



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB5321

by Rep. Sue Scherer

SYNOPSIS AS INTRODUCED:

220 ILCS 5/8-103

Amends the Public Utilities Act. Provides that energy efficiency and demand-response measures do not apply to self-directed customers. Provides that a self-directed customer is a customer of an electric utility whose total highest 30 minute demand aggregated for all of that customer's facilities within a utility service area was more than 10,000 kilowatts or whose annual aggregated usage is 500,000,000 kilowatt hours or more in this State and who complies with certain provisions. Provides that the criteria for determining qualification as a self-directing customer shall be based on the most recent 12 consecutive billing periods prior to the customer's initial application for designation as a self-directing customer. Provides that the provisions regarding self-directed customers will no longer be applicable after January 1, 2021.

LRB098 18567 RPS 53705 b

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 Section 8-103 as follows:

6 (220 ILCS 5/8-103)

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

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

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

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

13 (1) 0.2% of energy delivered in the year commencing
14 June 1, 2008;

15 (2) 0.4% of energy delivered in the year commencing
16 June 1, 2009;

17 (3) 0.6% of energy delivered in the year commencing
18 June 1, 2010;

19 (4) 0.8% of energy delivered in the year commencing
20 June 1, 2011;

21 (5) 1% of energy delivered in the year commencing June
22 1, 2012;

23 (6) 1.4% of energy delivered in the year commencing
24 June 1, 2013;

25 (7) 1.8% of energy delivered in the year commencing
26 June 1, 2014; and

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

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

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

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

25 (1) in 2008, no more than 0.5% of the amount paid per
26 kilowatthour by those customers during the year ending May

1 31, 2007;

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

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

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

17 (5) thereafter, the amount of energy efficiency and
18 demand-response measures implemented for any single year
19 shall be reduced by an amount necessary to limit the
20 estimated average net increase due to the cost of these
21 measures included in the amounts paid by eligible retail
22 customers in connection with electric service to no more
23 than the greater of 2.015% of the amount paid per
24 kilowatthour by those customers during the year ending May
25 31, 2007 or the incremental amount per kilowatthour paid
26 for these measures in 2011.

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

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

25 The apportionment of the dollars to cover the costs to
26 implement the Department's share of the portfolio of energy

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

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

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

24 Each utility shall include, in its recovery of costs, the
25 costs estimated for both the utility's and the Department's
26 implementation of energy efficiency and demand-response

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

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

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

24 No utility shall be assessed a penalty under subsection (f)
25 of this Section for failure to make a timely filing if that
26 failure is the result of a lack of agreement with the

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

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

19 (f) No later than November 15, 2007, each electric utility
20 shall file an energy efficiency and demand-response plan with
21 the Commission to meet the energy efficiency and
22 demand-response standards for 2008 through 2010. No later than
23 October 1, 2010, each electric utility shall file an energy
24 efficiency and demand-response plan with the Commission to meet
25 the energy efficiency and demand-response standards for 2011
26 through 2013. Every 3 years thereafter, each electric utility

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

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

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

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

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

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

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

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

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

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

20 (i) If, after 2 years, an electric utility fails to meet
21 the efficiency standard specified in subsection (b) of this
22 Section, as modified by subsections (d) and (e), it shall make
23 a contribution to the Low-Income Home Energy Assistance
24 Program. The combined total liability for failure to meet the
25 goal shall be \$1,000,000, which shall be assessed as follows: a
26 large electric utility shall pay \$665,000, and a medium

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

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

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

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

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

18 (l) Subsections (a) through (k) of this Section do not
19 apply to any customer of an electric utility whose total
20 highest 30 minute demand aggregated for all of such customer's
21 facilities within a utility service area was more than 10,000
22 kilowatts or whose annual aggregated usage is 500,000,000
23 kilowatt hours or more in this State and that complies with the
24 provisions of paragraph (1) of this subsection (l). These
25 criteria for determining qualification as a self-directing
26 customer ("SDC") shall be based on the most recent 12

1 consecutive billing periods prior to the customer's initial
2 application for designation as a SDC.

3 (1) Customers described in this subsection (1) shall
4 apply to the Department, on a form approved by the
5 Department on or before October 1, 2014, to be designated
6 as a SDC on or before February 1, 2015. Thereafter, an
7 application may be made not less than 6 months before the
8 filing date of the electric utility energy efficiency and
9 demand-response plan described in subsection (f) of this
10 Section; however, a new customer that commences taking
11 service from an electric utility after February 1, 2015 may
12 apply to become a SDC up to 30 days after beginning
13 service. The application shall contain the following:

14 (A) the customer's certification that, at the time
15 of its application, it qualifies to be a SDC described
16 in this subsection (1);

