



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

SB3131

Introduced 2/15/2018, by Sen. Sue Rezin

#### SYNOPSIS AS INTRODUCED:

See Index

Amends the Public Utilities Act. Changes references to "hearing examiner" to references to "administrative law judge" throughout the Act. Repeals provisions concerning emission allowances, conducting a study on billing practices and policies, conducting a study on strategic options for changing the structure of energy service markets, conducting a study on the feasibility of wheeling electricity in the State, rules for recovering costs of canceled facilities, recovery of additional charges refunded to customers, conducting a study on implementing promotional rates for industrial and commercial customers, alternative rate regulations, and conducting a study on patterns of entry and exit for each relevant market for telecommunications services. Removes references to repealed provisions. Makes conforming changes in the High Speed Internet Services and Information Technology Act. Makes other changes. Effective immediately.

LRB100 19958 SMS 35239 b

1 AN ACT concerning regulation.

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

4 Section 5. The High Speed Internet Services and Information  
5 Technology Act is amended by changing Section 20 as follows:

6 (20 ILCS 661/20)

7 Sec. 20. Duties of the enlisted nonprofit organization.

8 (a) The high speed Internet deployment strategy and demand  
9 creation initiative to be performed by the nonprofit  
10 organization shall include, but not be limited to, the  
11 following actions:

12 (1) Create a geographic statewide inventory of high  
13 speed Internet service and other relevant broadband and  
14 information technology services. The inventory shall:

15 (A) identify geographic gaps in high speed  
16 Internet service through a method of GIS mapping of  
17 service availability and GIS analysis at the census  
18 block level;

19 (B) provide a baseline assessment of statewide  
20 high speed Internet deployment in terms of percentage  
21 of Illinois households with high speed Internet  
22 availability; and

23 (C) collect from Facilities-based Providers of

1 Broadband Connections to End User Locations the  
2 information provided pursuant to the agreements  
3 entered into with the non-profit organization as of the  
4 effective date of this amendatory Act of the 96th  
5 General Assembly or similar information from  
6 Facilities-based Providers of Broadband Connections to  
7 End User Locations that do not have the agreements on  
8 said date.

9 For the purposes of item (C), "Facilities-based  
10 Providers of Broadband Connections to End User  
11 Locations" means an entity that meets any of the  
12 following conditions:

13 (i) It owns the portion of the physical  
14 facility that terminates at the end user location.

15 (ii) It obtains unbundled network elements  
16 (UNEs), special access lines, or other leased  
17 facilities that terminate at the end user location  
18 and provisions or equips them as broadband.

19 (iii) It provisions or equips a broadband  
20 wireless channel to the end user location over  
21 licensed or unlicensed spectrum.

22 "Facilities-based Provider of Broadband  
23 Connections to End User Locations" does not include  
24 providers of terrestrial fixed wireless services (such  
25 as Wi-Fi and other wireless Ethernet, or wireless local  
26 area network, applications) that only enable local

1           distribution and sharing of a premises broadband  
2           facility and does not include air-to-ground services.  
3           ~~shall have the same meaning as that term is defined in~~  
4           ~~Section 13-407 of the Public Utilities Act.~~

5           (2) Track and identify, through customer interviews  
6           and surveys and other publicly available sources,  
7           statewide residential and business adoption of high speed  
8           Internet, computers, and related information technology  
9           and any barriers to adoption.

10          (3) Build and facilitate in each county or designated  
11          region a local technology planning team with members  
12          representing a cross section of the community, including,  
13          but not limited to, representatives of business, K-12  
14          education, health care, libraries, higher education,  
15          community-based organizations, local government, tourism,  
16          parks and recreation, and agriculture. Each team shall  
17          benchmark technology use across relevant community  
18          sectors, set goals for improved technology use within each  
19          sector, and develop a plan for achieving its goals, with  
20          specific recommendations for online application  
21          development and demand creation.

22          (4) Collaborate with high speed Internet providers and  
23          technology companies to encourage deployment and use,  
24          especially in underserved areas, by aggregating local  
25          demand, mapping analysis, and creating market intelligence  
26          to improve the business case for providers to deploy.

