3 forward basis as a result of the evaluations. The resources  
4 dedicated to evaluation shall not exceed 3% of portfolio  
5 resources in any given multi-year period.

6 (g) No more than 3% of expenditures on energy efficiency  
7 measures may be allocated for demonstration of breakthrough  
8 equipment and devices.

9 (g-5) The utility shall develop a program that provides  
10 residential and small commercial customers a rebate for  
11 customer investment in technologies which result in at least a  
12 3% reduction in the customers' energy usage from the previous  
13 calendar year on a weather normalized basis. The approved  
14 methodology shall be specific to the technology used. The  
15 program shall provide an option for the technology vendor or  
16 alternative retail electric supplier to conduct the  
17 verification calculation and submit rebates on behalf of the  
18 customer. A customer may not receive recovery under more than  
19 one utility energy efficiency program, as defined in this  
20 Section, per technology.

21 (h) Illinois natural gas utilities that are affiliated by  
22 virtue of a common parent company may, at the utilities'  
23 request, be considered a single natural gas utility for  
24 purposes of complying with this Section.

25 (i) If, after 3 years, a gas utility fails to meet the  
26 efficiency standard specified in subsection (c) of this Section

1 as modified by subsection (d), then it shall make a  
2 contribution to the Low-Income Home Energy Assistance Program.  
3 The total liability for failure to meet the goal shall be  
4 assessed as follows:

- 5 (1) a large gas utility shall pay \$600,000;
- 6 (2) a medium gas utility shall pay \$400,000; and
- 7 (3) a small gas utility shall pay \$200,000.

8 For purposes of this Section, (i) a "large gas utility" is  
9 a gas utility that on December 31, 2008, served more than  
10 1,500,000 gas customers in Illinois; (ii) a "medium gas  
11 utility" is a gas utility that on December 31, 2008, served  
12 fewer than 1,500,000, but more than 500,000 gas customers in  
13 Illinois; and (iii) a "small gas utility" is a gas utility that  
14 on December 31, 2008, served fewer than 500,000 and more than  
15 100,000 gas customers in Illinois. The costs of this  
16 contribution may not be recovered from ratepayers.

17 If a gas utility fails to meet the efficiency standard  
18 specified in subsection (c) of this Section, as modified by  
19 subsection (d) of this Section, in any 2 consecutive multi-year  
20 planning periods, then the responsibility for implementing the  
21 utility's energy efficiency measures shall be transferred to an  
22 independent program administrator selected by the Commission.  
23 Reasonable and prudent costs incurred by the independent  
24 program administrator to meet the efficiency standard  
25 specified in subsection (c) of this Section, as modified by  
26 subsection (d) of this Section, may be recovered from the

1 customers of the affected gas utilities, other than customers  
2 described in subsection (m) of this Section. The utility shall  
3 provide the independent program administrator with all  
4 information and assistance necessary to perform the program  
5 administrator's duties including but not limited to customer,  
6 account, and energy usage data, and shall allow the program  
7 administrator to include inserts in customer bills. The utility  
8 may recover reasonable costs associated with any such  
9 assistance.

10 (j) No utility shall be deemed to have failed to meet the  
11 energy efficiency standards to the extent any such failure is  
12 due to a failure of the Department.

13 (k) Not later than January 1, 2012, the Commission shall  
14 develop and solicit public comment on a plan to foster  
15 statewide coordination and consistency between statutorily  
16 mandated natural gas and electric energy efficiency programs to  
17 reduce program or participant costs or to improve program  
18 performance. Not later than September 1, 2013, the Commission  
19 shall issue a report to the General Assembly containing its  
20 findings and recommendations.

21 (l) This Section does not apply to a gas utility that on  
22 January 1, 2009, provided gas service to fewer than 100,000  
23 customers in Illinois.

24 (m) Subsections (a) through (k) of this Section do not  
25 apply to customers of a natural gas utility that have a North  
26 American Industry Classification System code number that is

1 22111 or any such code number beginning with the digits 31, 32,  
2 or 33 and (i) annual usage in the aggregate of 4 million therms  
3 or more within the service territory of the affected gas  
4 utility or with aggregate usage of 8 million therms or more in  
5 this State and complying with the provisions of item (l) of  
6 this subsection (m); or (ii) using natural gas as feedstock and  
7 meeting the usage requirements described in item (i) of this  
8 subsection (m), to the extent such annual feedstock usage is  
9 greater than 60% of the customer's total annual usage of  
10 natural gas.

