



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB2529

by Rep. Lou Lang

SYNOPSIS AS INTRODUCED:

See Index

Amends the Public Utilities Act. Requires the Illinois Commerce Commission to make a report to the Governor, the General Assembly, or either branch of the General Assembly (rather than the Governor) upon request. In provisions concerning recovery of delivery service costs through performance-based formula rate tariffs, makes changes concerning how the Commission shall determine the investment return on certain pension assets. Allows a utility to retroactively recover certain costs of delivery service to the extent not recovered through reconciliation by assessing a surcharge reflecting those unrecovered costs with interest at the utility's weighted average cost of capital during the period in which those costs were unrecovered. Provides that the utility's filing on its updated cost inputs to the performance-based formula rate shall include a reconciliation of the revenue requirement in effect for the prior rate year (as set by the cost inputs for the prior rate year) with the actual revenue requirement for the prior rate year (determined using a year-end rate base) that uses amounts reflected in the applicable FERC Form 1 that reports actual costs for the prior rate year. States that the changes are intended to: be a restatement and clarification of existing law; give binding effect to certain legislative actions; and preempt and supersede certain final orders of the Commission. Provides that each participating utility is deemed to have been in full compliance with specified requirements and all Commission orders entered under specified provisions. Provides that the Commission shall not undertake any investigation of such compliance and no penalty shall be assessed or adverse action taken against a participating utility for noncompliance with Commission orders associated with the Act. Makes other changes. Effective immediately.

LRB098 10876 JLS 41377 b

FISCAL NOTE ACT
MAY APPLY

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 Intent; orders preempted and superseded.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

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

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

19 (220 ILCS 5/4-301) (from Ch. 111 2/3, par. 4-301)

20 Sec. 4-301. The Commission may confer in person, or by
21 correspondence, by attending conventions, or in any other way,
22 with Commissions and any and all agencies dealing with public

1 utilities of other states and of the United States on any
2 matters relating to public utilities.

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

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

20 The Commission shall conduct a hearing and take testimony
21 relative to any pending legislation with respect to any person,
22 corporation or matter within its jurisdiction, if requested to
23 do so by the Governor, the General Assembly, or ~~by~~ either
24 branch of the General Assembly ~~thereof~~, and shall report its
25 conclusions to the Governor or the General Assembly, as the
26 case may be. The Commission may also recommend the enactment of

1 such legislation with respect to any matter within its
2 jurisdiction as it deems wise or necessary in the public
3 interest. The Commission shall, at such times as the Governor,
4 the General Assembly, or either branch of the General Assembly
5 shall direct, examine any particular subject connected with the
6 condition and management of public utilities, and report to the
7 Governor or the General Assembly, as the case may be, ~~him~~ in
8 writing its opinion thereon with its reasons therefor.

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

10 (220 ILCS 5/16-108.5)

11 Sec. 16-108.5. Infrastructure investment and
12 modernization; regulatory reform.

13 (a) (Blank).

14 (b) For purposes of this Section, "participating utility"
15 means an electric utility or a combination utility serving more
16 than 1,000,000 customers in Illinois that voluntarily elects
17 and commits to undertake (i) the infrastructure investment
18 program consisting of the commitments and obligations
19 described in this subsection (b) and (ii) the customer
20 assistance program consisting of the commitments and
21 obligations described in subsection (b-10) of this Section,
22 notwithstanding any other provisions of this Act and without
23 obtaining any approvals from the Commission or any other agency
24 other than as set forth in this Section, regardless of whether
25 any such approval would otherwise be required. "Combination

1 utility" means a utility that, as of January 1, 2011, provided
2 electric service to at least one million retail customers in
3 Illinois and gas service to at least 500,000 retail customers
4 in Illinois. A participating utility shall recover the
5 expenditures made under the infrastructure investment program
6 through the ratemaking process, including, but not limited to,
7 the performance-based formula rate and process set forth in
8 this Section.

9 During the infrastructure investment program's peak
10 program year, a participating utility other than a combination
11 utility shall create 2,000 full-time equivalent jobs in
12 Illinois, and a participating utility that is a combination
13 utility shall create 450 full-time equivalent jobs in Illinois
14 related to the provision of electric service. These jobs shall
15 include direct jobs, contractor positions, and induced jobs,
16 but shall not include any portion of a job commitment, not
17 specifically contingent on an amendatory Act of the 97th
18 General Assembly becoming law, between a participating utility
19 and a labor union that existed on the effective date of this
20 amendatory Act of the 97th General Assembly and that has not
21 yet been fulfilled. A portion of the full-time equivalent jobs
22 created by each participating utility shall include
23 incremental personnel hired subsequent to the effective date of
24 this amendatory Act of the 97th General Assembly. For purposes
25 of this Section, "peak program year" means the consecutive
26 12-month period with the highest number of full-time equivalent

1 jobs that occurs between the beginning of investment year 2 and
2 the end of investment year 4.

