



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB4661

Introduced 2/6/2024, by Rep. Jay Hoffman

SYNOPSIS AS INTRODUCED:

220 ILCS 5/9-241

from Ch. 111 2/3, par. 9-241

220 ILCS 5/16-108.5

Amends the Public Utilities Act. Provides that no electric utility shall establish or maintain any unreasonable difference as to rates or other charges, services, contractual terms, or facilities for access to or the use of its utility infrastructure by another person or for any other purpose. Amends the Electric Service Customer Choice and Rate Relief Law of 1997. Prohibits an electric utility in a county with a population of 3,000,000 or more from authorizing any other person or granting any other person the right, by agreement, lease, license, or otherwise, to access, control, use, or operate any electric utility's infrastructure, facilities, or assets of any kind or to deliver or provide to the electric utility's retail customers or any other person's customers, broadband services, Voice over Internet Protocol (VoIP) services, telecommunications services, or cable or video programming services. Specifies, however, that an electric utility in a county with a population of 3,000,000 or more may authorize or grant another person the right to access or use the electric utility's infrastructure, facilities, or assets, including, but not limited to, middle mile infrastructure, to facilitate the delivery of broadband services to Illinois residential and commercial customers on the condition that the access to and use of that electric utility's infrastructure, facilities, and assets (A) be granted on a non-discriminatory, non-exclusive, and competitively neutral basis; and (B) comply with all other State and federal laws, rules, and regulations, including, but not limited to, all applicable safety codes and requirements. Provides that, if there is any dispute regarding the terms, rates, or conditions of access to or use of the electric utility's infrastructure, facilities, and assets to facilitate the delivery of broadband services to Illinois residential and commercial customers, then the Commission shall hear and decide the dispute upon petition of any party. Provides that nothing in the amendatory Act shall be construed to alter or diminish the rights or obligations of any person nor shall it be deemed to conflict with the federal Pole Attachment Act. Specifies that these prohibitions become inoperative after December 31, 2027. Defines terms. Effective immediately.

LRB103 37733 SPS 67860 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 Sections 9-241 and 16-108.5 as follows:

6 (220 ILCS 5/9-241) (from Ch. 111 2/3, par. 9-241)

7 Sec. 9-241. Nondiscrimination.

8 (a) No public utility shall, as to rates or other charges,
9 services, facilities or in other respect, make or grant any
10 preference or advantage to any corporation or person or
11 subject any corporation or person to any prejudice or
12 disadvantage. No public utility shall establish or maintain
13 any unreasonable difference as to rates or other charges,
14 services, facilities, or in any other respect, either as
15 between localities or as between classes of service.

16 (b) No electric utility shall establish or maintain any
17 unreasonable difference as to rates or other charges,
18 services, contractual terms, or facilities for access to or
19 the use of its utility infrastructure by another person or for
20 any other purpose. Notwithstanding any other provision of law,
21 the Commission and its staff shall interpret this Section in
22 accordance with Article XVI of this Act.

23 (c) Nothing ~~However, nothing~~ in this Section shall be

1 construed as limiting the authority of the Commission to
2 permit the establishment of economic development rates as
3 incentives to economic development either in enterprise zones
4 as designated by the State of Illinois or in other areas of a
5 utility's service area. Such rates should be available to
6 existing businesses which demonstrate an increase to existing
7 load as well as new businesses which create new load for a
8 utility so as to create a more balanced utilization of
9 generating capacity. The Commission shall ensure that such
10 rates are established at a level which provides a net benefit
11 to customers within a public utility's service area.

12 (d) On or before January 1, 2023, the Commission shall
13 conduct a comprehensive study to assess whether low-income
14 discount rates for electric and natural gas residential
15 customers are appropriate and the potential design and
16 implementation of any such rates. The Commission shall include
17 its findings, together with the appropriate recommendations,
18 in a report to be provided to the General Assembly. Upon
19 completion of the study, the Commission shall have the
20 authority to permit or require electric and natural gas
21 utilities to file a tariff establishing low-income discount
22 rates.

23 Such study shall assess, at a minimum, the following:

24 (1) customer eligibility requirements, including
25 income-based eligibility and eligibility based on
26 participation in or eligibility for certain public

1 assistance programs;

2 (2) appropriate rate structures, including
3 consideration of tiered discounts for different income
4 levels;

5 (3) appropriate recovery mechanisms, including the
6 consideration of volumetric charges and customer charges;

7 (4) appropriate verification mechanisms;

8 (5) measures to ensure customer confidentiality and
9 data safeguards;

10 (6) outreach and consumer education procedures; and

11 (7) the impact that a low-income discount rate would
12 have on the affordability of delivery service to
13 low-income customers and customers overall.

14 (e) The Commission shall adopt rules requiring utility
15 companies to produce information, in the form of a mailing,
16 and other approved methods of distribution, to its consumers,
17 to inform the consumers of available rebates, discounts,
18 credits, and other cost-saving mechanisms that can help them
19 lower their monthly utility bills, and send out such
20 information semi-annually, unless otherwise provided by this
21 Article.

22 (f) Prior to October 1, 1989, no public utility providing
23 electrical or gas service shall consider the use of solar or
24 other nonconventional renewable sources of energy by a
25 customer as a basis for establishing higher rates or charges
26 for any service or commodity sold to such customer; nor shall a

1 public utility subject any customer utilizing such energy
2 source or sources to any other prejudice or disadvantage on
3 account of such use. No public utility shall without the
4 consent of the Commission, charge or receive any greater
5 compensation in the aggregate for a lesser commodity, product,
6 or service than for a greater commodity, product or service of
7 like character.