11 (1) Customers described in this subsection (m) of this  
12 Section shall apply, on a form approved on or before  
13 October 1, 2009 by the Department, to the Department to be  
14 designated as a self-directing customer ("SDC") or as an  
15 exempt customer using natural gas as a feedstock from which  
16 other products are made, including, but not limited to,  
17 feedstock for a hydrogen plant, on or before the 1st day of  
18 February, 2010. Thereafter, application may be made not  
19 less than 6 months before the filing date of the gas  
20 utility energy efficiency plan described in subsection (f)  
21 of this Section; however, a new customer that commences  
22 taking service from a natural gas utility after February 1,  
23 2010 may apply to become a SDC or exempt customer up to 30  
24 days after beginning service. Customers described in this  
25 subsection (m) that have not already been approved by the  
26 Department may apply to be designated a self-directing

1 customer or exempt customer, on a form approved by the  
2 Department, between September 1, 2013 and September 30,  
3 2013. Customer applications that are approved by the  
4 Department under this amendatory Act of the 98th General  
5 Assembly shall be considered to be a self-directing  
6 customer or exempt customer, as applicable, for the current  
7 3-year planning period effective December 1, 2013. Such  
8 application shall contain the following:

9 (A) the customer's certification that, at the time  
10 of its application, it qualifies to be a SDC or exempt  
11 customer described in this subsection (m) of this  
12 Section;

13 (B) in the case of a SDC, the customer's  
14 certification that it has established or will  
15 establish by the beginning of the utility's multi-year  
16 planning period commencing subsequent to the  
17 application, and will maintain for accounting  
18 purposes, an energy efficiency reserve account and  
19 that the customer will accrue funds in said account to  
20 be held for the purpose of funding, in whole or in  
21 part, energy efficiency measures of the customer's  
22 choosing, which may include, but are not limited to,  
23 projects involving combined heat and power systems  
24 that use the same energy source both for the generation  
25 of electrical or mechanical power and the production of  
26 steam or another form of useful thermal energy or the

1 use of combustible gas produced from biomass, or both;

2 (C) in the case of a SDC, the customer's  
3 certification that annual funding levels for the  
4 energy efficiency reserve account will be equal to 2%  
5 of the customer's cost of natural gas, composed of the  
6 customer's commodity cost and the delivery service  
7 charges paid to the gas utility, or \$150,000, whichever  
8 is less;

9 (D) in the case of a SDC, the customer's  
10 certification that the required reserve account  
11 balance will be capped at 3 years' worth of accruals  
12 and that the customer may, at its option, make further  
13 deposits to the account to the extent such deposit  
14 would increase the reserve account balance above the  
15 designated cap level;

16 (E) in the case of a SDC, the customer's  
17 certification that by October 1 of each year, beginning  
18 no sooner than October 1, 2012, the customer will  
19 report to the Department information, for the 12-month  
20 period ending May 31 of the same year, on all deposits  
21 and reductions, if any, to the reserve account during  
22 the reporting year, and to the extent deposits to the  
23 reserve account in any year are in an amount less than  
24 \$150,000, the basis for such reduced deposits; reserve  
25 account balances by month; a description of energy  
26 efficiency measures undertaken by the customer and

1           paid for in whole or in part with funds from the  
2           reserve account; an estimate of the energy saved, or to  
3           be saved, by the measure; and that the report shall  
4           include a verification by an officer or plant manager  
5           of the customer or by a registered professional  
6           engineer or certified energy efficiency trade  
7           professional that the funds withdrawn from the reserve  
8           account were used for the energy efficiency measures;

9           (F) in the case of an exempt customer, the  
10          customer's certification of the level of gas usage as  
11          feedstock in the customer's operation in a typical year  
12          and that it will provide information establishing this  
13          level, upon request of the Department;

14          (G) in the case of either an exempt customer or a  
15          SDC, the customer's certification that it has provided  
16          the gas utility or utilities serving the customer with  
17          a copy of the application as filed with the Department;

18          (H) in the case of either an exempt customer or a  
19          SDC, certification of the natural gas utility or  
20          utilities serving the customer in Illinois including  
21          the natural gas utility accounts that are the subject  
22          of the application; and

23          (I) in the case of either an exempt customer or a  
24          SDC, a verification signed by a plant manager or an  
25          authorized corporate officer attesting to the  
26          truthfulness and accuracy of the information contained

1           in the application.