3 A participating utility shall meet one of the following
4 commitments, as applicable:

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

14 (A) over a 5-year period, invest an estimated
15 \$1,300,000,000 in electric system upgrades,
16 modernization projects, and training facilities,
17 including, but not limited to:

18 (i) distribution infrastructure improvements
19 totaling an estimated \$1,000,000,000, including
20 underground residential distribution cable
21 injection and replacement and mainline cable
22 system refurbishment and replacement projects;

23 (ii) training facility construction or upgrade
24 projects totaling an estimated \$10,000,000,
25 provided that, at a minimum, one such facility
26 shall be located in a municipality having a

1 population of more than 2 million residents and one
2 such facility shall be located in a municipality
3 having a population of more than 150,000 residents
4 but fewer than 170,000 residents; any such new
5 facility located in a municipality having a
6 population of more than 2 million residents must be
7 designed for the purpose of obtaining, and the
8 owner of the facility shall apply for,
9 certification under the United States Green
10 Building Council's Leadership in Energy Efficiency
11 Design Green Building Rating System;

12 (iii) wood pole inspection, treatment, and
13 replacement programs;

14 (iv) an estimated \$200,000,000 for reducing
15 the susceptibility of certain circuits to
16 storm-related damage, including, but not limited
17 to, high winds, thunderstorms, and ice storms;
18 improvements may include, but are not limited to,
19 overhead to underground conversion and other
20 engineered outcomes for circuits; the
21 participating utility shall prioritize the
22 selection of circuits based on each circuit's
23 historical susceptibility to storm-related damage
24 and the ability to provide the greatest customer
25 benefit upon completion of the improvements; to be
26 eligible for improvement, the participating

1 utility's ability to maintain proper tree
2 clearances surrounding the overhead circuit must
3 not have been impeded by third parties; and

4 (B) over a 10-year period, invest an estimated
5 \$1,300,000,000 to upgrade and modernize its
6 transmission and distribution infrastructure and in
7 Smart Grid electric system upgrades, including, but
8 not limited to:

9 (i) additional smart meters;

10 (ii) distribution automation;

11 (iii) associated cyber secure data
12 communication network; and

13 (iv) substation micro-processor relay
14 upgrades.

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

24 (A) over a 10-year period, invest an estimated
25 \$265,000,000 in electric system upgrades,
26 modernization projects, and training facilities,

1 including, but not limited to:

2 (i) distribution infrastructure improvements
3 totaling an estimated \$245,000,000, which may
4 include bulk supply substations, transformers,
5 reconductoring, and rebuilding overhead
6 distribution and sub-transmission lines,
7 underground residential distribution cable
8 injection and replacement and mainline cable
9 system refurbishment and replacement projects;

10 (ii) training facility construction or upgrade
11 projects totaling an estimated \$1,000,000; any
12 such new facility must be designed for the purpose
13 of obtaining, and the owner of the facility shall
14 apply for, certification under the United States
15 Green Building Council's Leadership in Energy
16 Efficiency Design Green Building Rating System;
17 and

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

20 (B) over a 10-year period, invest an estimated
21 \$360,000,000 to upgrade and modernize its transmission
22 and distribution infrastructure and in Smart Grid
23 electric system upgrades, including, but not limited
24 to:

25 (i) additional smart meters;

26 (ii) distribution automation;

1 (iii) associated cyber secure data
2 communication network; and
3 (iv) substation micro-processor relay
4 upgrades.

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

8 The investments in the infrastructure investment program
9 described in this subsection (b) shall be incremental to the
10 participating utility's annual capital investment program, as
11 defined by, for purposes of this subsection (b), the
12 participating utility's average capital spend for calendar
13 years 2008, 2009, and 2010 as reported in the applicable
14 Federal Energy Regulatory Commission (FERC) Form 1; provided
15 that where one or more utilities have merged, the average
16 capital spend shall be determined using the aggregate of the
17 merged utilities' capital spend reported in FERC Form 1 for the
18 years 2008, 2009, and 2010. A participating utility may add
19 reasonable construction ramp-up and ramp-down time to the
20 investment periods specified in this subsection (b). For each
21 such investment period, the ramp-up and ramp-down time shall
22 not exceed a total of 6 months.

23 Within 60 days after filing a tariff under subsection (c)
24 of this Section, a participating utility shall submit to the
25 Commission its plan, including scope, schedule, and staffing,
26 for satisfying its infrastructure investment program

1 commitments pursuant to this subsection (b). The submitted plan
2 shall include a schedule and staffing plan for the next
3 calendar year. The plan shall also include a plan for the
4 creation, operation, and administration of a Smart Grid test
5 bed as described in subsection (c) of Section 16-108.8. The
6 plan need not allocate the work equally over the respective
7 periods, but should allocate material increments throughout
8 such periods commensurate with the work to be undertaken. No
9 later than April 1 of each subsequent year, the utility shall
10 submit to the Commission a report that includes any updates to
11 the plan, a schedule for the next calendar year, the
12 expenditures made for the prior calendar year and cumulatively,
13 and the number of full-time equivalent jobs created for the
14 prior calendar year and cumulatively. If the utility is
15 materially deficient in satisfying a schedule or staffing plan,
16 then the report must also include a corrective action plan to
17 address the deficiency. The fact that the plan, implementation
18 of the plan, or a schedule changes shall not imply the
19 imprudence or unreasonableness of the infrastructure
20 investment program, plan, or schedule. Further, no later than
21 45 days following the last day of the first, second, and third
22 quarters of each year of the plan, a participating utility
23 shall submit to the Commission a verified quarterly report for
24 the prior quarter that includes (i) the total number of
25 full-time equivalent jobs created during the prior quarter,
26 (ii) the total number of employees as of the last day of the