8 The Commission, in order to expedite the determination of
9 rate questions, or to avoid unnecessary and unreasonable
10 expense, or to avoid unjust or unreasonable discrimination
11 between classes of customers, or, whenever in the judgment of
12 the Commission public interest so requires, may, for rate
13 making and accounting purposes, or either of them, consider
14 one or more municipalities either with or without the adjacent
15 or intervening rural territory as a regional unit where the
16 same public utility serves such region under substantially
17 similar conditions, and may within such region prescribe
18 uniform rates for consumers or patrons of the same class.

19 Any public utility, with the consent and approval of the
20 Commission, may as a basis for the determination of the
21 charges made by it classify its service according to the
22 amount used, the time when used, the purpose for which used,
23 and other relevant factors.

24 (Source: P.A. 102-662, eff. 9-15-21.)

1 Sec. 16-108.5. Infrastructure investment and
2 modernization; regulatory reform.

3 (a) (Blank).

4 (b) For purposes of this Section, "participating utility"
5 means an electric utility or a combination utility serving
6 more than 1,000,000 customers in Illinois that voluntarily
7 elects and commits to undertake (i) the infrastructure
8 investment program consisting of the commitments and
9 obligations described in this subsection (b) and (ii) the
10 customer assistance program consisting of the commitments and
11 obligations described in subsection (b-10) of this Section,
12 notwithstanding any other provisions of this Act and without
13 obtaining any approvals from the Commission or any other
14 agency other than as set forth in this Section, regardless of
15 whether any such approval would otherwise be required.
16 "Combination utility" means a utility that, as of January 1,
17 2011, provided electric service to at least one million retail
18 customers in Illinois and gas service to at least 500,000
19 retail customers in Illinois. A participating utility shall
20 recover the expenditures made under the infrastructure
21 investment program through the ratemaking process, including,
22 but not limited to, the performance-based formula rate and
23 process set forth in this Section.

24 During the infrastructure investment program's peak
25 program year, a participating utility other than a combination
26 utility shall create 2,000 full-time equivalent jobs in

1 Illinois, and a participating utility that is a combination
2 utility shall create 450 full-time equivalent jobs in Illinois
3 related to the provision of electric service. These jobs shall
4 include direct jobs, contractor positions, and induced jobs,
5 but shall not include any portion of a job commitment, not
6 specifically contingent on an amendatory Act of the 97th
7 General Assembly becoming law, between a participating utility
8 and a labor union that existed on December 30, 2011 (the
9 effective date of Public Act 97-646) and that has not yet been
10 fulfilled. A portion of the full-time equivalent jobs created
11 by each participating utility shall include incremental
12 personnel hired subsequent to December 30, 2011 (the effective
13 date of Public Act 97-646). For purposes of this Section,
14 "peak program year" means the consecutive 12-month period with
15 the highest number of full-time equivalent jobs that occurs
16 between the beginning of investment year 2 and the end of
17 investment year 4.

18 A participating utility shall meet one of the following
19 commitments, as applicable:

- 20 (1) Beginning no later than 180 days after a
21 participating utility other than a combination utility
22 files a performance-based formula rate tariff pursuant to
23 subsection (c) of this Section, or, beginning no later
24 than January 1, 2012 if such utility files such
25 performance-based formula rate tariff within 14 days of
26 October 26, 2011 (the effective date of Public Act

1 97-616), the participating utility shall, except as
2 provided in subsection (b-5):

3 (A) over a 5-year period, invest an estimated
4 \$1,300,000,000 in electric system upgrades,
5 modernization projects, and training facilities,
6 including, but not limited to:

7 (i) distribution infrastructure improvements
8 totaling an estimated \$1,000,000,000, including
9 underground residential distribution cable
10 injection and replacement and mainline cable
11 system refurbishment and replacement projects;

12 (ii) training facility construction or upgrade
13 projects totaling an estimated \$10,000,000,
14 provided that, at a minimum, one such facility
15 shall be located in a municipality having a
16 population of more than 2 million residents and
17 one such facility shall be located in a
18 municipality having a population of more than
19 150,000 residents but fewer than 170,000
20 residents; any such new facility located in a
21 municipality having a population of more than 2
22 million residents must be designed for the purpose
23 of obtaining, and the owner of the facility shall
24 apply for, certification under the United States
25 Green Building Council's Leadership in Energy
26 Efficiency Design Green Building Rating System;

1 (iii) wood pole inspection, treatment, and
2 replacement programs;

3 (iv) an estimated \$200,000,000 for reducing
4 the susceptibility of certain circuits to
5 storm-related damage, including, but not limited
6 to, high winds, thunderstorms, and ice storms;
7 improvements may include, but are not limited to,
8 overhead to underground conversion and other
9 engineered outcomes for circuits; the
10 participating utility shall prioritize the
11 selection of circuits based on each circuit's
12 historical susceptibility to storm-related damage
13 and the ability to provide the greatest customer
14 benefit upon completion of the improvements; to be
15 eligible for improvement, the participating
16 utility's ability to maintain proper tree
17 clearances surrounding the overhead circuit must
18 not have been impeded by third parties; and

19 (B) over a 10-year period, invest an estimated
20 \$1,300,000,000 to upgrade and modernize its
21 transmission and distribution infrastructure and in
22 Smart Grid electric system upgrades, including, but
23 not limited to:

24 (i) additional smart meters;

25 (ii) distribution automation;

26 (iii) associated cyber secure data

1 communication network; and

2 (iv) substation micro-processor relay
3 upgrades.