2           (2) The Department shall review the application to  
3 determine that it contains the information described in  
4 provisions (A) through (I) of item (1) of this subsection  
5 (m), as applicable. The review shall be completed within 30  
6 days after the date the application is filed with the  
7 Department. Absent a determination by the Department  
8 within the 30-day period, the applicant shall be considered  
9 to be a SDC or exempt customer, as applicable, for all  
10 subsequent multi-year planning periods, as of the date of  
11 filing the application described in this subsection (m). If  
12 the Department determines that the application does not  
13 contain the applicable information described in provisions  
14 (A) through (I) of item (1) of this subsection (m), it  
15 shall notify the customer, in writing, of its determination  
16 that the application does not contain the required  
17 information and identify the information that is missing,  
18 and the customer shall provide the missing information  
19 within 15 working days after the date of receipt of the  
20 Department's notification.

21           (3) The Department shall have the right to audit the  
22 information provided in the customer's application and  
23 annual reports to ensure continued compliance with the  
24 requirements of this subsection. Based on the audit, if the  
25 Department determines the customer is no longer in  
26 compliance with the requirements of items (A) through (I)

1 of item (1) of this subsection (m), as applicable, the  
2 Department shall notify the customer in writing of the  
3 noncompliance. The customer shall have 30 days to establish  
4 its compliance, and failing to do so, may have its status  
5 as a SDC or exempt customer revoked by the Department. The  
6 Department shall treat all information provided by any  
7 customer seeking SDC status or exemption from the  
8 provisions of this Section as strictly confidential.

9 (4) Upon request, or on its own motion, the Commission  
10 may open an investigation, no more than once every 3 years  
11 and not before October 1, 2014, to evaluate the  
12 effectiveness of the self-directing program described in  
13 this subsection (m).

14 Customers described in this subsection (m) that applied to  
15 the Department on January 3, 2013, were approved by the  
16 Department on February 13, 2013 to be a self-directing customer  
17 or exempt customer, and receive natural gas from a utility that  
18 provides gas service to at least 500,000 retail customers in  
19 Illinois and electric service to at least 1,000,000 retail  
20 customers in Illinois shall be considered to be a  
21 self-directing customer or exempt customer, as applicable, for  
22 the current 3-year planning period effective December 1, 2013.

23 (n) The applicability of this Section to customers  
24 described in subsection (m) of this Section is conditioned on  
25 the existence of the SDC program. In no event will any  
26 provision of this Section apply to such customers after January

1 1, 2020.

2 (o) Utilities' 3-year energy efficiency plans approved by  
3 the Commission on or before the effective date of this  
4 amendatory Act of the 99th General Assembly for the period June  
5 1, 2014 through May 31, 2017 shall continue to be in force and  
6 effect through December 31, 2017 so that the energy efficiency  
7 programs set forth in those plans continue to be offered during  
8 the period June 1, 2017 through December 31, 2017. Each utility  
9 is authorized to increase, on a pro rata basis, the energy  
10 savings goals and budgets approved in its plan to reflect the  
11 additional 7 months of the plan's operation.

12 (Source: P.A. 98-90, eff. 7-15-13; 98-225, eff. 8-9-13; 98-604,  
13 eff. 12-17-13; 99-906, eff. 6-1-17.)

14 Section 95. No acceleration or delay. Where this Act makes  
15 changes in a statute that is represented in this Act by text  
16 that is not yet or no longer in effect (for example, a Section  
17 represented by multiple versions), the use of that text does  
18 not accelerate or delay the taking effect of (i) the changes  
19 made by this Act or (ii) provisions derived from any other  
20 Public Act.

21 Section 99. Effective date. This Act takes effect upon  
22 becoming law or on the date that the provisions of Public Act  
23 99-906 amending Sections 8-103, 8-103B, and 8-104 of the Public  
24 Utilities Act take effect, whichever is later.