

# HB2956



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

HB2956

by Rep. William Davis

#### SYNOPSIS AS INTRODUCED:

220 ILCS 5/8-103B

Amends the Public Utilities Act. Removes language exempting retail customers of an electric utility that serves more than 3,000,000 retail customers in the State and whose total highest 30-minute demand was more than 10,000 kilowatts and retail customers of an electric utility that serves less than 3,000,000 retail customers but more than 500,000 retail customers in the State and whose total highest 15-minute demand was more than 10,000 kilowatts from certain provisions concerning energy efficiency and demand-response measures. Makes other changes. Effective immediately.

LRB101 09743 JRG 54844 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 Section 8-103B as follows:

6 (220 ILCS 5/8-103B)

7 Sec. 8-103B. 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 expenditures 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 (c) 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" have the meanings set  
3 forth in the Illinois Power Agency Act.

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

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

1 achievement of the cumulative persisting annual savings goals  
2 set forth in subsection (b-5):

3 (1) 5.8% deemed cumulative persisting annual savings  
4 for the year ending December 31, 2018;

5 (2) 5.2% deemed cumulative persisting annual savings  
6 for the year ending December 31, 2019;

7 (3) 4.5% deemed cumulative persisting annual savings  
8 for the year ending December 31, 2020;

9 (4) 4.0% deemed cumulative persisting annual savings  
10 for the year ending December 31, 2021;

11 (5) 3.5% deemed cumulative persisting annual savings  
12 for the year ending December 31, 2022;

13 (6) 3.1% deemed cumulative persisting annual savings  
14 for the year ending December 31, 2023;

15 (7) 2.8% deemed cumulative persisting annual savings  
16 for the year ending December 31, 2024;

17 (8) 2.5% deemed cumulative persisting annual savings  
18 for the year ending December 31, 2025;

19 (9) 2.3% deemed cumulative persisting annual savings  
20 for the year ending December 31, 2026;

21 (10) 2.1% deemed cumulative persisting annual savings  
22 for the year ending December 31, 2027;

23 (11) 1.8% deemed cumulative persisting annual savings  
24 for the year ending December 31, 2028;

25 (12) 1.7% deemed cumulative persisting annual savings  
26 for the year ending December 31, 2029; and

1           (13) 1.5% deemed cumulative persisting annual savings  
2           for the year ending December 31, 2030.

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

9           (b-5) Beginning in 2018, electric utilities subject to this  
10          Section that serve more than 3,000,000 retail customers in the  
11          State shall achieve the following cumulative persisting annual  
12          savings goals, as modified by subsection (f) of this Section  
13          and as compared to the deemed baseline of 88,000,000 MWhs of  
14          electric power and energy sales set forth in subsection (b), as  
15          reduced 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) 7.8% cumulative persisting annual savings for the  
23                 year ending December 31, 2018;

24                 (2) 9.1% cumulative persisting annual savings for the  
25                 year ending December 31, 2019;

26                 (3) 10.4% cumulative persisting annual savings for the

1 year ending December 31, 2020;

2 (4) 11.8% cumulative persisting annual savings for the  
3 year ending December 31, 2021;

4 (5) 13.1% cumulative persisting annual savings for the  
5 year ending December 31, 2022;

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

8 (7) 15.7% cumulative persisting annual savings for the  
9 year ending December 31, 2024;

10 (8) 17% cumulative persisting annual savings for the  
11 year ending December 31, 2025;

12 (9) 17.9% cumulative persisting annual savings for the  
13 year ending December 31, 2026;

14 (10) 18.8% cumulative persisting annual savings for  
15 the year ending December 31, 2027;

16 (11) 19.7% cumulative persisting annual savings for  
17 the year ending December 31, 2028;

18 (12) 20.6% cumulative persisting annual savings for  
19 the year ending December 31, 2029; and

20 (13) 21.5% cumulative persisting annual savings for  
21 the year ending December 31, 2030.

22 (b-10) For purposes of this Section, electric utilities  
23 subject to this Section that serve less than 3,000,000 retail  
24 customers but more than 500,000 retail customers in the State  
25 shall be deemed to have achieved a cumulative persisting annual  
26 savings of 6.6% from energy efficiency measures and programs

1 implemented during the period beginning January 1, 2012 and  
2 ending December 31, 2017, which is based on the deemed average  
3 weather normalized sales of electric power and energy during  
4 calendar years 2014, 2015, and 2016 of 36,900,000 MWhs. For the  
5 purposes of this subsection (b-10) and subsection (b-15), the  
6 36,900,000 MWhs of deemed electric power and energy sales shall  
7 be reduced by the number of MWhs equal to the sum of the annual  
8 consumption of customers that are exempt from subsections (a)  
9 through (j) of this Section under subsection (l) of this  
10 Section, as averaged across the calendar years 2014, 2015, and  
11 2016. After 2017, the deemed value of cumulative persisting  
12 annual savings from energy efficiency measures and programs  
13 implemented during the period beginning January 1, 2012 and  
14 ending December 31, 2017, shall be reduced each year, as  
15 follows, and the applicable value shall be applied to and count  
16 toward the utility's achievement of the cumulative persisting  
17 annual savings goals set forth in subsection (b-15):

18 (1) 5.8% deemed cumulative persisting annual savings  
19 for the year ending December 31, 2018;

20 (2) 5.2% deemed cumulative persisting annual savings  
21 for the year ending December 31, 2019;

22 (3) 4.5% deemed cumulative persisting annual savings  
23 for the year ending December 31, 2020;

24 (4) 4.0% deemed cumulative persisting annual savings  
25 for the year ending December 31, 2021;

26 (5) 3.5% deemed cumulative persisting annual savings

1 for the year ending December 31, 2022;

2 (6) 3.1% deemed cumulative persisting annual savings  
3 for the year ending December 31, 2023;

4 (7) 2.8% deemed cumulative persisting annual savings  
5 for the year ending December 31, 2024;

6 (8) 2.5% deemed cumulative persisting annual savings  
7 for the year ending December 31, 2025;

8 (9) 2.3% deemed cumulative persisting annual savings  
9 for the year ending December 31, 2026;

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

12 (11) 1.8% deemed cumulative persisting annual savings  
13 for the year ending December 31, 2028;

14 (12) 1.7% deemed cumulative persisting annual savings  
15 for the year ending December 31, 2029; and

16 (13) 1.5% deemed cumulative persisting annual savings  
17 for the year ending December 31, 2030.