4 (2) Beginning no later than 180 days after a
5 participating utility that is a combination utility files
6 a performance-based formula rate tariff pursuant to
7 subsection (c) of this Section, or, beginning no later
8 than January 1, 2012 if such utility files such
9 performance-based formula rate tariff within 14 days of
10 October 26, 2011 (the effective date of Public Act
11 97-616), the participating utility shall, except as
12 provided in subsection (b-5):

13 (A) over a 10-year period, invest an estimated
14 \$265,000,000 in electric system upgrades,
15 modernization projects, and training facilities,
16 including, but not limited to:

17 (i) distribution infrastructure improvements
18 totaling an estimated \$245,000,000, which may
19 include bulk supply substations, transformers,
20 reconductoring, and rebuilding overhead
21 distribution and sub-transmission lines,
22 underground residential distribution cable
23 injection and replacement and mainline cable
24 system refurbishment and replacement projects;

25 (ii) training facility construction or upgrade
26 projects totaling an estimated \$1,000,000; any

1 such new facility must be designed for the purpose
2 of obtaining, and the owner of the facility shall
3 apply for, certification under the United States
4 Green Building Council's Leadership in Energy
5 Efficiency Design Green Building Rating System;
6 and

7 (iii) wood pole inspection, treatment, and
8 replacement programs; and

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

14 (i) additional smart meters;

15 (ii) distribution automation;

16 (iii) associated cyber secure data
17 communication network; and

18 (iv) substation micro-processor relay
19 upgrades.

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

23 The investments in the infrastructure investment program
24 described in this subsection (b) shall be incremental to the
25 participating utility's annual capital investment program, as
26 defined by, for purposes of this subsection (b), the

1 participating utility's average capital spend for calendar
2 years 2008, 2009, and 2010 as reported in the applicable
3 Federal Energy Regulatory Commission (FERC) Form 1; provided
4 that where one or more utilities have merged, the average
5 capital spend shall be determined using the aggregate of the
6 merged utilities' capital spend reported in FERC Form 1 for
7 the years 2008, 2009, and 2010. A participating utility may
8 add reasonable construction ramp-up and ramp-down time to the
9 investment periods specified in this subsection (b). For each
10 such investment period, the ramp-up and ramp-down time shall
11 not exceed a total of 6 months.

12 Within 60 days after filing a tariff under subsection (c)
13 of this Section, a participating utility shall submit to the
14 Commission its plan, including scope, schedule, and staffing,
15 for satisfying its infrastructure investment program
16 commitments pursuant to this subsection (b). The submitted
17 plan shall include a schedule and staffing plan for the next
18 calendar year. The plan shall also include a plan for the
19 creation, operation, and administration of a Smart Grid test
20 bed as described in subsection (c) of Section 16-108.8. The
21 plan need not allocate the work equally over the respective
22 periods, but should allocate material increments throughout
23 such periods commensurate with the work to be undertaken. No
24 later than April 1 of each subsequent year, the utility shall
25 submit to the Commission a report that includes any updates to
26 the plan, a schedule for the next calendar year, the

1 expenditures made for the prior calendar year and
2 cumulatively, and the number of full-time equivalent jobs
3 created for the prior calendar year and cumulatively. If the
4 utility is materially deficient in satisfying a schedule or
5 staffing plan, then the report must also include a corrective
6 action plan to address the deficiency. The fact that the plan,
7 implementation of the plan, or a schedule changes shall not
8 imply the imprudence or unreasonableness of the infrastructure
9 investment program, plan, or schedule. Further, no later than
10 45 days following the last day of the first, second, and third
11 quarters of each year of the plan, a participating utility
12 shall submit to the Commission a verified quarterly report for
13 the prior quarter that includes (i) the total number of
14 full-time equivalent jobs created during the prior quarter,
15 (ii) the total number of employees as of the last day of the
16 prior quarter, (iii) the total number of full-time equivalent
17 hours in each job classification or job title, (iv) the total
18 number of incremental employees and contractors in support of
19 the investments undertaken pursuant to this subsection (b) for
20 the prior quarter, and (v) any other information that the
21 Commission may require by rule.

22 With respect to the participating utility's peak job
23 commitment, if, after considering the utility's corrective
24 action plan and compliance thereunder, the Commission enters
25 an order finding, after notice and hearing, that a
26 participating utility did not satisfy its peak job commitment

1 described in this subsection (b) for reasons that are
2 reasonably within its control, then the Commission shall also
3 determine, after consideration of the evidence, including, but
4 not limited to, evidence submitted by the Department of
5 Commerce and Economic Opportunity and the utility, the
6 deficiency in the number of full-time equivalent jobs during
7 the peak program year due to such failure. The Commission
8 shall notify the Department of any proceeding that is
9 initiated pursuant to this paragraph. For each full-time
10 equivalent job deficiency during the peak program year that
11 the Commission finds as set forth in this paragraph, the
12 participating utility shall, within 30 days after the entry of
13 the Commission's order, pay \$6,000 to a fund for training
14 grants administered under Section 605-800 of the Department of
15 Commerce and Economic Opportunity Law, which shall not be a
16 recoverable expense.

