HB2825

LRB100 09650 RJF 19819 b

100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB2825

by Rep. Jerry Costello, II

SYNOPSIS AS INTRODUCED:

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

Amends the Public Utilities Act. Provides that certain energy efficiency and demand-response plans administered by the Department of Commerce and Economic Opportunity that were approved by the Illinois Commerce Commission on or before the effective date of Public Act 99-906 for the period June 1, 2014 through May 31, 2017 shall continue to be in force and effect through December 31, 2017. Provides that the Department of Commerce and Economic Opportunity and each such utility is authorized to increase, on a pro rata basis, the energy savings goals and budgets approved in its plan to reflect the additional 7 months of the plan's operation. Provides that implementation of energy efficiency measures targeted at the public sector shall prioritize programming whose goal is to make local, State, and federal public facilities more economical and environmentally responsible, and that such programming shall be contracted to State public universities and community colleges that have existing relationships with or experience serving public sector energy efficiency programs in the State.

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A BILL FOR

AN ACT concerning regulation.

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

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

(220 ILCS 5/8-103)

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

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

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

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

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

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

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

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

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

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

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

June 1, 2014; and

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

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

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

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

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

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

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

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

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

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

for these measures in 2011.

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

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

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

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

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

Each utility shall include, in its recovery of costs, the costs estimated for both the utility's and the Department's implementation of energy efficiency and demand-response measures. Costs collected by the utility for measures implemented by the Department shall be submitted to the Department pursuant to Section 605-323 of the Civil Administrative Code of Illinois, shall be deposited into the Energy Efficiency Portfolio Standards Fund, and shall be used by the Department solely for the purpose of implementing these measures. A utility shall not be required to advance any moneys to the Department but only to forward such funds as it has collected. The Department shall report to the Commission on an annual basis regarding the costs actually incurred by the Department in the implementation of the measures. Any changes to the costs of energy efficiency measures as a result of plan modifications shall be appropriately reflected in amounts recovered by the utility and turned over to the Department.

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

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

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

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

(f) No later than November 15, 2007, each electric utility shall file an energy efficiency and demand-response plan with the Commission to meet the energy efficiency and demand-response standards for 2008 through 2010. No later than October 1, 2010, each electric utility shall file an energy efficiency and demand-response plan with the Commission to meet the energy efficiency and demand-response standards for 2011 through 2013. Every 3 years thereafter, each electric utility shall file, no later than September 1, an energy efficiency and demand-response plan with the Commission. If a utility does not file such a plan by September 1 of an applicable year, it shall face a penalty of $100,000 per day until the plan is filed. Each utility's plan shall set forth the utility's proposals to meet the utility's portion of the energy efficiency standards identified in subsection (b) and the demand-response standards identified in subsection (c) of this Section as modified by subsections (d) and (e), taking into account the unique circumstances of the utility's service territory. The Commission shall seek public comment on the utility's plan and shall issue an order approving or disapproving each plan within 5 months after its submission. If the Commission disapproves a plan, the Commission shall, within 30 days, describe in detail the reasons for the disapproval and describe a path by which the utility may file a revised draft of the plan to address the Commission's concerns satisfactorily. If the utility does not refile with the Commission within 60 days, the utility shall be subject to penalties at a rate of $100,000 per day until the plan is filed. This process shall continue, and penalties shall accrue, until the utility has successfully filed a portfolio of energy efficiency and demand-response measures. Penalties shall be deposited into the Energy Efficiency Trust Fund. In submitting proposed energy efficiency and demand-response plans and funding levels to meet the savings goals adopted by this Act the utility shall:

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

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

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

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

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

programs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Each utility shall include, in its recovery of costs, the costs estimated for both the utility's and the Department's implementation of energy efficiency and demand-response measures. Costs collected by the utility for measures implemented by the Department shall be submitted to the Department pursuant to Section 605-323 of the Civil Administrative Code of Illinois, shall be deposited into the Energy Efficiency Portfolio Standards Fund, and shall be used by the Department solely for the purpose of implementing these measures. A utility shall not be required to advance any moneys to the Department but only to forward such funds as it has collected. The Department shall report to the Commission on an annual basis regarding the costs actually incurred by the Department in the implementation of the measures. Any changes to the costs of energy efficiency measures as a result of plan modifications shall be appropriately reflected in amounts recovered by the utility and turned over to the Department.

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

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

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

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

(f) No later than November 15, 2007, each electric utility shall file an energy efficiency and demand-response plan with the Commission to meet the energy efficiency and demand-response standards for 2008 through 2010. No later than October 1, 2010, each electric utility shall file an energy efficiency and demand-response plan with the Commission to meet the energy efficiency and demand-response standards for 2011 through 2013. Every 3 years thereafter, each electric utility shall file, no later than September 1, an energy efficiency and demand-response plan with the Commission. If a utility does not file such a plan by September 1 of an applicable year, it shall face a penalty of $100,000 per day until the plan is filed. Each utility's plan shall set forth the utility's proposals to meet the utility's portion of the energy efficiency standards identified in subsection (b) and the demand-response standards identified in subsection (c) of this Section as modified by subsections (d) and (e), taking into account the unique circumstances of the utility's service territory. The Commission shall seek public comment on the utility's plan and shall issue an order approving or disapproving each plan within 5 months after its submission. If the Commission disapproves a plan, the Commission shall, within 30 days, describe in detail the reasons for the disapproval and describe a path by which the utility may file a revised draft of the plan to address the Commission's concerns satisfactorily. If the utility does not refile with the Commission within 60 days, the utility shall be subject to penalties at a rate of $100,000 per day until the plan is filed. This process shall continue, and penalties shall accrue, until the utility has successfully filed a portfolio of energy efficiency and demand-response measures. Penalties shall be deposited into the Energy Efficiency Trust Fund. In submitting proposed energy efficiency and demand-response plans and funding levels to meet the savings goals adopted by this Act the utility shall:

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

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

(3) Present estimates of the total amount paid for

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

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

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

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

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

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

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

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

(i) If, after 2 years, an electric utility fails to meet the efficiency standard specified in subsection (b) of this Section, as modified by subsections (d) and (e), it shall make a contribution to the Low-Income Home Energy Assistance Program. The combined total liability for failure to meet the goal shall be $1,000,000, which shall be assessed as follows: a large electric utility shall pay $665,000, and a medium electric utility shall pay $335,000. If, after 3 years, an electric utility fails to meet the efficiency standard specified in subsection (b) of this Section, as modified by subsections (d) and (e), it shall make a contribution to the Low-Income Home Energy Assistance Program. The combined total liability for failure to meet the goal shall be $1,000,000, which shall be assessed as follows: a large electric utility shall pay $665,000, and a medium electric utility shall pay

$335,000. In addition, the responsibility for implementing the energy efficiency measures of the utility making the payment shall be transferred to the Illinois Power Agency if, after 3 years, or in any subsequent 3-year period, the utility fails to meet the efficiency standard specified in subsection (b) of this Section, as modified by subsections (d) and (e). The Agency shall implement a competitive procurement program to procure resources necessary to meet the standards specified in this Section as modified by subsections (d) and (e), with costs for those resources to be recovered in the same manner as products purchased through the procurement plan as provided in Section 16-111.5. The Director shall implement this requirement in connection with the procurement plan as provided in Section 16-111.5.

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

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

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

(l)(1) The energy efficiency and demand-response plans of electric utilities serving more than 500,000 retail customers in the State<u>, including all such programs administered by the Department of Commerce and Economic Opportunity,</u> that were approved by the Commission on or before the effective date of this amendatory Act of the 99th General Assembly for the period June 1, 2014 through May 31, 2017 shall continue to be in force and effect through December 31, 2017 so that the energy efficiency programs set forth in those plans continue to be offered during the period June 1, 2017 through December 31, 2017. <u>The Department of Commerce and Economic Opportunity and each</u> ~~Each~~ such utility is authorized to increase, on a pro rata basis, the energy savings goals and budgets approved in its plan to reflect the additional 7 months of the plan's operation, provided that such increase shall also incorporate reductions to goals and budgets to reflect the proportion of the utility's load attributable to customers who are exempt from this Section under subsection (m) of this Section.

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

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

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

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

(220 ILCS 5/8-103B)

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) 2.3% deemed cumulative persisting annual savings

for the year ending December 31, 2026;

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

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

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

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

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

(b-5) Beginning in 2018, electric utilities subject to this Section that serve more than 3,000,000 retail customers in the State shall achieve the following cumulative persisting annual savings goals, as modified by subsection (f) of this Section and as compared to the deemed baseline of 88,000,000 MWhs of electric power and energy sales set forth in subsection (b), as reduced by the number of MWhs equal to the sum of the annual consumption of customers that are exempt from subsections (a) through (j) of this Section under subsection (l) of this Section as averaged across the calendar years 2014, 2015, and 2016, through the implementation of energy efficiency measures during the applicable year and in prior years, but no earlier than January 1, 2012:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b-10) For purposes of this Section, electric utilities subject to this Section that serve less than 3,000,000 retail customers but more than 500,000 retail customers in the State shall be deemed to have achieved a cumulative persisting annual savings of 6.6% from energy efficiency measures and programs implemented during the period beginning January 1, 2012 and ending December 31, 2017, which is based on the deemed average weather normalized sales of electric power and energy during calendar years 2014, 2015, and 2016 of 36,900,000 MWhs. For the purposes of this subsection (b-10) and subsection (b-15), the 36,900,000 MWhs of deemed electric power and energy sales shall be reduced by the number of MWhs equal to the sum of the annual consumption of customers that are exempt from subsections (a) through (j) of this Section under subsection (l) of this Section, as averaged across the calendar years 2014, 2015, and 2016. After 2017, the deemed value of cumulative persisting annual savings from energy efficiency measures and programs implemented during the period beginning January 1, 2012 and ending December 31, 2017, shall be reduced each year, as follows, and the applicable value shall be applied to and count toward the utility's achievement of the cumulative persisting annual savings goals set forth in subsection (b-15):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) 13% cumulative persisting annual savings for the

year ending December 31, 2025;

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

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

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

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

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

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

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

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

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

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

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

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

(5) 0.5% of cumulative persisting annual savings for

the year ending December 31, 2022;

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

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

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

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

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

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

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

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

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

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

Implementation of energy efficiency measures targeted at the public sector shall prioritize programming with a goal of