17 (B) the customer's certification that it has
18 established or shall establish, by the beginning of the
19 utility's 3-year planning period commencing subsequent
20 to the application, and shall maintain for accounting
21 purposes an energy efficiency reserve account and that
22 the customer shall accrue funds in the account to be
23 held for the purpose of funding, in whole or in part,
24 energy efficiency measures of the customer's choosing,
25 which may include, but are not limited to, projects
26 involving combined heat and power systems that use the

1 same energy source both for the generation of
2 electrical or mechanical power and the production of
3 steam or another form of useful thermal energy or the
4 use of combustible gas produced from biomass or both;

5 (C) the customer's certification that annual
6 funding levels for the energy efficiency reserve
7 account shall be equal to 2% of the customer's cost of
8 electricity, composed of the customer's commodity cost
9 and the delivery service charges paid to the electric
10 utility;

11 (D) in the case of customers who use one or more
12 electric arc furnaces with an annual usage of greater
13 than 50% of the customer's total annual electricity
14 usage, the required annual funding levels described in
15 subparagraph (C) of paragraph (1) of this subsection
16 (1) shall be based on the electricity usage not
17 directly used by the electric arc furnaces;

18 (E) the customer's certification that the required
19 reserve account balance shall be capped at 3 years'
20 worth of accruals and that the customer may, at its
21 option, make further deposits to the account to the
22 extent such a deposit would increase the reserve
23 account balance above the designated cap level;

24 (F) the customer's certification that by October 1
25 of each year, beginning no sooner than October 1, 2016,
26 the customer shall report to the Department, for the

1 12-month period ending May 31 of the same year,
2 information on all deposits and reductions, if any, to
3 the reserve account during the reporting year; reserve
4 account balances by month; a description of energy
5 efficiency measures undertaken by the customer and
6 paid for in whole or in part with funds from the
7 reserve account; and an estimate of the energy saved or
8 to be saved by the measure and that the report shall
9 include a verification, by an officer or plant manager
10 of the customer or by a registered professional
11 engineer or certified, energy-efficiency trade
12 professional, that the funds withdrawn from the
13 reserve account were used for the energy efficiency
14 measures;

15 (G) in the case of a customer with one or more
16 electric arc furnaces that meet the criteria described
17 in subparagraph (D) of paragraph (1) of this subsection
18 (1), the customer's certification of the level of
19 electricity usage for powering its electric arc
20 furnaces in a typical year and that it shall provide
21 information establishing this level, upon request of
22 the Department;

23 (H) the customer's certification that it has
24 provided the electric utility or utilities serving the
25 customer with a copy of the application as filed with
26 the Department;

1 (I) the customer's certification of the electric
2 utility or utilities serving the customer in this
3 State, including the electric utility accounts that
4 are the subject of the application; and

5 (J) the customer's verification, signed by a plant
6 manager or an authorized corporate officer, attesting
7 to the truthfulness and accuracy of the information
8 contained in the application.

9 (2) The Department shall review the application to
10 determine that it contains the information described in
11 subparagraphs (A) through (J) of paragraph (1) of this
12 subsection (1), as applicable. The review shall be
13 completed within 30 days after the date the application is
14 filed with the Department. Absent a determination by the
15 Department within the 30-day period, the applicant shall be
16 considered to be a customer for all subsequent 3-year
17 planning periods, as of the date of filing the application
18 described in this subsection (1). If the Department
19 determines that the application does not contain the
20 applicable information described in subparagraphs (A)
21 through (J) of paragraph (1) of this subsection (1), it
22 shall notify the customer, in writing, of its determination
23 that the application does not contain the required
24 information and identify the information that is missing,
25 and the customer shall provide the missing information
26 within 15 working days after the date of receipt of the

1 Department's notification.

2 (3) The Department shall have the right to audit the
3 information provided in the customer's application and its
4 annual reports to ensure continued compliance with the
5 requirements of this subsection (1). Based on the audit, if
6 the Department determines the customer is no longer in
7 compliance with the requirements of subparagraphs (A)
8 through (J) of paragraph (1) of this subsection (1), as
9 applicable, the Department shall notify the customer in
10 writing of the noncompliance. The customer shall have 30
11 days to establish its compliance and, failing to do so, may
12 have its status as a SDC or exempt customer revoked by the
13 Department. The Department shall treat all information
14 provided by any customer seeking SDC status or exemption
15 from the provisions of this Section as strictly
16 confidential.

17 (4) Upon request or on its own motion, the Commission
18 may open an investigation, no more than once every 3 years
19 and not before October 1, 2017, to evaluate the
20 effectiveness of the self-directing program described in
21 this subsection (1).

22 (m) The applicability of this Section to customers
23 described in subsection (1) of this Section is conditioned on
24 the existence of the SDC program. In no event shall any
25 provision of this Section apply to such customers after January
26 1, 2021.

1 (Source: P.A. 97-616, eff. 10-26-11; 97-841, eff. 7-20-12;
2 98-90, eff. 7-15-13.)