1 prior quarter, (iii) the total number of full-time equivalent
2 hours in each job classification or job title, (iv) the total
3 number of incremental employees and contractors in support of
4 the investments undertaken pursuant to this subsection (b) for
5 the prior quarter, and (v) any other information that the
6 Commission may require by rule.

7 With respect to the participating utility's peak job
8 commitment, if, after considering the utility's corrective
9 action plan and compliance thereunder, the Commission enters an
10 order finding, after notice and hearing, that a participating
11 utility did not satisfy its peak job commitment described in
12 this subsection (b) for reasons that are reasonably within its
13 control, then the Commission shall also determine, after
14 consideration of the evidence, including, but not limited to,
15 evidence submitted by the Department of Commerce and Economic
16 Opportunity and the utility, the deficiency in the number of
17 full-time equivalent jobs during the peak program year due to
18 such failure. The Commission shall notify the Department of any
19 proceeding that is initiated pursuant to this paragraph. For
20 each full-time equivalent job deficiency during the peak
21 program year that the Commission finds as set forth in this
22 paragraph, the participating utility shall, within 30 days
23 after the entry of the Commission's order, pay \$6,000 to a fund
24 for training grants administered under Section 605-800 of The
25 Department of Commerce and Economic Opportunity Law, which
26 shall not be a recoverable expense.

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

14 If the Commission finds that a participating utility is no
15 longer eligible to update the performance-based formula rate
16 tariff pursuant to subsection (d) of this Section, or the
17 performance-based formula rate is otherwise terminated, then
18 the participating utility's voluntary commitments and
19 obligations under this subsection (b) shall immediately
20 terminate, except for the utility's obligation to pay an amount
21 already owed to the fund for training grants pursuant to a
22 Commission order.

23 In meeting the obligations of this subsection (b), to the
24 extent feasible and consistent with State and federal law, the
25 investments under the infrastructure investment program should
26 provide employment opportunities for all segments of the

1 population and workforce, including minority-owned and
2 female-owned business enterprises, and shall not, consistent
3 with State and federal law, discriminate based on race or
4 socioeconomic status.

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

15 If the participating utility finds that it is implementing
16 its plan for satisfying the infrastructure investment program
17 commitments described in subsection (b) of this Section at a
18 cost below the estimated amounts specified in subsection (b) of
19 this Section, then the utility may file a petition with the
20 Commission requesting that it be permitted to satisfy its
21 commitments by spending less than the estimated amounts
22 specified in subsection (b) of this Section. The Commission
23 shall, after notice and hearing, enter its order approving, or
24 approving as modified, or denying each such petition within 150
25 days after the filing of the petition.

26 In no event, absent General Assembly approval, shall the

1 capital investment costs incurred by a participating utility
2 other than a combination utility in satisfying its
3 infrastructure investment program commitments described in
4 subsection (b) of this Section exceed \$3,000,000,000 or, for a
5 participating utility that is a combination utility,
6 \$720,000,000. If the participating utility's updated cost
7 estimates for satisfying its infrastructure investment program
8 commitments described in subsection (b) of this Section exceed
9 the limitation imposed by this subsection (b-5), then it shall
10 submit a report to the Commission that identifies the increased
11 costs and explains the reason or reasons for the increased
12 costs no later than the year in which the utility estimates it
13 will exceed the limitation. The Commission shall review the
14 report and shall, within 90 days after the participating
15 utility files the report, report to the General Assembly its
16 findings regarding the participating utility's report. If the
17 General Assembly does not amend the limitation imposed by this
18 subsection (b-5), then the utility may modify its plan so as
19 not to exceed the limitation imposed by this subsection (b-5)
20 and may propose corresponding changes to the metrics
21 established pursuant to subparagraphs (5) through (8) of
22 subsection (f) of this Section, and the Commission may modify
23 the metrics and incremental savings goals established pursuant
24 to subsection (f) of this Section accordingly.