1           (5) Collaborate with the Department in developing a  
2           program to increase computer ownership and broadband  
3           access for disenfranchised populations across the State.  
4           The program may include grants to local community  
5           technology centers that provide technology training,  
6           promote computer ownership, and increase broadband access.

7           (6) Collaborate with the Department and the Illinois  
8           Commerce Commission regarding the collection of the  
9           information required by this Section to assist in  
10          monitoring and analyzing the broadband markets and the  
11          status of competition and deployment of broadband services  
12          to consumers in the State, including the format of  
13          information requested, provided the Commission enters into  
14          the proprietary and confidentiality agreements governing  
15          such information.

16          (b) The nonprofit organization may apply for federal grants  
17          consistent with the objectives of this Act.

18          (c) (Blank).

19          (d) The nonprofit organization shall have the power to  
20          obtain or to raise funds other than the grants received from  
21          the Department under this Act.

22          (e) The nonprofit organization and its Board of Directors  
23          shall exist separately and independently from the Department  
24          and any other governmental entity, but shall cooperate with  
25          other public or private entities it deems appropriate in  
26          carrying out its duties.

1 (f) Notwithstanding anything in this Act or any other Act  
2 to the contrary, any information that is designated  
3 confidential or proprietary by an entity providing the  
4 information to the nonprofit organization or any other entity  
5 to accomplish the objectives of this Act shall be deemed  
6 confidential, proprietary, and a trade secret and treated by  
7 the nonprofit organization or anyone else possessing the  
8 information as such and shall not be disclosed.

9 (g) The nonprofit organization shall provide a report to  
10 the Commission on Government Forecasting and Accountability on  
11 an annual basis for the first 3 complete State fiscal years  
12 following its enlistment.

13 (Source: P.A. 99-576, eff. 7-15-16.)

14 Section 10. The Public Utilities Act is amended by changing  
15 Sections 2-105, 2-106, 4-304, 5-102, 6-102, 7-204, 8-103B,  
16 8-508, 8-509, 9-102.1, 9-201, 9-214, 9-222.2, 9-223, 10-101,  
17 10-101.1, 10-103, 10-104, 10-105, 10-106, 10-107, 10-110,  
18 10-111, 10-201, 10-204, 13-506.2, 13-515, 16-108.5, and 16-111  
19 as follows:

20 (220 ILCS 5/2-105) (from Ch. 111 2/3, par. 2-105)

21 Sec. 2-105. Organization; executive director; assistants  
22 to Commissioners.

23 (a) In order that the Commission may perform the duties and  
24 exercise the powers granted to it and assume its

1 responsibilities under this Act and any and all other statutes  
2 of this State, the Commission, acting jointly, shall hire an  
3 executive director who shall be responsible to the Commission  
4 and shall serve subject only to removal by the Commission for  
5 good cause. The executive director shall be responsible for the  
6 supervision and direction of the Commission staff and for the  
7 necessary administrative activities of the Commission, subject  
8 only to Commission direction and approval. In furtherance  
9 thereof, the executive director may organize the Commission  
10 staff into such departments, bureaus, sections, or divisions as  
11 he may deem necessary or appropriate. In connection therewith,  
12 the executive director may delegate and assign to one or more  
13 staff member or members the supervision and direction of any  
14 such department, bureau, section, or division.

15 (b) The executive director shall obtain, subject to the  
16 provisions of the Personnel Code, such accountants, engineers,  
17 experts, inspectors, clerks, and employees as may be necessary  
18 to carry out the provisions of this Act or to perform the  
19 duties and exercise the powers conferred by law upon the  
20 Commission. All accountants, engineers, experts, inspectors,  
21 clerks, and employees of the Commission shall receive the  
22 compensation fixed by the Executive Director, subject only to  
23 Commission approval. Notwithstanding these provisions, each  
24 commissioner shall have the authority to retain up to 2  
25 full-time assistants, subject to the provisions of the  
26 Personnel Code, who shall be supervised by the commissioner and

1 whose compensation shall be fixed by the commissioner.

2 (c) The commissioners, executive director, administrative  
3 law judges ~~hearing examiners~~, accountants, engineers, clerks,  
4 inspectors, experts, and other employees shall have reimbursed  
5 to them all actual and necessary traveling and other expenses  
6 and disbursements necessarily incurred or made by them in the  
7 discharge of their official duties. The Commission and  
8 executive director may also incur necessary expenses for office  
9 furniture, stationery, printing, and other incidental  
10 expenses.