18 (b-15) Beginning in 2018, electric utilities subject to  
19 this Section that serve less than 3,000,000 retail customers  
20 but more than 500,000 retail customers in the State shall  
21 achieve the following cumulative persisting annual savings  
22 goals, as modified by subsection (b-20) and subsection (f) of  
23 this Section and as compared to the deemed baseline as reduced  
24 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 (l) of this



1 Section as averaged across the calendar years 2014, 2015, and  
2 2016, through the implementation of energy efficiency measures  
3 during the applicable year and in prior years, but no earlier  
4 than January 1, 2012:

5 (1) 7.4% cumulative persisting annual savings for the  
6 year ending December 31, 2018;

7 (2) 8.2% cumulative persisting annual savings for the  
8 year ending December 31, 2019;

9 (3) 9.0% cumulative persisting annual savings for the  
10 year ending December 31, 2020;

11 (4) 9.8% cumulative persisting annual savings for the  
12 year ending December 31, 2021;

13 (5) 10.6% cumulative persisting annual savings for the  
14 year ending December 31, 2022;

15 (6) 11.4% cumulative persisting annual savings for the  
16 year ending December 31, 2023;

17 (7) 12.2% cumulative persisting annual savings for the  
18 year ending December 31, 2024;

19 (8) 13% cumulative persisting annual savings for the  
20 year ending December 31, 2025;

21 (9) 13.6% cumulative persisting annual savings for the  
22 year ending December 31, 2026;

23 (10) 14.2% cumulative persisting annual savings for  
24 the year ending December 31, 2027;

25 (11) 14.8% cumulative persisting annual savings for  
26 the year ending December 31, 2028;

1 (12) 15.4% cumulative persisting annual savings for  
2 the year ending December 31, 2029; and

3 (13) 16% cumulative persisting annual savings for the  
4 year ending December 31, 2030.

5 The difference between the cumulative persisting annual  
6 savings goal for the applicable calendar year and the  
7 cumulative persisting annual savings goal for the immediately  
8 preceding calendar year is 0.8% for the period of January 1,  
9 2018 through December 31, 2025 and 0.6% for the period of  
10 January 1, 2026 through December 31, 2030.

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

21 Within 270 days after June 1, 2017 (the effective date of  
22 Public Act 99-906) ~~this amendatory Act of the 99th General~~  
23 ~~Assembly~~, an electric utility that serves less than 3,000,000  
24 retail customers but more than 500,000 retail customers in the  
25 State shall file a plan with the Commission that identifies the  
26 cost-effective voltage optimization investment the electric

1 utility plans to undertake through December 31, 2024. The  
2 Commission, after notice and hearing, shall approve or approve  
3 with modification the plan within 120 days after the plan's  
4 filing and, in the order approving or approving with  
5 modification the plan, the Commission shall adjust the  
6 applicable cumulative persisting annual savings goals set  
7 forth in subsection (b-15) to reflect any amount of  
8 cost-effective energy savings approved by the Commission that  
9 is greater than or less than the following cumulative  
10 persisting annual savings values attributable to voltage  
11 optimization for the applicable year:

12 (1) 0.0% of cumulative persisting annual savings for  
13 the year ending December 31, 2018;

14 (2) 0.17% of cumulative persisting annual savings for  
15 the year ending December 31, 2019;

16 (3) 0.17% of cumulative persisting annual savings for  
17 the year ending December 31, 2020;

18 (4) 0.33% of cumulative persisting annual savings for  
19 the year ending December 31, 2021;

20 (5) 0.5% of cumulative persisting annual savings for  
21 the year ending December 31, 2022;

22 (6) 0.67% of cumulative persisting annual savings for  
23 the year ending December 31, 2023;

24 (7) 0.83% of cumulative persisting annual savings for  
25 the year ending December 31, 2024; and

26 (8) 1.0% of cumulative persisting annual savings for

1 the year ending December 31, 2025.

2 (b-25) In the event an electric utility jointly offers an  
3 energy efficiency measure or program with a gas utility under  
4 plans approved under this Section and Section 8-104 of this  
5 Act, the electric utility may continue offering the program,  
6 including the gas energy efficiency measures, in the event the  
7 gas utility discontinues funding the program. In that event,  
8 the energy savings value associated with such other fuels shall  
9 be converted to electric energy savings on an equivalent Btu  
10 basis for the premises. However, the electric utility shall  
11 prioritize programs for low-income residential customers to  
12 the extent practicable. An electric utility may recover the  
13 costs of offering the gas energy efficiency measures under this  
14 subsection (b-25).

15 For those energy efficiency measures or programs that save  
16 both electricity and other fuels but are not jointly offered  
17 with a gas utility under plans approved under this Section and  
18 Section 8-104 or not offered with an affiliated gas utility  
19 under paragraph (6) of subsection (f) of Section 8-104 of this  
20 Act, the electric utility may count savings of fuels other than  
21 electricity toward the achievement of its annual savings goal,  
22 and the energy savings value associated with such other fuels  
23 shall be converted to electric energy savings on an equivalent  
24 Btu basis at the premises.

25 In no event shall more than 10% of each year's applicable  
26 annual incremental goal as defined in paragraph (7) of

1 subsection (g) of this Section be met through savings of fuels  
2 other than electricity.

3 (c) Electric utilities shall be responsible for overseeing  
4 the design, development, and filing of energy efficiency plans  
5 with the Commission and may, as part of that implementation,  
6 outsource various aspects of program development and  
7 implementation. A minimum of 10%, for electric utilities that  
8 serve more than 3,000,000 retail customers in the State, and a  
9 minimum of 7%, for electric utilities that serve less than  
10 3,000,000 retail customers but more than 500,000 retail  
11 customers in the State, of the utility's entire portfolio  
12 funding level for a given year shall be used to procure  
13 cost-effective energy efficiency measures from units of local  
14 government, municipal corporations, school districts, public  
15 housing, and community college districts, provided that a  
16 minimum percentage of available funds shall be used to procure  
17 energy efficiency from public housing, which percentage shall  
18 be equal to public housing's share of public building energy  
19 consumption.

20 The utilities shall also implement energy efficiency  
21 measures targeted at low-income households, which, for  
22 purposes of this Section, shall be defined as households at or  
23 below 80% of area median income, and expenditures to implement  
24 the measures shall be no less than \$25,000,000 per year for  
25 electric utilities that serve more than 3,000,000 retail  
26 customers in the State and no less than \$8,350,000 per year for

1 electric utilities that serve less than 3,000,000 retail  
2 customers but more than 500,000 retail customers in the State.

3 Each electric utility shall assess opportunities to  
4 implement cost-effective energy efficiency measures and  
5 programs through a public housing authority or authorities  
6 located in its service territory. If such opportunities are  
7 identified, the utility shall propose such measures and  
8 programs to address the opportunities. Expenditures to address  
9 such opportunities shall be credited toward the minimum  
10 procurement and expenditure requirements set forth in this  
11 subsection (c).