25 (b-10) All participating utilities shall make
26 contributions for an energy low-income and support program in

1 accordance with this subsection. Beginning no later than 180
2 days after a participating utility files a performance-based
3 formula rate tariff pursuant to subsection (c) of this Section,
4 or beginning no later than January 1, 2012 if such utility
5 files such performance-based formula rate tariff within 14 days
6 of the effective date of this amendatory Act of the 97th
7 General Assembly, and without obtaining any approvals from the
8 Commission or any other agency other than as set forth in this
9 Section, regardless of whether any such approval would
10 otherwise be required, a participating utility other than a
11 combination utility shall pay \$10,000,000 per year for 5 years
12 and a participating utility that is a combination utility shall
13 pay \$1,000,000 per year for 10 years to the energy low-income
14 and support program, which is intended to fund customer
15 assistance programs with the primary purpose being avoidance of
16 imminent disconnection. Such programs may include:

17 (1) a residential hardship program that may partner
18 with community-based organizations, including senior
19 citizen organizations, and provides grants to low-income
20 residential customers, including low-income senior
21 citizens, who demonstrate a hardship;

22 (2) a program that provides grants and other bill
23 payment concessions to disabled veterans who demonstrate a
24 hardship and members of the armed services or reserve
25 forces of the United States or members of the Illinois
26 National Guard who are on active duty pursuant to an

1 executive order of the President of the United States, an
2 act of the Congress of the United States, or an order of
3 the Governor and who demonstrate a hardship;

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

8 (4) a non-residential special hardship program that
9 provides grants to non-residential customers such as small
10 businesses and non-profit organizations that demonstrate a
11 hardship, including those providing services to senior
12 citizen and low-income customers; and

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

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

22 Programs that use funds that are provided by a
23 participating utility to reduce utility bills may be
24 implemented through tariffs that are filed with and reviewed by
25 the Commission. If a utility elects to file tariffs with the
26 Commission to implement all or a portion of the programs, those

1 tariffs shall, regardless of the date actually filed, be deemed
2 accepted and approved, and shall become effective on the
3 effective date of this amendatory Act of the 97th General
4 Assembly. The participating utilities whose customers benefit
5 from the funds that are disbursed as contemplated in this
6 Section shall file annual reports documenting the disbursement
7 of those funds with the Commission. The Commission has the
8 authority to audit disbursement of the funds to ensure they
9 were disbursed consistently with this Section.

10 If the Commission finds that a participating utility is no
11 longer eligible to update the performance-based formula rate
12 tariff pursuant to subsection (d) of this Section, or the
13 performance-based formula rate is otherwise terminated, then
14 the participating utility's voluntary commitments and
15 obligations under this subsection (b-10) shall immediately
16 terminate.

17 (c) A participating utility may elect to recover its
18 delivery services costs through a performance-based formula
19 rate approved by the Commission, which shall specify the cost
20 components that form the basis of the rate charged to customers
21 with sufficient specificity to operate in a standardized manner
22 and be updated annually with transparent information that
23 reflects the utility's actual costs to be recovered during the
24 applicable rate year, which is the period beginning with the
25 first billing day of January and extending through the last
26 billing day of the following December. In the event the utility

1 recovers a portion of its costs through automatic adjustment
2 clause tariffs on the effective date of this amendatory Act of
3 the 97th General Assembly, the utility may elect to continue to
4 recover these costs through such tariffs, but then these costs
5 shall not be recovered through the performance-based formula
6 rate. In the event the participating utility, prior to the
7 effective date of this amendatory Act of the 97th General
8 Assembly, filed electric delivery services tariffs with the
9 Commission pursuant to Section 9-201 of this Act that are
10 related to the recovery of its electric delivery services costs
11 that are still pending on the effective date of this amendatory
12 Act of the 97th General Assembly, the participating utility
13 shall, at the time it files its performance-based formula rate
14 tariff with the Commission, also file a notice of withdrawal
15 with the Commission to withdraw the electric delivery services
16 tariffs previously filed pursuant to Section 9-201 of this Act.
17 Upon receipt of such notice, the Commission shall dismiss with
18 prejudice any docket that had been initiated to investigate the
19 electric delivery services tariffs filed pursuant to Section
20 9-201 of this Act, and such tariffs and the record related
21 thereto shall not be the subject of any further hearing,
22 investigation, or proceeding of any kind related to rates for
23 electric delivery services.

24 The performance-based formula rate shall be implemented
25 through a tariff filed with the Commission consistent with the
26 provisions of this subsection (c) that shall be applicable to

1 all delivery services customers. The Commission shall initiate
2 and conduct an investigation of the tariff in a manner
3 consistent with the provisions of this subsection (c) and the
4 provisions of Article IX of this Act to the extent they do not
5 conflict with this subsection (c). Except in the case where the
6 Commission finds, after notice and hearing, that a
7 participating utility is not satisfying its investment amount
8 commitments under subsection (b) of this Section, the
9 performance-based formula rate shall remain in effect at the
10 discretion of the utility. The performance-based formula rate
11 approved by the Commission shall do the following:

12 (1) Provide for the recovery of the utility's actual
13 costs of delivery services that are prudently incurred and
14 reasonable in amount consistent with Commission practice
15 and law. The sole fact that a cost differs from that
16 incurred in a prior calendar year or that an investment is
17 different from that made in a prior calendar year shall not
18 imply the imprudence or unreasonableness of that cost or
19 investment.

20 (2) Reflect the utility's actual year-end capital
21 structure for the applicable calendar year, excluding
22 goodwill, subject to a determination of prudence and
23 reasonableness consistent with Commission practice and
24 law.

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

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

6 (B) 580 basis points.