11 (d) A copy of any contract executed between the Commission  
12 and the executive director which establishes or provides for  
13 the expenditure of public funds shall be filed with the State  
14 Comptroller within 15 days of execution and shall be available  
15 for public inspection. Any cancellation or modification of any  
16 such contract shall be filed with the State Comptroller within  
17 15 days of execution and shall be available for public  
18 inspection. When a contract or modification required to be  
19 filed under this subsection has not been filed within 30 days  
20 of execution, the State Comptroller shall refuse to issue any  
21 warrant for payment thereunder until the Commission files the  
22 contract or modification with the State Comptroller.

23 (Source: P.A. 89-429, eff. 12-15-95.)

24 (220 ILCS 5/2-106) (from Ch. 111 2/3, par. 2-106)

25 Sec. 2-106. (a) The executive director shall employ



1 ~~administrative law judges hearing examiners~~ to make valuations  
2 of public utility properties, or to estimate proper rates of  
3 service of public utilities, or to examine other questions  
4 coming before the Commission, by taking testimony or by  
5 independent investigation. The executive director shall  
6 designate one administrative law judge ~~hearing examiner~~ to  
7 serve as chief administrative law judge ~~hearing examiner~~ who  
8 shall be responsible for supervising and directing the  
9 activities of all administrative law judges ~~hearing examiners~~,  
10 subject to the approval of the executive director.  
11 Administrative law judges ~~Hearing examiners~~ shall, under the  
12 direction of the chief administrative law judge ~~hearing~~  
13 ~~examiner~~, take testimony of witnesses, examine accounts,  
14 records, books, papers and physical properties, either by  
15 holding hearings or making independent investigations, in any  
16 matter referred to them by the chief administrative law judge  
17 ~~hearing examiner~~; and make report thereof to the chief  
18 administrative law judge ~~hearing examiner~~, and attend at  
19 hearings before the Commission when so directed by the chief  
20 administrative law judge ~~hearing examiner~~, for the purpose of  
21 explaining their investigations and the result thereof to the  
22 Commission and the parties interested; and perform such other  
23 duties as the chief administrative law judge ~~hearing examiner~~  
24 may direct.

25 (b) All administrative law judges ~~hearing examiners~~  
26 employed by the Commission shall be thoroughly familiar with

1 applicable rules of evidence, procedure and administrative  
2 law. At least every two years after an administrative law judge  
3 ~~a hearing examiner~~ is employed by the Commission, the executive  
4 director and chief administrative law judge ~~hearing examiner~~  
5 shall review the performance of such administrative law judge  
6 ~~hearing examiner~~ based on whether the administrative law judge  
7 ~~examiner~~:

8 (i) is, and is perceived to be, fair to all parties;

9 (ii) has a judicious and considerate temperament;

10 (iii) is capable of comprehending and properly conducting  
11 proceedings and other duties to which he is assigned;

12 (iv) is capable of understanding and rendering rulings on  
13 legal and evidentiary issues;

14 (v) is capable of independently evaluating the evidentiary  
15 record and drafting a proposed final order which reflects  
16 careful, impartial and competent analysis; and

17 (vi) meets any other qualifications deemed relevant or  
18 necessary by the executive director or chief administrative law  
19 judge ~~hearing examiner~~.

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

21 (220 ILCS 5/4-304) (from Ch. 111 2/3, par. 4-304)

22 Sec. 4-304. Beginning in 1986, the Commission shall prepare  
23 an annual report which shall be filed by January 31 of each  
24 year with the Joint Committee on Legislative Support Services  
25 of the General Assembly and the Governor and which shall be

1 publicly available. Such report shall include:

2 (1) A general review of agency activities and changes,  
3 including:

4 (a) a review of significant decisions and other  
5 regulatory actions for the preceding year, and pending  
6 cases, and an analysis of the impact of such decisions  
7 and actions, and potential impact of any significant  
8 pending cases;