12 Implementation of energy efficiency measures and programs  
13 targeted at low-income households should be contracted, when it  
14 is practicable, to independent third parties that have  
15 demonstrated capabilities to serve such households, with a  
16 preference for not-for-profit entities and government agencies  
17 that have existing relationships with or experience serving  
18 low-income communities in the State.

19 Each electric utility shall develop and implement  
20 reporting procedures that address and assist in determining the  
21 amount of energy savings that can be applied to the low-income  
22 procurement and expenditure requirements set forth in this  
23 subsection (c).

24 The electric utilities shall also convene a low-income  
25 energy efficiency advisory committee to assist in the design  
26 and evaluation of the low-income energy efficiency programs.

1 The committee shall be comprised of the electric utilities  
2 subject to the requirements of this Section, the gas utilities  
3 subject to the requirements of Section 8-104 of this Act, the  
4 utilities' low-income energy efficiency implementation  
5 contractors, and representatives of community-based  
6 organizations.

7 (d) Notwithstanding any other provision of law to the  
8 contrary, a utility providing approved energy efficiency  
9 measures and, if applicable, demand-response measures in the  
10 State shall be permitted to recover all reasonable and  
11 prudently incurred costs of those measures from all retail  
12 customers, except as provided in subsection (1) of this  
13 Section, as follows, provided that nothing in this subsection

14 (d) permits the double recovery of such costs from customers:

15 (1) The utility may recover its costs through an  
16 automatic adjustment clause tariff filed with and approved  
17 by the Commission. The tariff shall be established outside  
18 the context of a general rate case. Each year the  
19 Commission shall initiate a review to reconcile any amounts  
20 collected with the actual costs and to determine the  
21 required adjustment to the annual tariff factor to match  
22 annual expenditures. To enable the financing of the  
23 incremental capital expenditures, including regulatory  
24 assets, for electric utilities that serve less than  
25 3,000,000 retail customers but more than 500,000 retail  
26 customers in the State, the utility's actual year-end

1 capital structure that includes a common equity ratio,  
2 excluding goodwill, of up to and including 50% of the total  
3 capital structure shall be deemed reasonable and used to  
4 set rates.

5 (2) A utility may recover its costs through an energy  
6 efficiency formula rate approved by the Commission under a  
7 filing under subsections (f) and (g) of this Section, which  
8 shall specify the cost components that form the basis of  
9 the rate charged to customers with sufficient specificity  
10 to operate in a standardized manner and be updated annually  
11 with transparent information that reflects the utility's  
12 actual costs to be recovered during the applicable rate  
13 year, which is the period beginning with the first billing  
14 day of January and extending through the last billing day  
15 of the following December. The energy efficiency formula  
16 rate shall be implemented through a tariff filed with the  
17 Commission under subsections (f) and (g) of this Section  
18 that is consistent with the provisions of this paragraph  
19 (2) and that shall be applicable to all delivery services  
20 customers. The Commission shall conduct an investigation  
21 of the tariff in a manner consistent with the provisions of  
22 this paragraph (2), subsections (f) and (g) of this  
23 Section, and the provisions of Article IX of this Act to  
24 the extent they do not conflict with this paragraph (2).  
25 The energy efficiency formula rate approved by the  
26 Commission shall remain in effect at the discretion of the



1 utility and shall do the following:

2 (A) Provide for the recovery of the utility's  
3 actual costs incurred under this Section that are  
4 prudently incurred and reasonable in amount consistent  
5 with Commission practice and law. The sole fact that a  
6 cost differs from that incurred in a prior calendar  
7 year or that an investment is different from that made  
8 in a prior calendar year shall not imply the imprudence  
9 or unreasonableness of that cost or investment.

10 (B) Reflect the utility's actual year-end capital  
11 structure for the applicable calendar year, excluding  
12 goodwill, subject to a determination of prudence and  
13 reasonableness consistent with Commission practice and  
14 law. To enable the financing of the incremental capital  
15 expenditures, including regulatory assets, for  
16 electric utilities that serve less than 3,000,000  
17 retail customers but more than 500,000 retail  
18 customers in the State, a participating electric  
19 utility's actual year-end capital structure that  
20 includes a common equity ratio, excluding goodwill, of  
21 up to and including 50% of the total capital structure  
22 shall be deemed reasonable and used to set rates.

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

25 (i) the average for the applicable calendar  
26 year of the monthly average yields of 30-year U.S.

1 Treasury bonds published by the Board of Governors  
2 of the Federal Reserve System in its weekly H.15  
3 Statistical Release or successor publication; and  
4 (ii) 580 basis points.

5 At such time as the Board of Governors of the  
6 Federal Reserve System ceases to include the monthly  
7 average yields of 30-year U.S. Treasury bonds in its  
8 weekly H.15 Statistical Release or successor  
9 publication, the monthly average yields of the U.S.  
10 Treasury bonds then having the longest duration  
11 published by the Board of Governors in its weekly H.15  
12 Statistical Release or successor publication shall  
13 instead be used for purposes of this paragraph (2).

14 (D) Permit and set forth protocols, subject to a  
15 determination of prudence and reasonableness  
16 consistent with Commission practice and law, for the  
17 following:

18 (i) recovery of incentive compensation expense  
19 that is based on the achievement of operational  
20 metrics, including metrics related to budget  
21 controls, outage duration and frequency, safety,  
22 customer service, efficiency and productivity, and  
23 environmental compliance; however, this protocol  
24 shall not apply if such expense related to costs  
25 incurred under this Section is recovered under  
26 Article IX or Section 16-108.5 of this Act;

1 incentive compensation expense that is based on  
2 net income or an affiliate's earnings per share  
3 shall not be recoverable under the energy  
4 efficiency formula rate;

5 (ii) recovery of pension and other  
6 post-employment benefits expense, provided that  
7 such costs are supported by an actuarial study;  
8 however, this protocol shall not apply if such  
9 expense related to costs incurred under this  
10 Section is recovered under Article IX or Section  
11 16-108.5 of this Act;

12 (iii) recovery of existing regulatory assets  
13 over the periods previously authorized by the  
14 Commission;

15 (iv) as described in subsection (e),  
16 amortization of costs incurred under this Section;  
17 and

18 (v) projected, weather normalized billing  
19 determinants for the applicable rate year.

20 (E) Provide for an annual reconciliation, as  
21 described in paragraph (3) of this subsection (d), less  
22 any deferred taxes related to the reconciliation, with  
23 interest at an annual rate of return equal to the  
24 utility's weighted average cost of capital, including  
25 a revenue conversion factor calculated to recover or  
26 refund all additional income taxes that may be payable

1 or receivable as a result of that return, of the energy  
2 efficiency revenue requirement reflected in rates for  
3 each calendar year, beginning with the calendar year in  
4 which the utility files its energy efficiency formula  
5 rate tariff under this paragraph (2), with what the  
6 revenue requirement would have been had the actual cost  
7 information for the applicable calendar year been  
8 available at the filing date.