17 With respect to the participating utility's investment
18 amount commitments, if, after considering the utility's
19 corrective action plan and compliance thereunder, the
20 Commission enters an order finding, after notice and hearing,
21 that a participating utility is not satisfying its investment
22 amount commitments described in this subsection (b), then the
23 utility shall no longer be eligible to annually update the
24 performance-based formula rate tariff pursuant to subsection
25 (d) of this Section. In such event, the then current rates
26 shall remain in effect until such time as new rates are set

1 pursuant to Article IX of this Act, subject to retroactive
2 adjustment, with interest, to reconcile rates charged with
3 actual costs.

4 If the Commission finds that a participating utility is no
5 longer eligible to update the performance-based formula rate
6 tariff pursuant to subsection (d) of this Section, or the
7 performance-based formula rate is otherwise terminated, then
8 the participating utility's voluntary commitments and
9 obligations under this subsection (b) shall immediately
10 terminate, except for the utility's obligation to pay an
11 amount already owed to the fund for training grants pursuant
12 to a Commission order.

13 In meeting the obligations of this subsection (b), to the
14 extent feasible and consistent with State and federal law, the
15 investments under the infrastructure investment program should
16 provide employment opportunities for all segments of the
17 population and workforce, including minority-owned and
18 female-owned business enterprises, and shall not, consistent
19 with State and federal law, discriminate based on race or
20 socioeconomic status.

21 (b-5) Nothing in this Section shall prohibit the
22 Commission from investigating the prudence and reasonableness
23 of the expenditures made under the infrastructure investment
24 program during the annual review required by subsection (d) of
25 this Section and shall, as part of such investigation,
26 determine whether the utility's actual costs under the program

1 are prudent and reasonable. The fact that a participating
2 utility invests more than the minimum amounts specified in
3 subsection (b) of this Section or its plan shall not imply
4 imprudence or unreasonableness.

5 If the participating utility finds that it is implementing
6 its plan for satisfying the infrastructure investment program
7 commitments described in subsection (b) of this Section at a
8 cost below the estimated amounts specified in subsection (b)
9 of this Section, then the utility may file a petition with the
10 Commission requesting that it be permitted to satisfy its
11 commitments by spending less than the estimated amounts
12 specified in subsection (b) of this Section. The Commission
13 shall, after notice and hearing, enter its order approving, or
14 approving as modified, or denying each such petition within
15 150 days after the filing of the petition.

16 In no event, absent General Assembly approval, shall the
17 capital investment costs incurred by a participating utility
18 other than a combination utility in satisfying its
19 infrastructure investment program commitments described in
20 subsection (b) of this Section exceed \$3,000,000,000 or, for a
21 participating utility that is a combination utility,
22 \$720,000,000. If the participating utility's updated cost
23 estimates for satisfying its infrastructure investment program
24 commitments described in subsection (b) of this Section exceed
25 the limitation imposed by this subsection (b-5), then it shall
26 submit a report to the Commission that identifies the

1 increased costs and explains the reason or reasons for the
2 increased costs no later than the year in which the utility
3 estimates it will exceed the limitation. The Commission shall
4 review the report and shall, within 90 days after the
5 participating utility files the report, report to the General
6 Assembly its findings regarding the participating utility's
7 report. If the General Assembly does not amend the limitation
8 imposed by this subsection (b-5), then the utility may modify
9 its plan so as not to exceed the limitation imposed by this
10 subsection (b-5) and may propose corresponding changes to the
11 metrics established pursuant to subparagraphs (5) through (8)
12 of subsection (f) of this Section, and the Commission may
13 modify the metrics and incremental savings goals established
14 pursuant to subsection (f) of this Section accordingly.

15 (b-10) All participating utilities shall make
16 contributions for an energy low-income and support program in
17 accordance with this subsection. Beginning no later than 180
18 days after a participating utility files a performance-based
19 formula rate tariff pursuant to subsection (c) of this
20 Section, or beginning no later than January 1, 2012 if such
21 utility files such performance-based formula rate tariff
22 within 14 days of December 30, 2011 (the effective date of
23 Public Act 97-646), and without obtaining any approvals from
24 the Commission or any other agency other than as set forth in
25 this Section, regardless of whether any such approval would
26 otherwise be required, a participating utility other than a

1 combination utility shall pay \$10,000,000 per year for 5 years
2 and a participating utility that is a combination utility
3 shall pay \$1,000,000 per year for 10 years to the energy
4 low-income and support program, which is intended to fund
5 customer assistance programs with the primary purpose being
6 avoidance of imminent disconnection. Such programs may
7 include:

8 (1) a residential hardship program that may partner
9 with community-based organizations, including senior
10 citizen organizations, and provides grants to low-income
11 residential customers, including low-income senior
12 citizens, who demonstrate a hardship;

13 (2) a program that provides grants and other bill
14 payment concessions to veterans with disabilities who
15 demonstrate a hardship and members of the armed services
16 or reserve forces of the United States or members of the
17 Illinois National Guard who are on active duty pursuant to
18 an executive order of the President of the United States,
19 an act of the Congress of the United States, or an order of
20 the Governor and who demonstrate a hardship;