<u>making local, State, and federal public facilities more economical and environmentally responsible. Such programming shall be contracted, when it is practicable, to State public universities and community colleges that have existing relationships with or experience serving public sector energy efficiency programs in the State.</u>

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

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

(d) Notwithstanding any other provision of law to the contrary, a utility providing approved energy efficiency measures and, if applicable, demand-response measures in the State shall be permitted to recover all reasonable and prudently incurred costs of those measures from all retail customers, except as provided in subsection (l) of this

Section, as follows, provided that nothing in this subsection (d) permits the double recovery of such costs from customers:

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

(2) A utility may recover its costs through an energy efficiency formula rate approved by the Commission under a filing under subsections (f) and (g) of this Section, which shall specify the cost components that form the basis of the rate charged to customers with sufficient specificity to operate in a standardized manner and be updated annually with transparent information that reflects the utility's actual costs to be recovered during the applicable rate

year, which is the period beginning with the first billing day of January and extending through the last billing day of the following December. The energy efficiency formula rate shall be implemented through a tariff filed with the Commission under subsections (f) and (g) of this Section that is consistent with the provisions of this paragraph (2) and that shall be applicable to all delivery services customers. The Commission shall conduct an investigation of the tariff in a manner consistent with the provisions of this paragraph (2), subsections (f) and (g) of this Section, and the provisions of Article IX of this Act to the extent they do not conflict with this paragraph (2). The energy efficiency formula rate approved by the Commission shall remain in effect at the discretion of the utility and shall do the following:

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

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

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

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

(ii) 580 basis points.

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) The inputs to the energy efficiency formula rate for the applicable rate year shall be based on the projected costs to be incurred by the utility during the rate year under the utility's multi-year plan approved under subsections (f) and (g) of this Section, including, but not limited to, projected capital investment costs and projected regulatory asset balances with correspondingly updated depreciation and amortization reserves and expense. The filing shall also include a reconciliation of the energy efficiency revenue requirement that was 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 the actual costs for the prior rate year. Any over-collection or under-collection indicated by such reconciliation shall be reflected as a credit against, or recovered as an additional charge to, respectively, with interest calculated at a rate equal to the utility's weighted average cost of capital approved by the Commission for the prior rate year, the charges for the applicable rate year. Such over-collection or under-collection shall be adjusted to remove any deferred taxes related to the reconciliation, for purposes of calculating interest at an annual rate of return equal to the utility's weighted average cost of capital approved by the Commission for the prior rate year, including a revenue conversion factor calculated to recover or refund all additional income taxes that may be payable or receivable as a result of that return. Each reconciliation shall be certified by the participating utility in the same manner that FERC Form 1 is certified. The filing shall also include the charge or credit, if any, resulting from the calculation required by subparagraph (E) of paragraph (2) of this subsection (d).

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

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

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

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

Within 45 days after the utility files its annual update of cost inputs to the energy efficiency formula rate, the Commission shall with reasonable notice, initiate a proceeding concerning whether the projected costs to be incurred by the utility and recovered during the applicable rate year, and that are reflected in the inputs to the energy efficiency formula rate, are consistent with the utility's approved multi-year plan under subsections (f) and (g) of this Section and whether the costs incurred by the utility during the prior rate year were prudent and reasonable. The Commission shall also have the authority to investigate the information and data described in paragraph (9) of subsection (g) of this Section, including the proposed adjustment to the utility's return on equity component of its weighted average cost of capital. During the course of the proceeding, each objection shall be stated with particularity and evidence provided in support thereof, after which the utility shall have the opportunity to rebut the evidence. Discovery shall be allowed consistent with the Commission's Rules of Practice, which Rules of Practice shall be enforced by the Commission or the assigned hearing examiner. The Commission shall apply the same evidentiary standards, including, but not limited to, those concerning the prudence and reasonableness of the costs incurred by the utility, during the proceeding as it would apply in a proceeding to review a filing for a general increase in rates under Article IX of this Act. The Commission shall not, however, have the authority in a proceeding under this paragraph (3) to consider or order any changes to the structure or protocols of the energy efficiency formula rate approved under paragraph (2) of this subsection (d). In a proceeding under this paragraph (3), the Commission shall enter its order no later than the earlier of 195 days after the utility's filing of its annual update of cost inputs to the energy efficiency formula rate or December 15. The utility's proposed return on equity calculation, as described in paragraphs (7) through (9) of subsection (g) of this Section, shall be deemed the final, approved calculation on December 15 of the year in which it is filed unless the Commission enters an order on or before December

15, after notice and hearing, that modifies such calculation consistent with this Section. The Commission's determinations of the prudence and reasonableness of the costs incurred, and determination of such return on equity calculation, for the applicable calendar year shall be final upon entry of the Commission's order and shall not be subject to reopening, reexamination, or collateral attack in any other Commission proceeding, case, docket, order, rule, or regulation; however, nothing in this paragraph (3) shall prohibit a party from petitioning the Commission to rehear or appeal to the courts the order under the provisions of this Act.