9 The utility shall file, together with its tariff, the  
10 projected costs to be incurred by the utility during the  
11 rate year under the utility's multi-year plan approved  
12 under subsections (f) and (g) of this Section, including,  
13 but not limited to, the projected capital investment costs  
14 and projected regulatory asset balances with  
15 correspondingly updated depreciation and amortization  
16 reserves and expense, that shall populate the energy  
17 efficiency formula rate and set the initial rates under the  
18 formula.

19 The Commission shall review the proposed tariff in  
20 conjunction with its review of a proposed multi-year plan,  
21 as specified in paragraph (5) of subsection (g) of this  
22 Section. The review shall be based on the same evidentiary  
23 standards, including, but not limited to, those concerning  
24 the prudence and reasonableness of the costs incurred by  
25 the utility, the Commission applies in a hearing to review  
26 a filing for a general increase in rates under Article IX

1 of this Act. The initial rates shall take effect beginning  
2 with the January monthly billing period following the  
3 Commission's approval.

4 The tariff's rate design and cost allocation across  
5 customer classes shall be consistent with the utility's  
6 automatic adjustment clause tariff in effect on June 1,  
7 2017 (the effective date of Public Act 99-906) ~~this~~  
8 ~~amendatory Act of the 99th General Assembly~~; however, the  
9 Commission may revise the tariff's rate design and cost  
10 allocation in subsequent proceedings under paragraph (3)  
11 of this subsection (d).

12 If the energy efficiency formula rate is terminated,  
13 the then current rates shall remain in effect until such  
14 time as the energy efficiency costs are incorporated into  
15 new rates that are set under this subsection (d) or Article  
16 IX of this Act, subject to retroactive rate adjustment,  
17 with interest, to reconcile rates charged with actual  
18 costs.

19 (3) The provisions of this paragraph (3) shall only  
20 apply to an electric utility that has elected to file an  
21 energy efficiency formula rate under paragraph (2) of this  
22 subsection (d). Subsequent to the Commission's issuance of  
23 an order approving the utility's energy efficiency formula  
24 rate structure and protocols, and initial rates under  
25 paragraph (2) of this subsection (d), the utility shall  
26 file, on or before June 1 of each year, with the Chief

1 Clerk of the Commission its updated cost inputs to the  
2 energy efficiency formula rate for the applicable rate year  
3 and the corresponding new charges, as well as the  
4 information described in paragraph (9) of subsection (g) of  
5 this Section. Each such filing shall conform to the  
6 following requirements and include the following  
7 information:

8 (A) The inputs to the energy efficiency formula  
9 rate for the applicable rate year shall be based on the  
10 projected costs to be incurred by the utility during  
11 the rate year under the utility's multi-year plan  
12 approved under subsections (f) and (g) of this Section,  
13 including, but not limited to, projected capital  
14 investment costs and projected regulatory asset  
15 balances with correspondingly updated depreciation and  
16 amortization reserves and expense. The filing shall  
17 also include a reconciliation of the energy efficiency  
18 revenue requirement that was in effect for the prior  
19 rate year (as set by the cost inputs for the prior rate  
20 year) with the actual revenue requirement for the prior  
21 rate year (determined using a year-end rate base) that  
22 uses amounts reflected in the applicable FERC Form 1  
23 that reports the actual costs for the prior rate year.  
24 Any over-collection or under-collection indicated by  
25 such reconciliation shall be reflected as a credit  
26 against, or recovered as an additional charge to,

1           respectively, with interest calculated at a rate equal  
2           to the utility's weighted average cost of capital  
3           approved by the Commission for the prior rate year, the  
4           charges for the applicable rate year. Such  
5           over-collection or under-collection shall be adjusted  
6           to remove any deferred taxes related to the  
7           reconciliation, for purposes of calculating interest  
8           at an annual rate of return equal to the utility's  
9           weighted average cost of capital approved by the  
10          Commission for the prior rate year, including a revenue  
11          conversion factor calculated to recover or refund all  
12          additional income taxes that may be payable or  
13          receivable as a result of that return. Each  
14          reconciliation shall be certified by the participating  
15          utility in the same manner that FERC Form 1 is  
16          certified. The filing shall also include the charge or  
17          credit, if any, resulting from the calculation  
18          required by subparagraph (E) of paragraph (2) of this  
19          subsection (d).

20                 Notwithstanding any other provision of law to the  
21          contrary, the intent of the reconciliation is to  
22          ultimately reconcile both the revenue requirement  
23          reflected in rates for each calendar year, beginning  
24          with the calendar year in which the utility files its  
25          energy efficiency formula rate tariff under paragraph  
26          (2) of this subsection (d), with what the revenue

1 requirement determined using a year-end rate base for  
2 the applicable calendar year would have been had the  
3 actual cost information for the applicable calendar  
4 year been available at the filing date.

5 For purposes of this Section, "FERC Form 1" means  
6 the Annual Report of Major Electric Utilities,  
7 Licensees and Others that electric utilities are  
8 required to file with the Federal Energy Regulatory  
9 Commission under the Federal Power Act, Sections 3,  
10 4(a), 304 and 209, modified as necessary to be  
11 consistent with 83 Ill. Admin. Code Part 415 as of May  
12 1, 2011. Nothing in this Section is intended to allow  
13 costs that are not otherwise recoverable to be  
14 recoverable by virtue of inclusion in FERC Form 1.

15 (B) The new charges shall take effect beginning on  
16 the first billing day of the following January billing  
17 period and remain in effect through the last billing  
18 day of the next December billing period regardless of  
19 whether the Commission enters upon a hearing under this  
20 paragraph (3).

21 (C) The filing shall include relevant and  
22 necessary data and documentation for the applicable  
23 rate year. Normalization adjustments shall not be  
24 required.