9 (b) for each significant decision, regulatory  
10 action and pending case, a description of the positions  
11 advocated by major parties, including Commission  
12 staff, and for each such decision rendered or action  
13 taken, the position adopted by the Commission and  
14 reason therefor;

15 (c) a description of the Commission's budget,  
16 caseload, and staff levels, including specifically:

17 (i) a breakdown by type of case of the cases  
18 resolved and filed during the year and of pending  
19 cases;

20 (ii) a description of the allocation of the  
21 Commission's budget, identifying amounts budgeted  
22 for each significant regulatory function or  
23 activity and for each department, bureau, section,  
24 division or office of the Commission and its  
25 employees;

26 (iii) a description of current employee

1 levels, identifying any change occurring during  
2 the year in the number of employees, personnel  
3 policies and practices or compensation levels; and  
4 identifying the number and type of employees  
5 assigned to each Commission regulatory function  
6 and to each department, bureau, section, division  
7 or office of the Commission;

8 (d) a description of any significant changes in  
9 Commission policies, programs or practices with  
10 respect to agency organization and administration,  
11 hearings and procedures or substantive regulatory  
12 activity.

13 (2) A discussion and analysis of the state of each  
14 utility industry regulated by the Commission and  
15 significant changes, trends and developments therein,  
16 including the number and types of firms offering each  
17 utility service, existing, new and prospective  
18 technologies, variations in the quality, availability and  
19 price for utility services in different geographic areas of  
20 the State, and any other industry factors or circumstances  
21 which may affect the public interest or the regulation of  
22 such industries.

23 (3) A specific discussion of the energy planning  
24 responsibilities and activities of the Commission and  
25 energy utilities, including:

26 (a) the extent to which conservation,

1 cogeneration, renewable energy technologies and  
2 improvements in energy efficiency are being utilized  
3 by energy consumers, the extent to which additional  
4 potential exists for the economical utilization of  
5 such supplies, and a description of existing and  
6 proposed programs and policies designed to promote and  
7 encourage such utilization;

8 (b) a description of each energy plan filed with  
9 the Commission pursuant to the provisions of this Act,  
10 and a copy, or detailed summary of the most recent  
11 energy plans adopted by the Commission;

12 (c) a discussion of the powers by which the  
13 Commission is implementing the planning  
14 responsibilities of Article VIII, including a  
15 description of the staff and budget assigned to such  
16 function, the procedures by which Commission staff  
17 reviews and analyzes energy plans submitted by the  
18 utilities, the Department of Natural Resources, and  
19 any other person or party; and

20 (d) a summary of the adoption of solar photovoltaic  
21 systems by residential and small business consumers in  
22 Illinois and a description of any and all barriers to  
23 residential and small business consumers' financing,  
24 installation, and valuation of energy produced by  
25 solar photovoltaic systems; electric utilities,  
26 alternative retail electric suppliers, and installers

1 of distributed generation shall provide all  
2 information requested by the Commission or its staff  
3 necessary to complete the analysis required by this  
4 paragraph (d).

5 (4) A discussion of the extent to which utility  
6 services are available to all Illinois citizens including:

7 (a) the percentage and number of persons or  
8 households requiring each such service who are not  
9 receiving such service, and the reasons therefore,  
10 including specifically the number of such persons or  
11 households who are unable to afford such service;

12 (b) a critical analysis of existing programs  
13 designed to promote and preserve the availability and  
14 affordability of utility services; and

15 (c) an analysis of the financial impact on  
16 utilities and other ratepayers of the inability of some  
17 customers or potential customers to afford utility  
18 service, including the number of service  
19 disconnections and reconnections, and cost thereof and  
20 the dollar amount of uncollectible accounts recovered  
21 through rates.

22 (5) A detailed description of the means by which the  
23 Commission is implementing its new statutory  
24 responsibilities under this Act, and the status of such  
25 implementation, including specifically:

26 (a) Commission reorganization resulting from the

1 addition of an Executive Director and administrative  
2 law judge hearing examiner qualifications and review;

3 (b) Commission responsibilities for construction  
4 and rate supervision, including construction cost  
5 audits, management audits, excess capacity  
6 adjustments, phase-ins of new plant and the means and  
7 capability for monitoring and reevaluating existing or  
8 future construction projects;

9 (c) promulgation and application of rules  
10 concerning ex parte communications, circulation of  
11 recommended orders and transcription of closed  
12 meetings.