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

25 (4) a non-residential special hardship program that
26 provides grants to non-residential customers such as small

1 businesses and non-profit organizations that demonstrate a
2 hardship, including those providing services to senior
3 citizen and low-income customers; and

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

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

13 Programs that use funds that are provided by a
14 participating utility to reduce utility bills may be
15 implemented through tariffs that are filed with and reviewed
16 by the Commission. If a utility elects to file tariffs with the
17 Commission to implement all or a portion of the programs,
18 those tariffs shall, regardless of the date actually filed, be
19 deemed accepted and approved, and shall become effective on
20 December 30, 2011 (the effective date of Public Act 97-646).
21 The participating utilities whose customers benefit from the
22 funds that are disbursed as contemplated in this Section shall
23 file annual reports documenting the disbursement of those
24 funds with the Commission. The Commission has the authority to
25 audit disbursement of the funds to ensure they were disbursed
26 consistently with this Section.

1 If the Commission finds that a participating utility is no
2 longer eligible to update the performance-based formula rate
3 tariff pursuant to subsection (d) of this Section, or the
4 performance-based formula rate is otherwise terminated, then
5 the participating utility's voluntary commitments and
6 obligations under this subsection (b-10) shall immediately
7 terminate.

8 (c) A participating utility may elect to recover its
9 delivery services costs through a performance-based formula
10 rate approved by the Commission, which shall specify the cost
11 components that form the basis of the rate charged to
12 customers with sufficient specificity to operate in a
13 standardized manner and be updated annually with transparent
14 information that reflects the utility's actual costs to be
15 recovered during the applicable rate year, which is the period
16 beginning with the first billing day of January and extending
17 through the last billing day of the following December. In the
18 event the utility recovers a portion of its costs through
19 automatic adjustment clause tariffs on October 26, 2011 (the
20 effective date of Public Act 97-616), the utility may elect to
21 continue to recover these costs through such tariffs, but then
22 these costs shall not be recovered through the
23 performance-based formula rate. In the event the participating
24 utility, prior to December 30, 2011 (the effective date of
25 Public Act 97-646), filed electric delivery services tariffs
26 with the Commission pursuant to Section 9-201 of this Act that

1 are related to the recovery of its electric delivery services
2 costs that are still pending on December 30, 2011 (the
3 effective date of Public Act 97-646), the participating
4 utility shall, at the time it files its performance-based
5 formula rate tariff with the Commission, also file a notice of
6 withdrawal with the Commission to withdraw the electric
7 delivery services tariffs previously filed pursuant to Section
8 9-201 of this Act. Upon receipt of such notice, the Commission
9 shall dismiss with prejudice any docket that had been
10 initiated to investigate the electric delivery services
11 tariffs filed pursuant to Section 9-201 of this Act, and such
12 tariffs and the record related thereto shall not be the
13 subject of any further hearing, investigation, or proceeding
14 of any kind related to rates for electric delivery services.

15 The performance-based formula rate shall be implemented
16 through a tariff filed with the Commission consistent with the
17 provisions of this subsection (c) that shall be applicable to
18 all delivery services customers. The Commission shall initiate
19 and conduct an investigation of the tariff in a manner
20 consistent with the provisions of this subsection (c) and the
21 provisions of Article IX of this Act to the extent they do not
22 conflict with this subsection (c). Except in the case where
23 the Commission finds, after notice and hearing, that a
24 participating utility is not satisfying its investment amount
25 commitments under subsection (b) of this Section, the
26 performance-based formula rate shall remain in effect at the

1 discretion of the utility. The performance-based formula rate
2 approved by the Commission shall do the following:

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

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

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

26 (A) the average for the applicable calendar year

1 of the monthly average yields of 30-year U.S. Treasury
2 bonds published by the Board of Governors of the
3 Federal Reserve System in its weekly H.15 Statistical
4 Release or successor publication; and

5 (B) 580 basis points.

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

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

18 (A) recovery of incentive compensation expense
19 that is based on the achievement of operational
20 metrics, including metrics related to budget controls,
21 outage duration and frequency, safety, customer
22 service, efficiency and productivity, and
23 environmental compliance. Incentive compensation
24 expense that is based on net income or an affiliate's
25 earnings per share shall not be recoverable under the
26 performance-based formula rate;

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

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

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

18 (E) recovery of the expenses related to the
19 Commission proceeding under this subsection (c) to
20 approve this performance-based formula rate and
21 initial rates or to subsequent proceedings related to
22 the formula, provided that the recovery shall be
23 amortized over a 3-year period; recovery of expenses
24 related to the annual Commission proceedings under
25 subsection (d) of this Section to review the inputs to
26 the performance-based formula rate shall be expensed

1 and recovered through the performance-based formula
2 rate;

3 (F) amortization over a 5-year period of the full
4 amount of each charge or credit that exceeds
5 \$3,700,000 for a participating utility that is a
6 combination utility or \$10,000,000 for a participating
7 utility that serves more than 3 million retail
8 customers in the applicable calendar year and that
9 relates to a workforce reduction program's severance
10 costs, changes in accounting rules, changes in law,
11 compliance with any Commission-initiated audit, or a
12 single storm or other similar expense, provided that
13 any unamortized balance shall be reflected in the rate
14 base. For purposes of this subparagraph (F), changes
15 in law includes any enactment, repeal, or amendment in
16 a law, ordinance, rule, regulation, interpretation,
17 permit, license, consent, or order, including those
18 relating to taxes, accounting, or to environmental
19 matters, or in the interpretation or application
20 thereof by any governmental authority occurring after
21 October 26, 2011 (the effective date of Public Act
22 97-616);

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

25 (H) historical weather normalized billing
26 determinants; and

1 (I) allocation methods for common costs.