25 Within 45 days after the utility files its annual  
26 update of cost inputs to the energy efficiency formula



1 rate, the Commission shall with reasonable notice,  
2 initiate a proceeding concerning whether the projected  
3 costs to be incurred by the utility and recovered during  
4 the applicable rate year, and that are reflected in the  
5 inputs to the energy efficiency formula rate, are  
6 consistent with the utility's approved multi-year plan  
7 under subsections (f) and (g) of this Section and whether  
8 the costs incurred by the utility during the prior rate  
9 year were prudent and reasonable. The Commission shall also  
10 have the authority to investigate the information and data  
11 described in paragraph (9) of subsection (g) of this  
12 Section, including the proposed adjustment to the  
13 utility's return on equity component of its weighted  
14 average cost of capital. During the course of the  
15 proceeding, each objection shall be stated with  
16 particularity and evidence provided in support thereof,  
17 after which the utility shall have the opportunity to rebut  
18 the evidence. Discovery shall be allowed consistent with  
19 the Commission's Rules of Practice, which Rules of Practice  
20 shall be enforced by the Commission or the assigned  
21 administrative law judge. The Commission shall apply the  
22 same evidentiary standards, including, but not limited to,  
23 those concerning the prudence and reasonableness of the  
24 costs incurred by the utility, during the proceeding as it  
25 would apply in a proceeding to review a filing for a  
26 general increase in rates under Article IX of this Act. The

1 Commission shall not, however, have the authority in a  
2 proceeding under this paragraph (3) to consider or order  
3 any changes to the structure or protocols of the energy  
4 efficiency formula rate approved under paragraph (2) of  
5 this subsection (d). In a proceeding under this paragraph  
6 (3), the Commission shall enter its order no later than the  
7 earlier of 195 days after the utility's filing of its  
8 annual update of cost inputs to the energy efficiency  
9 formula rate or December 15. The utility's proposed return  
10 on equity calculation, as described in paragraphs (7)  
11 through (9) of subsection (g) of this Section, shall be  
12 deemed the final, approved calculation on December 15 of  
13 the year in which it is filed unless the Commission enters  
14 an order on or before December 15, after notice and  
15 hearing, that modifies such calculation consistent with  
16 this Section. The Commission's determinations of the  
17 prudence and reasonableness of the costs incurred, and  
18 determination of such return on equity calculation, for the  
19 applicable calendar year shall be final upon entry of the  
20 Commission's order and shall not be subject to reopening,  
21 reexamination, or collateral attack in any other  
22 Commission proceeding, case, docket, order, rule, or  
23 regulation; however, nothing in this paragraph (3) shall  
24 prohibit a party from petitioning the Commission to rehear  
25 or appeal to the courts the order under the provisions of  
26 this Act.

1           (e) Beginning on June 1, 2017 (the effective date of Public  
2 Act 99-906) ~~this amendatory Act of the 99th General Assembly~~, a  
3 utility subject to the requirements of this Section may elect  
4 to defer, as a regulatory asset, up to the full amount of its  
5 expenditures incurred under this Section for each annual  
6 period, including, but not limited to, any expenditures  
7 incurred above the funding level set by subsection (f) of this  
8 Section for a given year. The total expenditures deferred as a  
9 regulatory asset in a given year shall be amortized and  
10 recovered over a period that is equal to the weighted average  
11 of the energy efficiency measure lives implemented for that  
12 year that are reflected in the regulatory asset. The  
13 unamortized balance shall be recognized as of December 31 for a  
14 given year. The utility shall also earn a return on the total  
15 of the unamortized balances of all of the energy efficiency  
16 regulatory assets, less any deferred taxes related to those  
17 unamortized balances, at an annual rate equal to the utility's  
18 weighted average cost of capital that includes, based on a  
19 year-end capital structure, the utility's actual cost of debt  
20 for the applicable calendar year and a cost of equity, which  
21 shall be calculated as the sum of the (i) the average for the  
22 applicable calendar year of the monthly average yields of  
23 30-year U.S. Treasury bonds published by the Board of Governors  
24 of the Federal Reserve System in its weekly H.15 Statistical  
25 Release or successor publication; and (ii) 580 basis points,  
26 including a revenue conversion factor calculated to recover or

1 refund all additional income taxes that may be payable or  
2 receivable as a result of that return. Capital investment costs  
3 shall be depreciated and recovered over their useful lives  
4 consistent with generally accepted accounting principles. The  
5 weighted average cost of capital shall be applied to the  
6 capital investment cost balance, less any accumulated  
7 depreciation and accumulated deferred income taxes, as of  
8 December 31 for a given year.

9 When an electric utility creates a regulatory asset under  
10 the provisions of this Section, the costs are recovered over a  
11 period during which customers also receive a benefit which is  
12 in the public interest. Accordingly, it is the intent of the  
13 General Assembly that an electric utility that elects to create  
14 a regulatory asset under the provisions of this Section shall  
15 recover all of the associated costs as set forth in this  
16 Section. After the Commission has approved the prudence and  
17 reasonableness of the costs that comprise the regulatory asset,  
18 the electric utility shall be permitted to recover all such  
19 costs, and the value and recoverability through rates of the  
20 associated regulatory asset shall not be limited, altered,  
21 impaired, or reduced.

22 (f) Beginning in 2017, each electric utility shall file an  
23 energy efficiency plan with the Commission to meet the energy  
24 efficiency standards for the next applicable multi-year period  
25 beginning January 1 of the year following the filing, according  
26 to the schedule set forth in paragraphs (1) through (3) of this

1 subsection (f). If a utility does not file such a plan on or  
2 before the applicable filing deadline for the plan, it shall  
3 face a penalty of \$100,000 per day until the plan is filed.

4 (1) No later than 30 days after June 1, 2017 (the  
5 effective date of Public Act 99-906) ~~this amendatory Act of~~  
6 ~~the 99th General Assembly or May 1, 2017, whichever is~~  
7 ~~later~~, each electric utility shall file a 4-year energy  
8 efficiency plan commencing on January 1, 2018 that is  
9 designed to achieve the cumulative persisting annual  
10 savings goals specified in paragraphs (1) through (4) of  
11 subsection (b-5) of this Section or in paragraphs (1)  
12 through (4) of subsection (b-15) of this Section, as  
13 applicable, through implementation of energy efficiency  
14 measures; however, the goals may be reduced if the  
15 utility's expenditures are limited pursuant to subsection  
16 (m) of this Section or, for a utility that serves less than  
17 3,000,000 retail customers, if each of the following  
18 conditions are met: (A) the plan's analysis and forecasts  
19 of the utility's ability to acquire energy savings  
20 demonstrate that achievement of such goals is not cost  
21 effective; and (B) the amount of energy savings achieved by  
22 the utility as determined by the independent evaluator for  
23 the most recent year for which savings have been evaluated  
24 preceding the plan filing was less than the average annual  
25 amount of savings required to achieve the goals for the  
26 applicable 4-year plan period. Except as provided in

1 subsection (m) of this Section, annual increases in  
2 cumulative persisting annual savings goals during the  
3 applicable 4-year plan period shall not be reduced to  
4 amounts that are less than the maximum amount of cumulative  
5 persisting annual savings that is forecast to be  
6 cost-effectively achievable during the 4-year plan period.  
7 The Commission shall review any proposed goal reduction as  
8 part of its review and approval of the utility's proposed  
9 plan.