13 (6) A description of all appeals taken from Commission  
14 orders, findings or decisions and the status and outcome of  
15 such appeals.

16 (7) A description of the status of all studies and  
17 investigations required by this Act, including those  
18 ordered pursuant to Section ~~Sections 8-304, 9-242, 9-244~~  
19 ~~and~~ 13-301 and all such subsequently ordered studies or  
20 investigations.

21 (8) A discussion of new or potential developments in  
22 federal legislation, and federal agency and judicial  
23 decisions relevant to State regulation of utility  
24 services.

25 (9) All recommendations for appropriate legislative  
26 action by the General Assembly.

1           The Commission may include such other information as it  
2 deems to be necessary or beneficial in describing or explaining  
3 its activities or regulatory responsibilities. The report  
4 required by this Section shall be adopted by a vote of the full  
5 Commission prior to filing.

6           (Source: P.A. 99-107, eff. 7-22-15.)

7           (220 ILCS 5/5-102) (from Ch. 111 2/3, par. 5-102)

8           Sec. 5-102. The Commission shall have power to establish a  
9 uniform system of accounts to be kept by public utilities or to  
10 classify public utilities and to establish a uniform system of  
11 accounts for each class and to prescribe the manner in which  
12 such accounts shall be kept. It may also, in its discretion,  
13 prescribe the forms of accounts to be kept by public utilities,  
14 including records of service, as well as accounts of earnings  
15 and expenses, and any other forms, records and memoranda which  
16 in the judgment of the Commission may be necessary to carry out  
17 any of the provisions of this Act. ~~The system of accounts~~  
18 ~~established by the Commission and the forms of accounts~~  
19 ~~prescribed by it shall not be inconsistent, in the case of~~  
20 ~~corporations subject to the provisions of the Act of Congress~~  
21 ~~entitled, "An Act to regulate commerce," approved February~~  
22 ~~fourth, eighteen hundred and eighty seven, and the Acts~~  
23 ~~amendatory thereof and supplementary thereto, with the systems~~  
24 ~~and forms from time to time established for such corporations~~  
25 ~~by the Interstate Commerce Commission, but nothing herein~~



1 ~~contained shall affect the power of the Commission to prescribe~~  
2 ~~forms of accounts for such corporations, with the approval of~~  
3 ~~the Interstate Commerce Commission, covering information in~~  
4 ~~addition to that required by the Interstate Commerce~~  
5 ~~Commission.~~ Where the Commission has prescribed the forms of  
6 accounts to be kept by any public utility for any of its  
7 business, it shall thereafter be unlawful for such public  
8 utility to keep any accounts for such business other than those  
9 prescribed or approved by the Commission, or those prescribed  
10 by or under the authority of any other state or of the United  
11 States.

12 The Commission may, from time to time, alter, amend or  
13 repeal, in whole or in part, any uniform system of accounts, or  
14 the form and manner of keeping accounts.

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

16 (220 ILCS 5/6-102) (from Ch. 111 2/3, par. 6-102)

17 Sec. 6-102. Authorization of issues of stock.

18 (a) Subject to the provisions of this Act and of the order  
19 of the Commission issued as provided in this Act, a public  
20 utility may issue stocks and stock certificates, and bonds,  
21 notes and other evidences of indebtedness payable at periods of  
22 more than 12 months after the date thereof for any lawful  
23 purpose. However, such public utility shall first have secured  
24 from the Commission an order authorizing such issue and stating  
25 the amount thereof and the purpose or purposes to which the

1 issue or the proceeds thereof are to be applied, and that in  
2 the opinion of the Commission, the money, property or labor to  
3 be procured or paid for by such issue is reasonably required  
4 for the purpose or purposes specified in the order.