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

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

24 (6) Provide for an annual reconciliation, as described
25 in subsection (d) of this Section, with interest, of the
26 revenue requirement reflected in rates for each calendar

1 year, beginning with the calendar year in which the
2 utility files its performance-based formula rate tariff
3 pursuant to subsection (c) of this Section, with what the
4 revenue requirement would have been had the actual cost
5 information for the applicable calendar year been
6 available at the filing date.

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

23 After the utility files its proposed performance-based
24 formula rate structure and protocols and initial rates, the
25 Commission shall initiate a docket to review the filing. The
26 Commission shall enter an order approving, or approving as

1 modified, the performance-based formula rate, including the
2 initial rates, as just and reasonable within 270 days after
3 the date on which the tariff was filed, or, if the tariff is
4 filed within 14 days after October 26, 2011 (the effective
5 date of Public Act 97-616), then by May 31, 2012. Such review
6 shall be based on the same evidentiary standards, including,
7 but not limited to, those concerning the prudence and
8 reasonableness of the costs incurred by the utility, the
9 Commission applies in a hearing to review a filing for a
10 general increase in rates under Article IX of this Act. The
11 initial rates shall take effect within 30 days after the
12 Commission's order approving the performance-based formula
13 rate tariff.

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

20 Subsequent changes to the performance-based formula rate
21 structure or protocols shall be made as set forth in Section
22 9-201 of this Act, but nothing in this subsection (c) is
23 intended to limit the Commission's authority under Article IX
24 and other provisions of this Act to initiate an investigation
25 of a participating utility's performance-based formula rate
26 tariff, provided that any such changes shall be consistent

1 with paragraphs (1) through (6) of this subsection (c). Any
2 change ordered by the Commission shall be made at the same time
3 new rates take effect following the Commission's next order
4 pursuant to subsection (d) of this Section, provided that the
5 new rates take effect no less than 30 days after the date on
6 which the Commission issues an order adopting the change.

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

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

23 (d) Subsequent to the Commission's issuance of an order
24 approving the utility's performance-based formula rate
25 structure and protocols, and initial rates under subsection
26 (c) of this Section, the utility shall file, on or before May 1

1 of each year, with the Chief Clerk of the Commission its
2 updated cost inputs to the performance-based formula rate for
3 the applicable rate year and the corresponding new charges.
4 Each such filing shall conform to the following requirements
5 and include the following information:

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

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

26 Notwithstanding anything that may be to the contrary,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (3.5) For a participating utility other than a
22 combination utility, 20% improvement in the System Average
23 Interruption Frequency Index for its Northeastern Region,
24 using a baseline of the average of the data from 2001
25 through 2010. For purposes of this paragraph (3.5),
26 Northeastern Region shall have the meaning set forth in

1 the participating utility's most recent report filed
2 pursuant to Section 16-125 of this Act.

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

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

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

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

24 (8) Uncollectible expense: reduce uncollectible
25 expense by at least \$30,000,000 for a participating
26 utility other than a combination utility and by at least

1 \$3,500,000 for a participating utility that is a
2 combination utility, using a baseline of the average
3 uncollectible expense for the years 2008 through 2010.

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

12 The definitions set forth in 83 Ill. Adm. Code 411.20 as of
13 May 1, 2011 shall be used for purposes of calculating
14 performance under paragraphs (1) through (3.5) of this
15 subsection (f), provided, however, that the participating
16 utility may exclude up to 9 extreme weather event days from
17 such calculation for each year, and provided further that the
18 participating utility shall exclude 9 extreme weather event
19 days when calculating each year of the baseline period to the
20 extent that there are 9 such days in a given year of the
21 baseline period. For purposes of this Section, an extreme
22 weather event day is a 24-hour calendar day (beginning at
23 12:00 a.m. and ending at 11:59 p.m.) during which any weather
24 event (e.g., storm, tornado) caused interruptions for 10,000
25 or more of the participating utility's customers for 3 hours
26 or more. If there are more than 9 extreme weather event days in

1 a year, then the utility may choose no more than 9 extreme
2 weather event days to exclude, provided that the same extreme
3 weather event days are excluded from each of the calculations
4 performed under paragraphs (1) through (3.5) of this
5 subsection (f).

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

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

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

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

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

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

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

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

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

25 (4) With respect to each of the incremental annual
26 performance goals established pursuant to paragraph (4) of

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

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

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

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

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

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

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

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

1 adjustments to actual charges (other than as specified for
2 energy efficiency) as an input.

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

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

25 For purposes of this Section, the amount per kilowatthour
26 means the total amount paid for electric service expressed on

1 a per kilowatthour basis, and the total amount paid for
2 electric service includes without limitation amounts paid for
3 supply, transmission, distribution, surcharges, and add-on
4 taxes exclusive of any increases in taxes or new taxes imposed
5 after October 26, 2011 (the effective date of Public Act
6 97-616). For purposes of this Section, "eligible retail
7 customers" shall have the meaning set forth in Section
8 16-111.5 of this Act.