(e) Beginning on the effective date of this amendatory Act of the 99th General Assembly, a utility subject to the requirements of this Section may elect to defer, as a regulatory asset, up to the full amount of its expenditures incurred under this Section for each annual period, including, but not limited to, any expenditures incurred above the funding level set by subsection (f) of this Section for a given year. The total expenditures deferred as a regulatory asset in a given year shall be amortized and recovered over a period that is equal to the weighted average of the energy efficiency measure lives implemented for that year that are reflected in the regulatory asset. The unamortized balance shall be recognized as of December 31 for a given year. The utility shall also earn a return on the total of the unamortized balances of all of the energy efficiency regulatory assets, less any deferred taxes related to those unamortized balances, at an annual rate equal to the utility's weighted average cost of capital that includes, based on a year-end capital structure, the utility's actual cost of debt for the applicable calendar year and a cost of equity, which shall be calculated as the sum of the (i) the average for the applicable calendar year of the monthly average yields of 30-year U.S. Treasury bonds published by the Board of Governors of the Federal Reserve System in its weekly H.15 Statistical Release or successor publication; and (ii) 580 basis points, including a revenue conversion factor calculated to recover or refund all additional income taxes that may be payable or receivable as a result of that return. Capital investment costs shall be depreciated and recovered over their useful lives consistent with generally accepted accounting principles. The weighted average cost of capital shall be applied to the capital investment cost balance, less any accumulated depreciation and accumulated deferred income taxes, as of December 31 for a given year.

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

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

(1) No later than 30 days after the effective date of this amendatory Act of the 99th General Assembly or May 1, 2017, whichever is later, each electric utility shall file a 4-year energy efficiency plan commencing on January 1, 2018 that is designed to achieve the cumulative persisting annual savings goals specified in paragraphs (1) through (4) of subsection (b-5) of this Section or in paragraphs (1) through (4) of subsection (b-15) of this Section, as applicable, through implementation of energy efficiency measures; however, the goals may be reduced if the utility's expenditures are limited pursuant to subsection

(m) of this Section or, for a utility that serves less than 3,000,000 retail customers, if each of the following conditions are met: (A) the plan's analysis and forecasts of the utility's ability to acquire energy savings demonstrate that achievement of such goals is not cost effective; and (B) the amount of energy savings achieved by the utility as determined by the independent evaluator for the most recent year for which savings have been evaluated preceding the plan filing was less than the average annual amount of savings required to achieve the goals for the applicable 4-year plan period. Except as provided in subsection (m) of this Section, annual increases in cumulative persisting annual savings goals during the applicable 4-year plan period shall not be reduced to amounts that are less than the maximum amount of cumulative persisting annual savings that is forecast to be cost-effectively achievable during the 4-year plan period. The Commission shall review any proposed goal reduction as part of its review and approval of the utility's proposed plan.

(2) No later than March 1, 2021, each electric utility shall file a 4-year energy efficiency plan commencing on January 1, 2022 that is designed to achieve the cumulative persisting annual savings goals specified in paragraphs (5) through (8) of subsection (b-5) of this Section or in paragraphs (5) through (8) of subsection (b-15) of this

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

(3) No later than March 1, 2025, each electric utility shall file a 5-year energy efficiency plan commencing on January 1, 2026 that is designed to achieve the cumulative persisting annual savings goals specified in paragraphs

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Provide for an annual independent evaluation of the

performance of the cost-effectiveness of the utility's portfolio of measures, as well as a full review of the multi-year plan results of the broader net program impacts and, to the extent practical, for adjustment of the measures on a going-forward basis as a result of the evaluations. The resources dedicated to evaluation shall not exceed 3% of portfolio resources in any given year.

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

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

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

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

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

(bb) the calculation for determining achievement that is less than 125% but more than 100% of the applicable annual incremental goal shall use the reduced applicable annual incremental goal to set the value for 100%

achievement of the goal and shall use the unreduced goal to set the value for 125% achievement. The 8 basis point value shall also be modified, as necessary, so that the 200 basis points are evenly apportioned among each percentage point value between 100% and 125% achievement.

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

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

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

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

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

(7.5) For purposes of this Section, the term "applicable annual incremental goal" means the difference between the cumulative persisting annual savings goal for the calendar year that is the subject of the independent evaluator's determination and the cumulative persisting annual savings goal for the immediately preceding calendar year, as such goals are defined in subsections (b-5) and (b-15) of this Section and as these goals may have been modified as provided for under subsection (b-20) and paragraphs (1) through (3) of subsection (f) of this Section. Under subsections (b), (b-5), (b-10), and (b-15) of this Section, a utility must first replace energy savings from measures that have reached the end of their measure lives and would otherwise have to be replaced to meet the applicable savings goals identified in subsection (b-5) or (b-15) of this Section before any progress towards achievement of its applicable annual incremental goal may be counted. Notwithstanding anything else set forth in this Section, the difference between the actual annual incremental savings achieved in any given year, including the replacement of energy savings from measures that have expired, and the applicable annual incremental goal shall not affect adjustments to the return on equity for subsequent calendar years under this subsection (g).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) Notwithstanding any provision of law to the contrary, an electric utility subject to the requirements of this Section may file a tariff cancelling an automatic adjustment clause tariff in effect under this Section or Section 8-103, which shall take effect no later than one business day after the date such tariff is filed. Thereafter, the utility shall be authorized to defer and recover its expenditures incurred under this Section through a new tariff authorized under subsection (d) of this Section or in the utility's next rate case under Article IX or Section 16-108.5 of this Act, with interest at an annual rate equal to the utility's weighted average cost of capital as approved by the Commission in such case. If the utility elects to file a new tariff under subsection (d) of this Section, the utility may file the tariff within 10 days after the effective date of this amendatory Act of the 99th General Assembly, and the cost inputs to such tariff shall be based on the projected costs to be incurred by the utility during the calendar year in which the new tariff is filed and that were not recovered under the tariff that was cancelled as provided for in this subsection. Such costs shall include those incurred or to be incurred by the utility under its multi-year plan approved under subsections (f) and (g) of this Section, including, but not limited to, projected capital investment costs and projected regulatory asset balances with correspondingly updated depreciation and amortization reserves and expense. The Commission shall, after notice and hearing, approve, or approve with modification, such tariff and cost inputs no later than 75 days after the utility filed the tariff, provided that such approval, or approval with modification, shall be consistent with the provisions of this Section to the extent they do not conflict with this subsection (k). The tariff approved by the Commission shall take effect no later than 5 days after the Commission enters its order approving the tariff.