7 At such time as the Board of Governors of the Federal
8 Reserve System ceases to include the monthly average yields
9 of 30-year U.S. Treasury bonds in its weekly H.15
10 Statistical Release or successor publication, the monthly
11 average yields of the U.S. Treasury bonds then having the
12 longest duration published by the Board of Governors in its
13 weekly H.15 Statistical Release or successor publication
14 shall instead be used for purposes of this 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 be
9 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 ~~equal to the utility's long term~~
18 ~~debt cost of capital as of the end of the applicable~~
19 ~~calendar year;~~

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

1 subsection (d) of this Section to review the inputs to
2 the performance-based formula rate shall be expensed
3 and recovered through the performance-based formula
4 rate;

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

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

1 (H) historical weather normalized billing
2 determinants; and

3 (I) allocation methods for common costs.

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

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

25 (6) Provide for an annual reconciliation, as described
26 in subsection (d) of this Section, with interest ~~as~~

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

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

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

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

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

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

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

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

12 In the event the performance-based formula rate is
13 terminated, the then current rates shall remain in effect until
14 such time as new rates are set pursuant to Article IX of this
15 Act, subject to retroactive rate adjustment, with interest, to
16 reconcile rates charged with actual costs. At such time that
17 the performance-based formula rate is terminated, the
18 participating utility's voluntary commitments and obligations
19 under subsection (b) of this Section shall immediately
20 terminate, except for the utility's obligation to pay an amount
21 already owed to the fund for training grants pursuant to a
22 Commission order issued under subsection (b) of 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 (c)
26 of this Section, the utility shall file, on or before May 1 of

1 each year, with the Chief Clerk of the Commission its updated
2 cost inputs to the performance-based formula rate for the
3 applicable rate year and the corresponding new charges. Each
4 such filing shall conform to the following requirements and
5 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 and
10 correspondingly updated depreciation reserve and expense
11 for the calendar year in which the inputs are filed. The
12 filing shall also include a reconciliation of the revenue
13 requirement that was in effect for the prior rate year (as
14 set by the cost inputs for the prior rate year) with the
15 actual revenue requirement for the prior rate year
16 (determined using a year-end rate base) that uses amounts
17 ~~as~~ reflected in the applicable FERC Form 1 that reports the
18 actual costs for the prior rate year~~†~~. Any over-collection
19 or under-collection indicated by such reconciliation shall
20 be reflected as a credit against, or recovered as an
21 additional charge to, respectively, with interest
22 calculated at a rate equal to the utility's weighted
23 average cost of capital approved by the Commission for the
24 prior rate year, the charges for the applicable rate year.
25 Provided, however, that the first such reconciliation
26 shall be for the calendar year in which the utility files

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

25 Notwithstanding anything that may be to the contrary,
26 the intent of the reconciliation is to ultimately reconcile

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

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

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

1 schedules.

2 Within 45 days after the utility files its annual update of
3 cost inputs to the performance-based formula rate, the
4 Commission shall have the authority, either upon complaint or
5 its own initiative, but with reasonable notice, to enter upon a
6 hearing concerning the prudence and reasonableness of the costs
7 incurred by the utility to be recovered during the applicable
8 rate year that are reflected in the inputs to the
9 performance-based formula rate derived from the utility's FERC
10 Form 1. During the course of the hearing, each objection shall
11 be stated with particularity and evidence provided in support
12 thereof, after which the utility shall have the opportunity to
13 rebut the evidence. Discovery shall be allowed consistent with
14 the Commission's Rules of Practice, which Rules shall be
15 enforced by the Commission or the assigned hearing examiner.
16 The Commission shall apply the same evidentiary standards,
17 including, but not limited to, those concerning the prudence
18 and reasonableness of the costs incurred by the utility, in the
19 hearing as it would apply in a hearing to review a filing for a
20 general increase in rates under Article IX of this Act. The
21 Commission shall not, however, have the authority in a
22 proceeding under this subsection (d) to consider or order any
23 changes to the structure or protocols of the performance-based
24 formula rate approved pursuant to subsection (c) of this
25 Section. In a proceeding under this subsection (d), the
26 Commission shall enter its order no later than the earlier of

1 240 days after the utility's filing of its annual update of
2 cost inputs to the performance-based formula rate or December
3 31. The Commission's determinations of the prudence and
4 reasonableness of the costs incurred for the applicable
5 calendar year shall be final upon entry of the Commission's
6 order and shall not be subject to reopening, reexamination, or
7 collateral attack in any other Commission proceeding, case,
8 docket, order, rule or regulation, provided, however, that
9 nothing in this subsection (d) shall prohibit a party from
10 petitioning the Commission to rehear or appeal to the courts
11 the order pursuant to the provisions of this Act.

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

20 A participating utility's first filing of the updated cost
21 inputs, and any Commission investigation of such inputs
22 pursuant to this subsection (d) shall proceed notwithstanding
23 the fact that the Commission's investigation under subsection
24 (c) of this Section is still pending and notwithstanding any
25 other law, order, rule, or Commission practice to the contrary.