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

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

25 The provisions of Sections ~~16-108.5~~, 16-108.6, 16-108.7,
26 and 16-108.8 of this Act and the provisions of this Section,

1 other than this subsection (h) and subsection (i) of this
2 Section, are inoperative after December 31, 2022 for every
3 participating utility, after which time a participating
4 utility shall no longer be eligible to annually update the
5 performance-based formula rate tariff pursuant to subsection
6 (d) of this Section. At such time, the then current rates shall
7 remain in effect until such time as new rates are set pursuant
8 to Article IX of this Act, subject to retroactive adjustment,
9 with interest, to reconcile rates charged with actual costs.

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

14 (i) The provisions of this subsection (i) are inoperative
15 after December 31, 2027.

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

1 services, Voice over Internet Protocol (VoIP)
2 ~~voice over internet protocol~~ services, telecommunications
3 services, or cable or video programming services, unless they
4 are part of a service directly related to delivery services ~~or~~
5 ~~Smart Grid functionality or applications as defined in Section~~
6 ~~16-108.6 of this Act~~, and from recovering the costs of such
7 offerings from retail customers. ~~The prohibition set forth in~~
8 ~~this subsection (i) is inoperative after December 31, 2027 for~~
9 ~~every participating utility.~~

10 Furthermore, an electric utility in a county with a
11 population of 3,000,000 or more shall not authorize any other
12 person or grant any other person the right, by agreement,
13 lease, license, or otherwise, to access, control, use, or
14 operate that electric utility's infrastructure, facilities, or
15 assets of any kind or to deliver or provide to that electric
16 utility's customers or any other person's customers, broadband
17 services, Voice over Internet Protocol (VoIP) services,
18 telecommunications services, or cable or video programming
19 services.

20 However, notwithstanding the prohibitions set forth in
21 this Section, an electric utility in a county with a
22 population of 3,000,000 or more may authorize or grant another
23 person the right to access or use the electric utility's
24 infrastructure, facilities, or assets, including, but not
25 limited to, middle mile infrastructure, to facilitate the
26 delivery of broadband services to Illinois residential and

1 commercial customers on the condition that the access to and
2 use of that electric utility's infrastructure, facilities, and
3 assets (A) be granted on a non-discriminatory, non-exclusive,
4 and competitively neutral basis; and (B) comply with all other
5 State and federal laws, rules, and regulations, including, but
6 not limited to, all applicable safety codes and requirements.
7 If there is any dispute regarding the terms, rates, or
8 conditions of access to or use of that electric utility's
9 infrastructure, facilities, and assets to facilitate the
10 delivery of broadband services to Illinois residential and
11 commercial customers, the Commission, upon the petition of any
12 party, shall hear and decide the dispute in accordance with
13 the Commission's Rules of Practice (83 Ill. Adm. Code Part
14 200).

15 Nothing in this amendatory Act of the 103rd General
16 Assembly shall be construed to alter or diminish the rights or
17 obligations of any person under, nor shall it be deemed to
18 conflict with, the federal Pole Attachment Act (47 U.S.C.
19 224).

20 As used in this subsection (i):

21 "Broadband services" means the services that are used to
22 deliver to subscribers a high-speed service connection to the
23 public Internet that is capable of supporting, in at least one
24 direction, a speed in excess of 200 kilobits per second (kbps)
25 to the network demarcation point at the subscribers' premises.

26 "Electric utility" has the meaning set forth in Section

1 16-102.

2 "Middle mile infrastructure" has the meaning provided in
3 Section 60401 of the federal Infrastructure Investment and
4 Jobs Act (47 U.S.C. 1741).

5 (j) Nothing in this Section is intended to legislatively
6 overturn the opinion issued in Commonwealth Edison Co. v. Ill.
7 Commerce Comm'n, Nos. 2-08-0959, 2-08-1037, 2-08-1137,
8 1-08-3008, 1-08-3030, 1-08-3054, 1-08-3313 cons. (Ill. App.
9 Ct. 2d Dist. Sept. 30, 2010). Public Act 97-616 shall not be
10 construed as creating a contract between the General Assembly
11 and the participating utility, and shall not establish a
12 property right in the participating utility.

13 (k) The changes made in subsections (c) and (d) of this
14 Section by Public Act 98-15 are intended to be a restatement
15 and clarification of existing law, and intended to give
16 binding effect to the provisions of House Resolution 1157
17 adopted by the House of Representatives of the 97th General
18 Assembly and Senate Resolution 821 adopted by the Senate of
19 the 97th General Assembly that are reflected in paragraph (3)
20 of this subsection. In addition, Public Act 98-15 preempts and
21 supersedes any final Commission orders entered in Docket Nos.
22 11-0721, 12-0001, 12-0293, and 12-0321 to the extent
23 inconsistent with the amendatory language added to subsections
24 (c) and (d).

25 (1) No earlier than 5 business days after May 22, 2013
26 (the effective date of Public Act 98-15), each

1 participating utility shall file any tariff changes
2 necessary to implement the amendatory language set forth
3 in subsections (c) and (d) of this Section by Public Act
4 98-15 and a revised revenue requirement under the
5 participating utility's performance-based formula rate.
6 The Commission shall enter a final order approving such
7 tariff changes and revised revenue requirement within 21
8 days after the participating utility's filing.