10 (2) No later than March 1, 2021, each electric utility  
11 shall file a 4-year energy efficiency plan commencing on  
12 January 1, 2022 that is designed to achieve the cumulative  
13 persisting annual savings goals specified in paragraphs  
14 (5) through (8) of subsection (b-5) of this Section or in  
15 paragraphs (5) through (8) of subsection (b-15) of this  
16 Section, as applicable, through implementation of energy  
17 efficiency measures; however, the goals may be reduced if  
18 the utility's expenditures are limited pursuant to  
19 subsection (m) of this Section or, each of the following  
20 conditions are met: (A) the plan's analysis and forecasts  
21 of the utility's ability to acquire energy savings  
22 demonstrate that achievement of such goals is not cost  
23 effective; and (B) the amount of energy savings achieved by  
24 the utility as determined by the independent evaluator for  
25 the most recent year for which savings have been evaluated  
26 preceding the plan filing was less than the average annual

1 amount of savings required to achieve the goals for the  
2 applicable 4-year plan period. Except as provided in  
3 subsection (m) of this Section, annual increases in  
4 cumulative persisting annual savings goals during the  
5 applicable 4-year plan period shall not be reduced to  
6 amounts that are less than the maximum amount of cumulative  
7 persisting annual savings that is forecast to be  
8 cost-effectively achievable during the 4-year plan period.  
9 The Commission shall review any proposed goal reduction as  
10 part of its review and approval of the utility's proposed  
11 plan.

12 (3) No later than March 1, 2025, each electric utility  
13 shall file a 5-year energy efficiency plan commencing on  
14 January 1, 2026 that is designed to achieve the cumulative  
15 persisting annual savings goals specified in paragraphs  
16 (9) through (13) of subsection (b-5) of this Section or in  
17 paragraphs (9) through (13) of subsection (b-15) of this  
18 Section, as applicable, through implementation of energy  
19 efficiency measures; however, the goals may be reduced if  
20 the utility's expenditures are limited pursuant to  
21 subsection (m) of this Section or, each of the following  
22 conditions are met: (A) the plan's analysis and forecasts  
23 of the utility's ability to acquire energy savings  
24 demonstrate that achievement of such goals is not cost  
25 effective; and (B) the amount of energy savings achieved by  
26 the utility as determined by the independent evaluator for

1 the most recent year for which savings have been evaluated  
2 preceding the plan filing was less than the average annual  
3 amount of savings required to achieve the goals for the  
4 applicable 5-year plan period. Except as provided in  
5 subsection (m) of this Section, annual increases in  
6 cumulative persisting annual savings goals during the  
7 applicable 5-year plan period shall not be reduced to  
8 amounts that are less than the maximum amount of cumulative  
9 persisting annual savings that is forecast to be  
10 cost-effectively achievable during the 5-year plan period.  
11 The Commission shall review any proposed goal reduction as  
12 part of its review and approval of the utility's proposed  
13 plan.

14 Each utility's plan shall set forth the utility's proposals  
15 to meet the energy efficiency standards identified in  
16 subsection (b-5) or (b-15), as applicable and as such standards  
17 may have been modified under this subsection (f), taking into  
18 account the unique circumstances of the utility's service  
19 territory. For those plans commencing on January 1, 2018, the  
20 Commission shall seek public comment on the utility's plan and  
21 shall issue an order approving or disapproving each plan no  
22 later than ~~August 31, 2017, or~~ 105 days after June 1, 2017 (the  
23 effective date of Public Act 99-906) ~~this amendatory Act of the~~  
24 ~~99th General Assembly, whichever is later~~. For those plans  
25 commencing after December 31, 2021, the Commission shall seek  
26 public comment on the utility's plan and shall issue an order



1 approving or disapproving each plan within 6 months after its  
2 submission. If the Commission disapproves a plan, the  
3 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, the utility shall be  
8 subject to penalties at a rate of \$100,000 per day until the  
9 plan is filed. This process shall continue, and penalties shall  
10 accrue, until the utility has successfully filed a portfolio of  
11 energy efficiency and demand-response measures. Penalties  
12 shall be deposited into the Energy Efficiency Trust Fund.

13 (g) In submitting proposed plans and funding levels under  
14 subsection (f) of this Section to meet the savings goals  
15 identified in subsection (b-5) or (b-15) of this Section, as  
16 applicable, the utility shall:

17 (1) Demonstrate that its proposed energy efficiency  
18 measures will achieve the applicable requirements that are  
19 identified in subsection (b-5) or (b-15) of this Section,  
20 as modified by subsection (f) 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) Demonstrate that its overall portfolio of  
25 measures, not including low-income programs described in  
26 subsection (c) of this Section, is cost-effective using the

1 total resource cost test or complies with paragraphs (1)  
2 through (3) of subsection (f) of this Section and  
3 represents a diverse cross-section of opportunities for  
4 customers of all rate classes, other than those customers  
5 described in subsection (1) of this Section, to participate  
6 in the programs. Individual measures need not be cost  
7 effective.

8 (4) Present a third-party energy efficiency  
9 implementation program subject to the following  
10 requirements:

11 (A) beginning with the year commencing January 1,  
12 2019, electric utilities that serve more than  
13 3,000,000 retail customers in the State shall fund  
14 third-party energy efficiency programs in an amount  
15 that is no less than \$25,000,000 per year, and electric  
16 utilities that serve less than 3,000,000 retail  
17 customers but more than 500,000 retail customers in the  
18 State shall fund third-party energy efficiency  
19 programs in an amount that is no less than \$8,350,000  
20 per year;

21 (B) during 2018, the utility shall conduct a  
22 solicitation process for purposes of requesting  
23 proposals from third-party vendors for those  
24 third-party energy efficiency programs to be offered  
25 during one or more of the years commencing January 1,  
26 2019, January 1, 2020, and January 1, 2021; for those

1 multi-year plans commencing on January 1, 2022 and  
2 January 1, 2026, the utility shall conduct a  
3 solicitation process during 2021 and 2025,  
4 respectively, for purposes of requesting proposals  
5 from third-party vendors for those third-party energy  
6 efficiency programs to be offered during one or more  
7 years of the respective multi-year plan period; for  
8 each solicitation process, the utility shall identify  
9 the sector, technology, or geographical area for which  
10 it is seeking requests for proposals;

11 (C) the utility shall propose the bidder  
12 qualifications, performance measurement process, and  
13 contract structure, which must include a performance  
14 payment mechanism and general terms and conditions;  
15 the proposed qualifications, process, and structure  
16 shall be subject to Commission approval; and

17 (D) the utility shall retain an independent third  
18 party to score the proposals received through the  
19 solicitation process described in this paragraph (4),  
20 rank them according to their cost per lifetime  
21 kilowatt-hours saved, and assemble the portfolio of  
22 third-party programs.