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

(l) For the calendar years covered by a multi-year plan commencing after December 31, 2017, subsections (a) through (j) of this Section do not apply to any retail customers of an electric utility that serves more than 3,000,000 retail customers in the State and whose total highest 30 minute demand was more than 10,000 kilowatts, or any retail customers of an electric utility that serves less than 3,000,000 retail customers but more than 500,000 retail customers in the State and whose total highest 15 minute demand was more than 10,000 kilowatts. For purposes of this subsection (l), "retail customer" has the meaning set forth in Section 16-102 of this Act. A determination of whether this subsection is applicable to a customer shall be made for each multi-year plan beginning after December 31, 2017. The criteria for determining whether this subsection (l) is applicable to a retail customer shall be based on the 12 consecutive billing periods prior to the start of the first year of each such multi-year plan.

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

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

(2) 3.75% for each of the 4 years beginning January 1,

2022, and

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

of the average amount paid per kilowatthour by residential eligible retail customers during calendar year 2015. To determine the total amount that may be spent by an electric utility in any single year, the applicable percentage of the average amount paid per kilowatthour shall be multiplied by the total amount of energy delivered by such electric utility in the calendar year 2015, adjusted to reflect the proportion of the utility's load attributable to customers who are exempt from subsections (a) through (j) of this Section under subsection (l) of this Section. For purposes of this subsection (m), the amount paid per kilowatthour includes, without limitation, estimated amounts paid for supply, transmission, distribution, surcharges, and add-on taxes. For purposes of this Section, "eligible retail customers" shall have the meaning set forth in Section 16-111.5 of this Act. Once the Commission has approved a plan under subsections (f) and (g) of this Section, no subsequent rate impact determinations shall be made.

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

(220 ILCS 5/8-104)

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

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

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

(b) For purposes of this Section, "energy efficiency" means measures that reduce the amount of energy required to achieve a given end use. "Energy efficiency" also includes measures that reduce the total Btus of electricity and natural gas needed to meet the end use or uses. "Cost-effective" means that the measures satisfy the total resource cost test which, for purposes of this Section, means a standard that is met if, for an investment in energy efficiency, the benefit-cost ratio is greater than one. The benefit-cost ratio is the ratio of the net present value of the total benefits of the measures to the net present value of the total costs as calculated over the lifetime of the measures. The total resource cost test compares the sum of avoided natural gas utility costs, representing the benefits that accrue to the system and the participant in the delivery of those efficiency measures, as well as other quantifiable societal benefits, including avoided electric utility costs, to the sum of all incremental costs of end use measures (including both utility and participant contributions), plus costs to administer, deliver, and evaluate each demand-side measure, to quantify the net savings obtained by substituting demand-side measures for supply resources. In calculating avoided costs, reasonable estimates shall be included for financial costs likely to be imposed by future regulation of emissions of greenhouse gases. The low-income programs described in item (4) of subsection (f) of this Section shall not be required to meet the total resource cost test.

(c) Natural gas utilities shall implement cost-effective energy efficiency measures to meet at least the following natural gas savings requirements, which shall be based upon the total amount of gas delivered to retail customers, other than the customers described in subsection (m) of this Section, during calendar year 2009 multiplied by the applicable percentage. Natural gas utilities may comply with this Section by meeting the annual incremental savings goal in the applicable year or by showing that total cumulative annual savings within a 3-year planning period associated with measures implemented after May 31, 2011 were equal to the sum of each annual incremental savings requirement from May 31, 2011 through the end of the applicable year:

(1) 0.2% by May 31, 2012;

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

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

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

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

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

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

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

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

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

(e) Natural gas utilities shall be responsible for overseeing the design, development, and filing of their efficiency plans with the Commission. The utility shall utilize 75% of the available funding associated with energy efficiency programs approved by the Commission, and may outsource various aspects of program development and implementation. The remaining 25% of available funding shall be used by the Department of Commerce and Economic Opportunity to implement energy efficiency measures that achieve no less than 20% of the requirements of subsection (c) of this Section. Such measures shall be designed in conjunction with the utility and approved by the Commission. The Department may outsource development and implementation of energy efficiency measures. A minimum of 10% of the entire portfolio of cost-effective energy efficiency measures shall be procured from local government, municipal corporations, school districts, and community college districts. Five percent of the entire portfolio of cost-effective energy efficiency measures may be granted to local government and municipal corporations for market transformation initiatives. The Department shall coordinate the implementation of these measures and shall integrate delivery of natural gas efficiency programs with electric efficiency programs delivered pursuant to Section 8-103 of this Act, unless the Department can show that integration is not feasible.