9 (2) Notwithstanding anything that may be to the
10 contrary, a participating utility may file a tariff to
11 retroactively recover its previously unrecovered actual
12 costs of delivery service that are no longer subject to
13 recovery through a reconciliation adjustment under
14 subsection (d) of this Section. This retroactive recovery
15 shall include any derivative adjustments resulting from
16 the changes to subsections (c) and (d) of this Section by
17 Public Act 98-15. Such tariff shall allow the utility to
18 assess, on current customer bills over a period of 12
19 monthly billing periods, a charge or credit related to
20 those unrecovered costs with interest at the utility's
21 weighted average cost of capital during the period in
22 which those costs were unrecovered. A participating
23 utility may file a tariff that implements a retroactive
24 charge or credit as described in this paragraph for
25 amounts not otherwise included in the tariff filing
26 provided for in paragraph (1) of this subsection (k). The

1 Commission shall enter a final order approving such tariff
2 within 21 days after the participating utility's filing.

3 (3) The tariff changes described in paragraphs (1) and
4 (2) of this subsection (k) shall relate only to, and be
5 consistent with, the following provisions of Public Act
6 98-15: paragraph (2) of subsection (c) regarding year-end
7 capital structure, subparagraph (D) of paragraph (4) of
8 subsection (c) regarding pension assets, and subsection
9 (d) regarding the reconciliation components related to
10 year-end rate base and interest calculated at a rate equal
11 to the utility's weighted average cost of capital.

12 (4) Nothing in this subsection is intended to effect a
13 dismissal of or otherwise affect an appeal from any final
14 Commission orders entered in Docket Nos. 11-0721, 12-0001,
15 12-0293, and 12-0321 other than to the extent of the
16 amendatory language contained in subsections (c) and (d)
17 of this Section of Public Act 98-15.

18 (1) Each participating utility shall be deemed to have
19 been in full compliance with all requirements of subsection
20 (b) of this Section, subsection (c) of this Section, Section
21 16-108.6 of this Act, and all Commission orders entered
22 pursuant to Sections 16-108.5 and 16-108.6 of this Act, up to
23 and including May 22, 2013 (the effective date of Public Act
24 98-15). The Commission shall not undertake any investigation
25 of such compliance and no penalty shall be assessed or adverse
26 action taken against a participating utility for noncompliance

1 with Commission orders associated with subsection (b) of this
2 Section, subsection (c) of this Section, and Section 16-108.6
3 of this Act prior to such date. Each participating utility
4 other than a combination utility shall be permitted, without
5 penalty, a period of 12 months after such effective date to
6 take actions required to ensure its infrastructure investment
7 program is in compliance with subsection (b) of this Section
8 and with Section 16-108.6 of this Act. Provided further, the
9 following subparagraphs shall apply to a participating utility
10 other than a combination utility:

11 (A) if the Commission has initiated a proceeding
12 pursuant to subsection (e) of Section 16-108.6 of this Act
13 that is pending as of May 22, 2013 (the effective date of
14 Public Act 98-15), then the order entered in such
15 proceeding shall, after notice and hearing, accelerate the
16 commencement of the meter deployment schedule approved in
17 the final Commission order on rehearing entered in Docket
18 No. 12-0298;

19 (B) if the Commission has entered an order pursuant to
20 subsection (e) of Section 16-108.6 of this Act prior to
21 May 22, 2013 (the effective date of Public Act 98-15) that
22 does not accelerate the commencement of the meter
23 deployment schedule approved in the final Commission order
24 on rehearing entered in Docket No. 12-0298, then the
25 utility shall file with the Commission, within 45 days
26 after such effective date, a plan for accelerating the

1 commencement of the utility's meter deployment schedule
2 approved in the final Commission order on rehearing
3 entered in Docket No. 12-0298; the Commission shall reopen
4 the proceeding in which it entered its order pursuant to
5 subsection (e) of Section 16-108.6 of this Act and shall,
6 after notice and hearing, enter an amendatory order that
7 approves or approves as modified such accelerated plan
8 within 90 days after the utility's filing; or

9 (C) if the Commission has not initiated a proceeding
10 pursuant to subsection (e) of Section 16-108.6 of this Act
11 prior to May 22, 2013 (the effective date of Public Act
12 98-15), then the utility shall file with the Commission,
13 within 45 days after such effective date, a plan for
14 accelerating the commencement of the utility's meter
15 deployment schedule approved in the final Commission order
16 on rehearing entered in Docket No. 12-0298 and the
17 Commission shall, after notice and hearing, approve or
18 approve as modified such plan within 90 days after the
19 utility's filing.

20 Any schedule for meter deployment approved by the
21 Commission pursuant to this subsection (1) shall take into
22 consideration procurement times for meters and other equipment
23 and operational issues. Nothing in Public Act 98-15 shall
24 shorten or extend the end dates for the 5-year or 10-year
25 periods set forth in subsection (b) of this Section or Section
26 16-108.6 of this Act. Nothing in this subsection is intended

1 to address whether a participating utility has, or has not,
2 satisfied any or all of the metrics and performance goals
3 established pursuant to subsection (f) of this Section.

4 (m) The provisions of Public Act 98-15 are severable under
5 Section 1.31 of the Statute on Statutes.

6 (Source: P.A. 102-1031, eff. 5-27-22; 103-154, eff. 6-30-23.)

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