5 (b) The provisions of this subsection (b) shall apply only  
6 to (1) any issuances of stock in a cumulative amount, exclusive  
7 of any issuances referred to in item (3), that are 10% or more  
8 in a calendar year or 20% or more in a 24-month period of the  
9 total common stockholders' equity or of the total amount of  
10 preferred stock outstanding, as the case may be, of the public  
11 utility, and (2) to any issuances of bonds, notes or other  
12 evidences of indebtedness in a cumulative principal amount,  
13 exclusive of any issuances referred to in item (3), that are  
14 10% or more in a calendar year or 20% or more in a 24-month  
15 period of the aggregate principal amount of bonds, notes and  
16 other evidences of indebtedness of the public utility  
17 outstanding, all as of the date of the issuance, but shall not  
18 apply to (3) any issuances of stock or of bonds, notes or other  
19 evidences of indebtedness 90% or more of the proceeds of which  
20 are to be used by the public utility for purposes of refunding,  
21 redeeming or refinancing outstanding issues of stock, bonds,  
22 notes or other evidences of indebtedness. To enable it to  
23 determine whether it will issue the order required by  
24 subsection (a) of this Section, the Commission may hold a  
25 hearing and may make such additional inquiry or investigation,  
26 and examine such witnesses, books, papers, accounts, documents

1 and contracts and require the filing of such data as it may  
2 deem of assistance. The public utility may be required by the  
3 Commission to disclose every interest of the directors of such  
4 public utility in any transaction under investigation. The  
5 Commission shall have power to investigate all such  
6 transactions and to inquire into the good faith thereof, to  
7 examine books, papers, accounts, documents and contracts of  
8 public utilities, construction or other companies or of firms  
9 or individuals with whom the public utility shall have had  
10 financial transactions, for the purpose of enabling it to  
11 verify any statements furnished, and to examine into the actual  
12 value of property acquired by or services rendered to such  
13 public utility. Before issuing its order, the Commission, when  
14 it is deemed necessary by the Commission, shall make an  
15 adequate physical valuation of all property of the public  
16 utility, but a valuation already made under proper public  
17 supervision may be adopted, either in whole or in part, at the  
18 discretion of the Commission; and shall also examine all  
19 previously authorized or outstanding securities of the public  
20 utility, and fixed charges attached thereto. A statement of the  
21 results of such physical valuation, and a statement of the  
22 character of all outstanding securities, together with the  
23 conditions under which they are held, shall be included in the  
24 order. The Commission may require that such information or such  
25 part thereof as it thinks proper, shall appear upon the stock,  
26 stock certificate, bond, note or other evidence of indebtedness

1 authorized by its order. The Commission may by its order grant  
2 permission for the issue of such stock certificates, or bonds,  
3 notes or other evidences of indebtedness in the amount applied  
4 for, or in a lesser amount, or not at all, and may attach to the  
5 exercise of its permission such condition or conditions as it  
6 may deem reasonable and necessary. Nothing in this Section  
7 shall prevent a public utility from seeking, nor the Commission  
8 from approving, a shelf registration plan for issuing  
9 securities over a reasonable period in accordance with  
10 regulations established by the United States Securities and  
11 Exchange Commission. Any securities issued pursuant to an  
12 approved shelf registration plan need not be further approved  
13 by the Commission so long as they are in compliance with the  
14 approved shelf registration plan. The Commission shall have the  
15 power to refuse its approval of applications to issue  
16 securities, in whole or in part, upon a finding that the issue  
17 of such securities would be contrary to public interest. The  
18 Commission may also require the public utility to compile for  
19 the information of its shareholders such facts in regard to its  
20 financial transactions, in such form as the Commission may  
21 direct.

22 No public utility shall, without the consent of the  
23 Commission, apply the issue of any stock or stock certificates,  
24 or bond, note or other evidence of indebtedness, which was  
25 issued pursuant to an order of the Commission entered pursuant  
26 to this subsection (b), or any part thereof, or any proceeds

1       thereof, to any purpose not specified in the Commission's order  
2       or to any purpose specified in the Commission's order in excess  
3       of the amount authorized for such purpose; or issue or dispose  
4       of the same on any terms less favorable than those specified in  
5       such order, or a modification thereof. The Commission shall  
6       have the power to require public utilities to account for the  
7       disposition of the proceeds of all sales of stocks and stock  
8       certificates, and bonds, notes and other evidences of  
9       indebtedness, which were issued pursuant to an order of the  
10      Commission entered pursuant to this subsection (b), in such  
11      form and detail as it may deem advisable, and to establish such  
12      rules and regulations as it may deem reasonable and necessary  
13      to insure the disposition of such proceeds for the purpose or  
14      purposes specified in its order.