26 (e) Nothing in subsections (c) or (d) of this Section shall

1 prohibit the Commission from investigating, or a participating
2 utility from filing, revenue-neutral tariff changes related to
3 rate design of a performance-based formula rate that has been
4 placed into effect for the utility. Following approval of a
5 participating utility's performance-based formula rate tariff
6 pursuant to subsection (c) of this Section, the utility shall
7 make a filing with the Commission within one year after the
8 effective date of the performance-based formula rate tariff
9 that proposes changes to the tariff to incorporate the findings
10 of any final rate design orders of the Commission applicable to
11 the participating utility and entered subsequent to the
12 Commission's approval of the tariff. The Commission shall,
13 after notice and hearing, enter its order approving, or
14 approving with modification, the proposed changes to the
15 performance-based formula rate tariff within 240 days after the
16 utility's filing. Following such approval, the utility shall
17 make a filing with the Commission during each subsequent 3-year
18 period that either proposes revenue-neutral tariff changes or
19 re-files the existing tariffs without change, which shall
20 present the Commission with an opportunity to suspend the
21 tariffs and consider revenue-neutral tariff changes related to
22 rate design.

23 (f) Within 30 days after the filing of a tariff pursuant to
24 subsection (c) of this Section, each participating utility
25 shall develop and file with the Commission multi-year metrics
26 designed to achieve, ratably (i.e., in equal segments) over a

1 10-year period, improvement over baseline performance values
2 as follows:

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

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

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

17 (3.5) For a participating utility other than a
18 combination utility, 20% improvement in the System Average
19 Interruption Frequency Index for its Northeastern Region,
20 using a baseline of the average of the data from 2001
21 through 2010. For purposes of this paragraph (3.5),
22 Northeastern Region shall have the meaning set forth in the
23 participating utility's most recent report filed pursuant
24 to Section 16-125 of this Act.

25 (4) Seventy-five percent improvement in the total
26 number of customers who exceed the service reliability

1 targets as set forth in subparagraphs (A) through (C) of
2 paragraph (4) of subsection (b) of 83 Ill. Admin. Code Part
3 411.140 as of May 1, 2011, using 2010 as the baseline year.

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

10 (6) Consumption on inactive meters: 90% improvement
11 for a participating utility other than a combination
12 utility, and 56% improvement for a participating utility
13 that is a combination utility, using a baseline of the
14 average unbilled kilowatthours for the years 2009 and 2010.

15 (7) Unaccounted for energy: 50% improvement for a
16 participating utility other than a combination utility
17 using a baseline of the non-technical line loss unaccounted
18 for energy kilowatthours for the year 2009.

19 (8) Uncollectible expense: reduce uncollectible
20 expense by at least \$30,000,000 for a participating utility
21 other than a combination utility and by at least \$3,500,000
22 for a participating utility that is a combination utility,
23 using a baseline of the average uncollectible expense for
24 the years 2008 through 2010.

25 (9) Opportunities for minority-owned and female-owned
26 business enterprises: design a performance metric

1 regarding the creation of opportunities for minority-owned
2 and female-owned business enterprises consistent with
3 State and federal law using a base performance value of the
4 percentage of the participating utility's capital
5 expenditures that were paid to minority-owned and
6 female-owned business enterprises in 2010.

7 The definitions set forth in 83 Ill. Admin. Code Part
8 411.20 as of May 1, 2011 shall be used for purposes of
9 calculating performance under paragraphs (1) through (3.5) of
10 this subsection (f), provided, however, that the participating
11 utility may exclude up to 9 extreme weather event days from
12 such calculation for each year, and provided further that the
13 participating utility shall exclude 9 extreme weather event
14 days when calculating each year of the baseline period to the
15 extent that there are 9 such days in a given year of the
16 baseline period. For purposes of this Section, an extreme
17 weather event day is a 24-hour calendar day (beginning at 12:00
18 a.m. and ending at 11:59 p.m.) during which any weather event
19 (e.g., storm, tornado) caused interruptions for 10,000 or more
20 of the participating utility's customers for 3 hours or more.
21 If there are more than 9 extreme weather event days in a year,
22 then the utility may choose no more than 9 extreme weather
23 event days to exclude, provided that the same extreme weather
24 event days are excluded from each of the calculations performed
25 under paragraphs (1) through (3.5) of this subsection (f).

26 The metrics shall include incremental performance goals

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

15 The metrics and performance goals set forth in
16 subparagraphs (5) through (8) of this subsection (f) are based
17 on the assumptions that the participating utility may fully
18 implement the technology described in subsection (b) of this
19 Section, including utilizing the full functionality of such
20 technology and that there is no requirement for personal
21 on-site notification. If the utility is unable to meet the
22 metrics and performance goals set forth in subparagraphs (5)
23 through (8) of this subsection (f) for such reasons, and the
24 Commission so finds after notice and hearing, then the utility
25 shall be excused from compliance, but only to the limited
26 extent achievement of the affected metrics and performance

1 goals was hindered by the less than full implementation.