23 The electric utility shall recover all costs  
24 associated with Commission-approved, third-party  
25 administered programs regardless of the success of those  
26 programs.

1           (4.5)     Implement     cost-effective     demand-response  
2     measures to reduce peak demand by 0.1% over the prior year  
3     for eligible retail customers, as defined in Section  
4     16-111.5 of this Act, and for customers that elect hourly  
5     service from the utility pursuant to Section 16-107 of this  
6     Act, provided those customers have not been declared  
7     competitive. This requirement continues until December 31,  
8     2026.

9           (5)     Include a proposed or revised cost-recovery tariff  
10    mechanism, as provided for under subsection (d) of this  
11    Section, to fund the proposed energy efficiency and  
12    demand-response measures and to ensure the recovery of the  
13    prudently and reasonably incurred costs of  
14    Commission-approved programs.

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

23          (7)     For electric utilities that serve more than  
24    3,000,000 retail customers in the State:

25                 (A) Through December 31, 2025, provide for an  
26    adjustment to the return on equity component of the

1 utility's weighted average cost of capital calculated  
2 under subsection (d) of this Section:

3 (i) If the independent evaluator determines  
4 that the utility achieved a cumulative persisting  
5 annual savings that is less than the applicable  
6 annual incremental goal, then the return on equity  
7 component shall be reduced by a maximum of 200  
8 basis points in the event that the utility achieved  
9 no more than 75% of such goal. If the utility  
10 achieved more than 75% of the applicable annual  
11 incremental goal but less than 100% of such goal,  
12 then the return on equity component shall be  
13 reduced by 8 basis points for each percent by which  
14 the utility failed to achieve the goal.

15 (ii) If the independent evaluator determines  
16 that the utility achieved a cumulative persisting  
17 annual savings that is more than the applicable  
18 annual incremental goal, then the return on equity  
19 component shall be increased by a maximum of 200  
20 basis points in the event that the utility achieved  
21 at least 125% of such goal. If the utility achieved  
22 more than 100% of the applicable annual  
23 incremental goal but less than 125% of such goal,  
24 then the return on equity component shall be  
25 increased by 8 basis points for each percent by  
26 which the utility achieved above the goal. If the

1 applicable annual incremental goal was reduced  
2 under paragraphs (1) or (2) of subsection (f) of  
3 this Section, then the following adjustments shall  
4 be made to the calculations described in this item  
5 (ii):

6 (aa) the calculation for determining  
7 achievement that is at least 125% of the  
8 applicable annual incremental goal shall use  
9 the unreduced applicable annual incremental  
10 goal to set the value; and

11 (bb) the calculation for determining  
12 achievement that is less than 125% but more  
13 than 100% of the applicable annual incremental  
14 goal shall use the reduced applicable annual  
15 incremental goal to set the value for 100%  
16 achievement of the goal and shall use the  
17 unreduced goal to set the value for 125%  
18 achievement. The 8 basis point value shall also  
19 be modified, as necessary, so that the 200  
20 basis points are evenly apportioned among each  
21 percentage point value between 100% and 125%  
22 achievement.

23 (B) For the period January 1, 2026 through December  
24 31, 2030, provide for an adjustment to the return on  
25 equity component of the utility's weighted average  
26 cost of capital calculated under subsection (d) of this

1           Section:

2                   (i) If the independent evaluator determines  
3                   that the utility achieved a cumulative persisting  
4                   annual savings that is less than the applicable  
5                   annual incremental goal, then the return on equity  
6                   component shall be reduced by a maximum of 200  
7                   basis points in the event that the utility achieved  
8                   no more than 66% of such goal. If the utility  
9                   achieved more than 66% of the applicable annual  
10                  incremental goal but less than 100% of such goal,  
11                  then the return on equity component shall be  
12                  reduced by 6 basis points for each percent by which  
13                  the utility failed to achieve the goal.

14                  (ii) If the independent evaluator determines  
15                  that the utility achieved a cumulative persisting  
16                  annual savings that is more than the applicable  
17                  annual incremental goal, then the return on equity  
18                  component shall be increased by a maximum of 200  
19                  basis points in the event that the utility achieved  
20                  at least 134% of such goal. If the utility achieved  
21                  more than 100% of the applicable annual  
22                  incremental goal but less than 134% of such goal,  
23                  then the return on equity component shall be  
24                  increased by 6 basis points for each percent by  
25                  which the utility achieved above the goal. If the  
26                  applicable annual incremental goal was reduced

1 under paragraph (3) of subsection (f) of this  
2 Section, then the following adjustments shall be  
3 made to the calculations described in this item  
4 (ii):

5 (aa) the calculation for determining  
6 achievement that is at least 134% of the  
7 applicable annual incremental goal shall use  
8 the unreduced applicable annual incremental  
9 goal to set the value; and

10 (bb) the calculation for determining  
11 achievement that is less than 134% but more  
12 than 100% of the applicable annual incremental  
13 goal shall use the reduced applicable annual  
14 incremental goal to set the value for 100%  
15 achievement of the goal and shall use the  
16 unreduced goal to set the value for 134%  
17 achievement. The 6 basis point value shall also  
18 be modified, as necessary, so that the 200  
19 basis points are evenly apportioned among each  
20 percentage point value between 100% and 134%  
21 achievement.

22 (7.5) For purposes of this Section, the term  
23 "applicable annual incremental goal" means the difference  
24 between the cumulative persisting annual savings goal for  
25 the calendar year that is the subject of the independent  
26 evaluator's determination and the cumulative persisting



1 annual savings goal for the immediately preceding calendar  
2 year, as such goals are defined in subsections (b-5) and  
3 (b-15) of this Section and as these goals may have been  
4 modified as provided for under subsection (b-20) and  
5 paragraphs (1) through (3) of subsection (f) of this  
6 Section. Under subsections (b), (b-5), (b-10), and (b-15)  
7 of this Section, a utility must first replace energy  
8 savings from measures that have reached the end of their  
9 measure lives and would otherwise have to be replaced to  
10 meet the applicable savings goals identified in subsection  
11 (b-5) or (b-15) of this Section before any progress towards  
12 achievement of its applicable annual incremental goal may  
13 be counted. Notwithstanding anything else set forth in this  
14 Section, the difference between the actual annual  
15 incremental savings achieved in any given year, including  
16 the replacement of energy savings from measures that have  
17 expired, and the applicable annual incremental goal shall  
18 not affect adjustments to the return on equity for  
19 subsequent calendar years under this subsection (g).

20 (8) For electric utilities that serve less than  
21 3,000,000 retail customers but more than 500,000 retail  
22 customers in the State:

23 (A) Through December 31, 2025, the applicable  
24 annual incremental goal shall be compared to the annual  
25 incremental savings as determined by the independent  
26 evaluator.