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

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

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

Each utility shall include, in its recovery of costs, the costs estimated for both the utility's and the Department's implementation of energy efficiency measures. Costs collected by the utility for measures implemented by the Department shall be submitted to the Department pursuant to Section 605-323 of the Civil Administrative Code of Illinois, shall be deposited into the Energy Efficiency Portfolio Standards Fund, and shall be used by the Department solely for the purpose of implementing these measures. A utility shall not be required to advance any moneys to the Department but only to forward such funds as it has collected. The Department shall report to the Commission on an annual basis regarding the costs actually incurred by the Department in the implementation of the measures. Any changes to the costs of energy efficiency measures as a result of plan modifications shall be appropriately reflected in amounts recovered by the utility and turned over to the Department.

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

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

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

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

(f) No later than October 1, 2010, each gas utility shall file an energy efficiency plan with the Commission to meet the energy efficiency standards through May 31, 2014. Every 3 years thereafter, each utility shall file, no later than October 1, an energy efficiency plan with the Commission. If a utility does not file such a plan by October 1 of the applicable year, then it shall face a penalty of $100,000 per day until the plan is filed. Each utility's plan shall set forth the utility's proposals to meet the utility's portion of the energy efficiency standards identified in subsection (c) of this Section, as modified by subsection (d) of this Section, taking into account the unique circumstances of the utility's service territory. The Commission shall seek public comment on the utility's plan and shall issue an order approving or disapproving each plan. If the Commission disapproves a plan, the Commission shall, within 30 days, describe in detail the reasons for the disapproval and describe a path by which the utility may file a revised draft of the plan to address the Commission's concerns satisfactorily. If the utility does not refile with the Commission within 60 days after the disapproval, the utility shall be subject to penalties at a rate of $100,000 per day until the plan is filed. This process shall continue, and penalties shall accrue, until the utility has successfully filed a portfolio of energy efficiency measures. Penalties shall be deposited into the Energy Efficiency Trust Fund and the cost of any such penalties may not be recovered from ratepayers. In submitting proposed energy efficiency plans and funding levels to meet the savings goals adopted by this Act the utility shall:

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

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

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

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

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

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

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

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

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

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

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

(1) a large gas utility shall pay $600,000;

(2) a medium gas utility shall pay $400,000; and

(3) a small gas utility shall pay $200,000.

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

If a gas utility fails to meet the efficiency standard specified in subsection (c) of this Section, as modified by subsection (d) of this Section, in any 2 consecutive 3-year planning periods, then the responsibility for implementing the utility's energy efficiency measures shall be transferred to an independent program administrator selected by the Commission. Reasonable and prudent costs incurred by the independent program administrator to meet the efficiency standard specified in subsection (c) of this Section, as modified by subsection (d) of this Section, may be recovered from the customers of the affected gas utilities, other than customers described in subsection (m) of this Section. The utility shall provide the independent program administrator with all information and assistance necessary to perform the program administrator's duties including but not limited to customer, account, and energy usage data, and shall allow the program administrator to include inserts in customer bills. The utility may recover reasonable costs associated with any such assistance.

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

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

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

(m) Subsections (a) through (k) of this Section do not apply to customers of a natural gas utility that have a North American Industry Classification System code number that is 22111 or any such code number beginning with the digits 31, 32, or 33 and (i) annual usage in the aggregate of 4 million therms or more within the service territory of the affected gas utility or with aggregate usage of 8 million therms or more in this State and complying with the provisions of item (l) of this subsection (m); or (ii) using natural gas as feedstock and meeting the usage requirements described in item (i) of this subsection (m), to the extent such annual feedstock usage is greater than 60% of the customer's total annual usage of natural gas.

(1) Customers described in this subsection (m) of this Section shall apply, on a form approved on or before October 1, 2009 by the Department, to the Department to be designated as a self-directing customer ("SDC") or as an exempt customer using natural gas as a feedstock from which other products are made, including, but not limited to, feedstock for a hydrogen plant, on or before the 1st day of February, 2010. Thereafter, application may be made not

less than 6 months before the filing date of the gas utility energy efficiency plan described in subsection (f) of this Section; however, a new customer that commences taking service from a natural gas utility after February 1, 2010 may apply to become a SDC or exempt customer up to 30 days after beginning service. Customers described in this subsection (m) that have not already been approved by the Department may apply to be designated a self-directing customer or exempt customer, on a form approved by the Department, between September 1, 2013 and September 30, 2013. Customer applications that are approved by the Department under this amendatory Act of the 98th General Assembly shall be considered to be a self-directing customer or exempt customer, as applicable, for the current 3-year planning period effective December 1, 2013. Such application shall contain the following:

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

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

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

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

(E) in the case of a SDC, the customer's certification that by October 1 of each year, beginning no sooner than October 1, 2012, the customer will report to the Department information, for the 12-month period ending May 31 of the same year, on all deposits and reductions, if any, to the reserve account during the reporting year, and to the extent deposits to the reserve account in any year are in an amount less than $150,000, the basis for such reduced deposits; reserve account balances by month; a description of energy efficiency measures undertaken by the customer and paid for in whole or in part with funds from the reserve account; an estimate of the energy saved, or to be saved, by the measure; and that the report shall include a verification by an officer or plant manager of the customer or by a registered professional engineer or certified energy efficiency trade professional that the funds withdrawn from the reserve account were used for the energy efficiency measures;

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

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

(H) in the case of either an exempt customer or a

SDC, certification of the natural gas utility or utilities serving the customer in Illinois including the natural gas utility accounts that are the subject of the application; and

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

(2) The Department shall review the application to determine that it contains the information described in provisions (A) through (I) of item (1) of this subsection (m), as applicable. The review shall be completed within 30 days after the date the application is filed with the Department. Absent a determination by the Department within the 30-day period, the applicant shall be considered to be a SDC or exempt customer, as applicable, for all subsequent 3-year planning periods, as of the date of filing the application described in this subsection (m). If the Department determines that the application does not contain the applicable information described in provisions (A) through (I) of item (1) of this subsection (m), it shall notify the customer, in writing, of its determination that the application does not contain the required information and identify the information that is missing, and the customer shall provide the missing information

within 15 working days after the date of receipt of the Department's notification.

(3) The Department shall have the right to audit the information provided in the customer's application and annual reports to ensure continued compliance with the requirements of this subsection. Based on the audit, if the Department determines the customer is no longer in compliance with the requirements of items (A) through (I) of item (1) of this subsection (m), as applicable, the Department shall notify the customer in writing of the noncompliance. The customer shall have 30 days to establish its compliance, and failing to do so, may have its status as a SDC or exempt customer revoked by the Department. The Department shall treat all information provided by any customer seeking SDC status or exemption from the provisions of this Section as strictly confidential.

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

Customers described in this subsection (m) that applied to the Department on January 3, 2013, were approved by the Department on February 13, 2013 to be a self-directing customer or exempt customer, and receive natural gas from a utility that provides gas service to at least 500,000 retail customers in

Illinois and electric service to at least 1,000,000 retail customers in Illinois shall be considered to be a self-directing customer or exempt customer, as applicable, for the current 3-year planning period effective December 1, 2013.

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

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

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

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

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

(b) For purposes of this Section, "energy efficiency" means measures that reduce the amount of energy required to achieve a given end use. "Energy efficiency" also includes measures that reduce the total Btus of electricity and natural gas needed to meet the end use or uses. "Cost-effective" means that the measures satisfy the total resource cost test which, for purposes of this Section, means a standard that is met if, for an investment in energy efficiency, the benefit-cost ratio is greater than one. The benefit-cost ratio is the ratio of the net present value of the total benefits of the measures to the net present value of the total costs as calculated over the lifetime of the measures. The total resource cost test compares the sum of avoided natural gas utility costs, representing the benefits that accrue to the system and the participant in the delivery of those efficiency measures, as well as other quantifiable societal benefits, including avoided electric utility costs, to the sum of all incremental costs of end use measures (including both utility and participant contributions), plus costs to administer, deliver, and evaluate each demand-side measure, to quantify the net savings obtained by substituting demand-side measures for supply resources. In calculating avoided costs, reasonable estimates shall be included for financial costs likely to be imposed by future regulation of emissions of greenhouse gases. The low-income programs described in item (4) of subsection (f) of this Section shall not be required to meet the total resource cost test.

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

(1) 0.2% by May 31, 2012;

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

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

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

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

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

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

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

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

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

(e) The provisions of this subsection (e) apply to those multi-year plans that commence prior to January 1, 2018. The utility shall utilize 75% of the available funding associated with energy efficiency programs approved by the Commission, and may outsource various aspects of program development and implementation. The remaining 25% of available funding shall be used by the Department of Commerce and Economic Opportunity to implement energy efficiency measures that achieve no less than 20% of the requirements of subsection (c) of this Section. Such measures shall be designed in conjunction with the utility and approved by the Commission. The Department may outsource development and implementation of energy efficiency measures. A minimum of 10% of the entire portfolio of cost-effective energy efficiency measures shall be procured from local government, municipal corporations, school districts, and community college districts. Five percent of the entire portfolio of cost-effective energy efficiency measures may be granted to local government and municipal corporations for market transformation initiatives. The Department shall coordinate the implementation of these measures and shall integrate delivery of natural gas efficiency programs with electric efficiency programs delivered pursuant to Section 8-103 of this Act, unless the Department can show that integration is not feasible.

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

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

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

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

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

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

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

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

(e-15) For those multi-year plans that commence prior to January 1, 2018, each utility shall include, in its recovery of costs, the costs estimated for both the utility's and the Department's implementation of energy efficiency measures. Costs collected by the utility for measures implemented by the Department shall be submitted to the Department pursuant to Section 605-323 of the Civil Administrative Code of Illinois, shall be deposited into the Energy Efficiency Portfolio Standards Fund, and shall be used by the Department solely for the purpose of implementing these measures. A utility shall not be required to advance any moneys to the Department but only to forward such funds as it has collected. The Department shall report to the Commission on an annual basis regarding the costs actually incurred by the Department in the implementation of the measures. Any changes to the costs of energy efficiency measures as a result of plan modifications shall be appropriately reflected in amounts recovered by the utility and turned over to the Department.