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

10 (1) With respect to each of the incremental annual
11 performance goals established pursuant to paragraph (1) of
12 subsection (f) of this Section,

13 (A) for each year that a participating utility
14 other than a combination utility does not achieve the
15 annual goal, the participating utility's return on
16 equity shall be reduced as follows: during years 1
17 through 3, by 5 basis points; during years 4 through 6,
18 by 6 basis points; and during years 7 through 10, by 7
19 basis points; and

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

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

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

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

26 (5) With respect to each of the incremental annual

1 performance goals established pursuant to subparagraph (5)
2 of subsection (f) of this Section, for each year that the
3 participating utility does not achieve at least 95% of each
4 such goal, the participating utility's return on equity
5 shall be reduced by 5 basis points for each such unachieved
6 goal.

7 (6) With respect to each of the incremental annual
8 performance goals established pursuant to paragraphs (6),
9 (7), and (8) of subsection (f) of this Section, as
10 applicable, which together measure non-operational
11 customer savings and benefits relating to the
12 implementation of the Advanced Metering Infrastructure
13 Deployment Plan, as defined in Section 16-108.6 of this
14 Act, the performance under each such goal shall be
15 calculated in terms of the percentage of the goal achieved.
16 The percentage of goal achieved for each of the goals shall
17 be aggregated, and an average percentage value calculated,
18 for each year of the 10-year period. If the utility does
19 not achieve an average percentage value in a given year of
20 at least 95%, the participating utility's return on equity
21 shall be reduced by 5 basis points.

22 The financial penalties shall be applied as described in
23 this subsection (f-5) for the 12-month period in which the
24 deficiency occurred through a separate tariff mechanism, which
25 shall be filed by the utility together with its metrics. In the
26 event the formula rate tariff established pursuant to

1 subsection (c) of this Section terminates, the utility's
2 obligations under subsection (f) of this Section and this
3 subsection (f-5) shall also terminate, provided, however, that
4 the tariff mechanism established pursuant to subsection (f) of
5 this Section and this subsection (f-5) shall remain in effect
6 until any penalties due and owing at the time of such
7 termination are applied.

8 The Commission shall, after notice and hearing, enter an
9 order within 120 days after the metrics are filed approving, or
10 approving with modification, a participating utility's tariff
11 or mechanism to satisfy the metrics set forth in subsection (f)
12 of this Section. On June 1 of each subsequent year, each
13 participating utility shall file a report with the Commission
14 that includes, among other things, a description of how the
15 participating utility performed under each metric and an
16 identification of any extraordinary events that adversely
17 impacted the utility's performance. Whenever a participating
18 utility does not satisfy the metrics required pursuant to
19 subsection (f) of this Section, the Commission shall, after
20 notice and hearing, enter an order approving financial
21 penalties in accordance with this subsection (f-5). The
22 Commission-approved financial penalties shall be applied
23 beginning with the next rate year. Nothing in this Section
24 shall authorize the Commission to reduce or otherwise obviate
25 the imposition of financial penalties for failing to achieve
26 one or more of the metrics established pursuant to subparagraph

1 (1) through (4) of subsection (f) of this Section.

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

20 In the event that the average annual increase exceeds 2.5%
21 as calculated pursuant to this subsection (g), then Sections
22 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of this Act, other
23 than this subsection, shall be inoperative as they relate to
24 the utility and its service area as of the date of the report
25 due to be submitted pursuant to this subsection and the utility
26 shall no longer be eligible to annually update the

1 performance-based formula rate tariff pursuant to subsection
2 (d) of this Section. In such event, the then current rates
3 shall remain in effect until such time as new rates are set
4 pursuant to Article IX of this Act, subject to retroactive
5 adjustment, with interest, to reconcile rates charged with
6 actual costs, and the participating utility's voluntary
7 commitments and obligations under subsection (b) of this
8 Section shall immediately terminate, except for the utility's
9 obligation to pay an amount already owed to the fund for
10 training grants pursuant to a Commission order issued under
11 subsection (b) of this Section.

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

16 For purposes of this Section, the amount per kilowatthour
17 means the total amount paid for electric service expressed on a
18 per kilowatthour basis, and the total amount paid for electric
19 service includes without limitation amounts paid for supply,
20 transmission, distribution, surcharges, and add-on taxes
21 exclusive of any increases in taxes or new taxes imposed after
22 the effective date of this amendatory Act of the 97th General
23 Assembly. For purposes of this Section, "eligible retail
24 customers" shall have the meaning set forth in Section 16-111.5
25 of this Act.

26 The fact that this Section becomes inoperative as set forth

1 in this subsection shall not be construed to mean that the
2 Commission may reexamine or otherwise reopen prudence or
3 reasonableness determinations already made.

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

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

25 In the event Sections 16-108.5, 16-108.6, 16-108.7, and
26 16-108.8 of this Act do not become inoperative after December

1 31, 2017, then these Sections are inoperative after December
2 31, 2022 for every participating utility, after which time a
3 participating utility shall no longer be eligible to annually
4 update the performance-based formula rate tariff pursuant to
5 subsection (d) of this Section. At such time, the then current
6 rates shall remain in effect until such time as new rates are
7 set pursuant to Article IX of this Act, subject to retroactive
8 adjustment, with interest, to reconcile rates charged with
9 actual costs.