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

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

9           (iii) The return on equity component shall not  
10 be increased or decreased if the annual  
11 incremental savings as determined by the  
12 independent evaluator is greater than 84.4% of the  
13 applicable annual incremental goal and less than  
14 100% of the applicable annual incremental goal.

15           (iv) The return on equity component shall not  
16 be increased or decreased by an amount greater than  
17 200 basis points pursuant to this subparagraph  
18 (A).

19           (B) For the period of January 1, 2026 through  
20 December 31, 2030, the applicable annual incremental  
21 goal shall be compared to the annual incremental  
22 savings as determined by the independent evaluator.

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

1           (ii) The return on equity component shall be  
2           increased by 6 basis points for each percent by  
3           which the utility exceeded 100% of the applicable  
4           annual incremental goal.

5           (iii) The return on equity component shall not  
6           be increased or decreased by an amount greater than  
7           200 basis points pursuant to this subparagraph  
8           (B).

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

14          (i) The calculation for determining  
15          achievement that is at least 125% or 134%, as  
16          applicable, of the applicable annual incremental  
17          goal shall use the unreduced applicable annual  
18          incremental goal to set the value.

19          (ii) For the period through December 31, 2025,  
20          the calculation for determining achievement that  
21          is less than 125% but more than 100% of the  
22          applicable annual incremental goal shall use the  
23          reduced applicable annual incremental goal to set  
24          the value for 100% achievement of the goal and  
25          shall use the unreduced goal to set the value for  
26          125% achievement. The 8 basis point value shall

1           also be modified, as necessary, so that the 200  
2           basis points are evenly apportioned among each  
3           percentage point value between 100% and 125%  
4           achievement.

5                     (iii) For the period of January 1, 2026 through  
6           December 31, 2030, the calculation for determining  
7           achievement that is less than 134% but more than  
8           100% of the applicable annual incremental goal  
9           shall use the reduced applicable annual  
10          incremental goal to set the value for 100%  
11          achievement of the goal and shall use the unreduced  
12          goal to set the value for 125% achievement. The 6  
13          basis point value shall also be modified, as  
14          necessary, so that the 200 basis points are evenly  
15          apportioned among each percentage point value  
16          between 100% and 134% achievement.

17                     (9) The utility shall submit the energy savings data to  
18          the independent evaluator no later than 30 days after the  
19          close of the plan year. The independent evaluator shall  
20          determine the cumulative persisting annual savings for a  
21          given plan year no later than 120 days after the close of  
22          the plan year. The utility shall submit an informational  
23          filing to the Commission no later than 160 days after the  
24          close of the plan year that attaches the independent  
25          evaluator's final report identifying the cumulative  
26          persisting annual savings for the year and calculates,

1 under paragraph (7) or (8) of this subsection (g), as  
2 applicable, any resulting change to the utility's return on  
3 equity component of the weighted average cost of capital  
4 applicable to the next plan year beginning with the January  
5 monthly billing period and extending through the December  
6 monthly billing period. However, if the utility recovers  
7 the costs incurred under this Section under paragraphs (2)  
8 and (3) of subsection (d) of this Section, then the utility  
9 shall not be required to submit such informational filing,  
10 and shall instead submit the information that would  
11 otherwise be included in the informational filing as part  
12 of its filing under paragraph (3) of such subsection (d)  
13 that is due on or before June 1 of each year.

14 For those utilities that must submit the informational  
15 filing, the Commission may, on its own motion or by  
16 petition, initiate an investigation of such filing,  
17 provided, however, that the utility's proposed return on  
18 equity calculation shall be deemed the final, approved  
19 calculation on December 15 of the year in which it is filed  
20 unless the Commission enters an order on or before December  
21 15, after notice and hearing, that modifies such  
22 calculation consistent with this Section.

23 The adjustments to the return on equity component  
24 described in paragraphs (7) and (8) of this subsection (g)  
25 shall be applied as described in such paragraphs through a  
26 separate tariff mechanism, which shall be filed by the

1 utility under subsections (f) and (g) of this Section.

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

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

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

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

1 this Section through a new tariff authorized under subsection  
2 (d) of this Section or in the utility's next rate case under  
3 Article IX or Section 16-108.5 of this Act, with interest at an  
4 annual rate equal to the utility's weighted average cost of  
5 capital as approved by the Commission in such case. If the  
6 utility elects to file a new tariff under subsection (d) of  
7 this Section, the utility may file the tariff within 10 days  
8 after June 1, 2017 (the effective date of Public Act 99-906)  
9 ~~this amendatory Act of the 99th General Assembly~~, and the cost  
10 inputs to such tariff shall be based on the projected costs to  
11 be incurred by the utility during the calendar year in which  
12 the new tariff is filed and that were not recovered under the  
13 tariff that was cancelled as provided for in this subsection.  
14 Such costs shall include those incurred or to be incurred by  
15 the utility under its multi-year plan approved under  
16 subsections (f) and (g) of this Section, including, but not  
17 limited to, projected capital investment costs and projected  
18 regulatory asset balances with correspondingly updated  
19 depreciation and amortization reserves and expense. The  
20 Commission shall, after notice and hearing, approve, or approve  
21 with modification, such tariff and cost inputs no later than 75  
22 days after the utility filed the tariff, provided that such  
23 approval, or approval with modification, shall be consistent  
24 with the provisions of this Section to the extent they do not  
25 conflict with this subsection (k). The tariff approved by the  
26 Commission shall take effect no later than 5 days after the

1 Commission enters its order approving the tariff.

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

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



1 ~~plan beginning after December 31, 2017. The criteria for~~  
2 ~~determining whether this subsection (1) is applicable to a~~  
3 ~~retail customer shall be based on the 12 consecutive billing~~  
4 ~~periods prior to the start of the first year of each such~~  
5 ~~multi-year plan.~~

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

14 (1) 3.5% for ~~the~~ each of the 4 years beginning January  
15 1, 2018,

16 (2) 3.75% for each of the 4 years beginning January 1,  
17 2022, and

18 (3) 4% for each of the 5 years beginning January 1,  
19 2026,

20 of the average amount paid per kilowatthour by residential  
21 eligible retail customers during calendar year 2015. To  
22 determine the total amount that may be spent by an electric  
23 utility in any single year, the applicable percentage of the  
24 average amount paid per kilowatthour shall be multiplied by the  
25 total amount of energy delivered by such electric utility in  
26 the calendar year 2015, adjusted to reflect the proportion of

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

12 (Source: P.A. 99-906, eff. 6-1-17; 100-840, eff. 8-13-18;  
13 revised 10-19-18.)

14 Section 99. Effective date. This Act takes effect upon  
15 becoming law.