(f) No later than October 1, 2010, each gas utility shall file an energy efficiency plan with the Commission to meet the energy efficiency standards through May 31, 2014. No later than October 1, 2013, each gas utility shall file an energy efficiency plan with the Commission to meet the energy efficiency standards through May 31, 2017. Beginning in 2017 and every 4 years thereafter, each utility shall file an energy efficiency plan with the Commission to meet the energy efficiency standards for the next applicable 4-year period beginning January 1 of the year following the filing. For those multi-year plans commencing on January 1, 2018, each utility shall file its proposed energy efficiency plan no later than 30 days after the effective date of this amendatory Act of the 99th General Assembly or May 1, 2017, whichever is later. Beginning in 2021 and every 4 years thereafter, each utility shall file its energy efficiency plan no later than March 1. If a utility does not file such a plan on or before the applicable filing deadline for the plan, then it shall face a penalty of $100,000 per day until the plan is filed.

Each utility's plan shall set forth the utility's proposals to meet the utility's portion of the energy efficiency standards identified in subsection (c) of this Section, as modified by subsection (d) of this Section, taking into account the unique circumstances of the utility's service territory. For those plans commencing after December 31, 2021, the Commission shall seek public comment on the utility's plan and shall issue an order approving or disapproving each plan within 6 months after its submission. For those plans commencing on January 1, 2018, the Commission shall seek public comment on the utility's plan and shall issue an order approving or disapproving each plan no later than August 31, 2017, or 105 days after the effective date of this amendatory Act of the 99th General Assembly, whichever is later. If the Commission disapproves a plan, the Commission shall, within 30 days, describe in detail the reasons for the disapproval and describe a path by which the utility may file a revised draft of the plan to address the Commission's concerns satisfactorily. If the utility does not refile with the Commission within 60 days after the disapproval, the utility shall be subject to penalties at a rate of $100,000 per day until the plan is filed. This process shall continue, and penalties shall accrue, until the utility has successfully filed a portfolio of energy efficiency measures. Penalties shall be deposited into the Energy Efficiency Trust Fund and the cost of any such penalties may not be recovered from ratepayers. In submitting proposed energy efficiency plans and funding levels to meet the savings goals adopted by this Act the utility shall:

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

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

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

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

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

(5) Demonstrate that its overall portfolio of energy efficiency measures, not including low-income programs described in item (4) of this subsection (f) and subsection (e-5) of this Section, are cost-effective using the total resource cost test and represent a diverse cross section of opportunities for customers of all rate classes to participate in the programs.

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

feasible or appropriate.

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

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

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

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

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

(1) a large gas utility shall pay $600,000;

(2) a medium gas utility shall pay $400,000; and

(3) a small gas utility shall pay $200,000.

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

If a gas utility fails to meet the efficiency standard specified in subsection (c) of this Section, as modified by subsection (d) of this Section, in any 2 consecutive multi-year planning periods, then the responsibility for implementing the utility's energy efficiency measures shall be transferred to an independent program administrator selected by the Commission. Reasonable and prudent costs incurred by the independent program administrator to meet the efficiency standard specified in subsection (c) of this Section, as modified by subsection (d) of this Section, may be recovered from the customers of the affected gas utilities, other than customers described in subsection (m) of this Section. The utility shall provide the independent program administrator with all information and assistance necessary to perform the program administrator's duties including but not limited to customer, account, and energy usage data, and shall allow the program administrator to include inserts in customer bills. The utility may recover reasonable costs associated with any such assistance.

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

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

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

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

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

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

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

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

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

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

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

(E) in the case of a SDC, the customer's certification that by October 1 of each year, beginning no sooner than October 1, 2012, the customer will report to the Department information, for the 12-month period ending May 31 of the same year, on all deposits and reductions, if any, to the reserve account during the reporting year, and to the extent deposits to the reserve account in any year are in an amount less than $150,000, the basis for such reduced deposits; reserve account balances by month; a description of energy efficiency measures undertaken by the customer and paid for in whole or in part with funds from the reserve account; an estimate of the energy saved, or to be saved, by the measure; and that the report shall include a verification by an officer or plant manager of the customer or by a registered professional engineer or certified energy efficiency trade professional that the funds withdrawn from the reserve account were used for the energy efficiency measures;

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

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

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

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

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

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

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

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

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

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

1, 2020.

(o) Utilities' 3-year energy efficiency plans approved by the Commission on or before the effective date of this amendatory Act of the 99th General Assembly for the period June 1, 2014 through May 31, 2017<u>, including all such programs administered by the Department of Commerce and Economic Opportunity,</u> shall continue to be in force and effect through December 31, 2017 so that the energy efficiency programs set forth in those plans continue to be offered during the period June 1, 2017 through December 31, 2017. Each utility is authorized to increase, on a pro rata basis, the energy savings goals and budgets approved in its plan to reflect the additional 7 months of the plan's operation.

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

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