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

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

1 services, unless they are part of a service directly related to
2 delivery services or Smart Grid functionality or applications
3 as defined in Section 16-108.6 of this Act, and from recovering
4 the costs of such offerings from retail customers.

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). This amendatory Act of the 97th
10 General Assembly shall not be construed as creating a contract
11 between the General Assembly and the participating utility, and
12 shall not establish a property right in the participating
13 utility.

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

26 (1) No earlier than 5 business days after the effective

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

11 (2) Notwithstanding anything that may be to the
12 contrary, a participating utility may file a tariff to
13 retroactively recover its previously unrecovered actual
14 costs of delivery service that are no longer subject to
15 recovery through a reconciliation adjustment under
16 subsection (d) of this Section. This retroactive recovery
17 shall include any derivative adjustments resulting from
18 the changes made to subsections (c) and (d) of this Section
19 by this amendatory Act of the 98th General Assembly. Such
20 tariff shall allow the utility to assess on current
21 customer bills over a period of 12 monthly billing periods,
22 a charge or credit related to those unrecovered costs with
23 interest at the utility's weighted average cost of capital
24 during the period in which those costs were unrecovered. A
25 participating utility may file a tariff that implements a
26 retroactive charge or credit as described in this paragraph

1 for amounts not otherwise included in the tariff filing
2 provided for in paragraph (1) of this subsection (k). The
3 Commission shall enter a final order approving such tariff
4 within 21 days after the participating utility's filing.

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

15 (4) Nothing in this subsection is intended to effect a
16 dismissal of or otherwise affect an appeal from any final
17 Commission orders entered in Docket Nos. 11-0721, 12-0001,
18 12-0293, and 12-0321 other than to the extent of the
19 amendatory language contained in subsections (c) and (d) of
20 this amendatory Act of the 98th General Assembly.

21 (1) Each participating utility shall be deemed to have been
22 in full compliance with all requirements of subsection (b) of
23 this Section, subsection (c) of this Section, Section 16-108.6
24 of this Act, and all Commission orders entered pursuant to
25 Sections 16-108.5 and 16-108.6 of this Act, up to and including
26 the effective date of this amendatory Act of the 98th General

1 Assembly. The Commission shall not undertake any investigation
2 of such compliance and no penalty shall be assessed or adverse
3 action taken against a participating utility for noncompliance
4 with Commission orders associated with subsection (b) of this
5 Section, subsection (c) of this Section, and Section 16-108.6
6 of this Act prior to such date. Each participating utility
7 shall be permitted, without penalty, a period of 12 months
8 after such effective date to take actions required to ensure
9 its infrastructure investment program is in compliance with
10 subsection (b) of this Section and with Section 16-108.6 of
11 this Act. Provided further:

12 (1) if this amendatory Act of the 98th General Assembly
13 takes effect on or before June 15, 2013, then each
14 participating utility other than an combination utility
15 shall file with the Commission, within 45 days after such
16 effective date, a plan for accelerating the utility's meter
17 deployment schedule approved in the final Commission order
18 on rehearing entered in Docket No. 12-0298 and the
19 Commission shall approve or approve as modified such plan
20 within 90 days after the utility's filing; provided
21 however, that if the Commission has already initiated a
22 proceeding pursuant to subsection (e) of Section 16-108.6
23 of this Act or issued an order thereunder prior to such
24 effective date, then the filing described in this
25 subparagraph shall not be required for the relevant
26 utility; or

1 (2) if this amendatory Act of the 98th General Assembly
2 takes effect after June 15, 2013, then the Commission shall
3 dismiss any pending proceeding with respect to a
4 participating utility other than a combination utility
5 initiated pursuant to subsection (e) of Section 16-108.6 of
6 this Act prior to such effective date within 5 days after
7 such effective date and any order entered pursuant to
8 subsection (e) of Section 16-108.6 of this Act prior to
9 such effective date applicable to a participating utility
10 other than a combination utility shall be immediately void
11 upon such effective date; provided further that within 45
12 days after the effective date of this amendatory Act of the
13 98th General Assembly, each participating utility other
14 than a combination utility shall file with the Commission a
15 plan for accelerating its meter deployment schedule
16 approved in the final Commission order on rehearing entered
17 in Docket No. 12-0298 and the Commission shall approve or
18 approve as modified such plan within 90 days after the
19 utility's filing.

20 The order entered by the Commission pursuant to paragraph
21 (1) or (2) of this subsection shall provide for accelerated
22 deployment, taking into account procurement times for meters
23 and other equipment. Nothing in this amendatory Act of the 98th
24 General Assembly shall shorten or extend the end dates for the
25 5-year or 10-year periods set forth in subsection (b) of this
26 Section or Section 16-108.6 of this Act. Nothing in this

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

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

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

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.

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Statutes amended in order of appearance

3

220 ILCS 5/4-301

from Ch. 111 2/3, par. 4-301

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220 ILCS 5/16-108.5