15           (c) A public utility may issue notes, for proper purposes,  
16      and not in violation of any provision of this Act or any other  
17      Act, payable at periods of not more than 12 months after the  
18      date of issuance of the same, without the consent of the  
19      Commission; but no such note shall, in whole or in part, be  
20      renewed or be refunded from the proceeds of any other such note  
21      or evidence of indebtedness from time to time without the  
22      consent of the Commission for an aggregate period of longer  
23      than 2 years. A "telecommunications carrier" as that term is  
24      defined by Section 13-202 of this Act is exempt from the  
25      requirements of this subsection (c).

26           (d) Any issuance of stock or of bonds, notes or other

1 evidences of indebtedness, other than issuances of notes  
2 pursuant to subsection (c) of this Section, which is not  
3 subject to subsection (b) of this Section, shall be regulated  
4 by the Commission as follows: the public utility shall file  
5 with the Commission, at least 15 days before the date of the  
6 issuance, an informational statement setting forth the type and  
7 amount of the issue and the purpose or purposes to which the  
8 issue or the proceeds thereof are to be applied. Prior to the  
9 date of the issuance specified in the public utility's filing,  
10 the Commission, if it finds that the issuance is not subject to  
11 subsection (b) of this Section, shall issue a written order in  
12 conformance with subsection (a) of this Section authorizing the  
13 issuance. Notwithstanding any other provisions of this Act, the  
14 Commission may delegate its authority to enter the order  
15 required by this subsection (d) to an administrative law judge  
16 ~~a hearing examiner~~.

17 (e) The Commission shall have no power to authorize the  
18 capitalization of the right to be a corporation, or to  
19 authorize the capitalization of any franchise, license, or  
20 permit whatsoever or the right to own, operate or enjoy any  
21 such franchise, license, or permit, in excess of the amount  
22 (exclusive of any tax or annual charge) actually paid to the  
23 State or to a political subdivision thereof as the  
24 consideration for the grant of such franchise, license, permit  
25 or right; nor shall any contract for consolidation or lease be  
26 capitalized, nor shall any public utility hereafter issue any

1 bonds, notes or other evidences of indebtedness against or as a  
2 lien, upon any contract for consolidation or merger.

3 (f) The provisions of this Section shall not apply to  
4 public utilities which are not corporations duly incorporated  
5 under the laws of this State to the extent that any such public  
6 utility may issue stock, bonds, notes or other evidences of  
7 indebtedness not directly or indirectly constituting or  
8 creating a lien or charge on, or right to profits from, any  
9 property used or useful in rendering service within this State.  
10 ~~Nothing in this Section or in Section 6-104 of this Act shall~~  
11 ~~be construed to require a common carrier by railroad subject to~~  
12 ~~Part I of the Interstate Commerce Act, being part of an Act of~~  
13 ~~the 49th Congress of the United States entitled "An Act to~~  
14 ~~Regulate Commerce", as amended, to secure from the Commission~~  
15 ~~authority to issue or execute or deliver any conditional sales~~  
16 ~~contract or similar contract or instrument reserving or~~  
17 ~~retaining title in the seller for all or part of the purchase~~  
18 ~~price of equipment or property used or to be used for or in~~  
19 ~~connection with the transportation of persons or property.~~

20 (Source: P.A. 90-561, eff. 12-16-97; 91-69, eff. 7-9-99.)

21 (220 ILCS 5/7-204) (from Ch. 111 2/3, par. 7-204)

22 Sec. 7-204. Reorganization defined; Commission approval  
23 therefore.

24 (a) For purposes of this Section, "reorganization" means  
25 any transaction which, regardless of the means by which it is

1 accomplished, results in a change in the ownership of a  
2 majority of the voting capital stock of an Illinois public  
3 utility; or the ownership or control of any entity which owns  
4 or controls a majority of the voting capital stock of a public  
5 utility; or by which 2 public utilities merge, or by which a  
6 public utility acquires substantially all of the assets of  
7 another public utility; provided, however, that  
8 "reorganization" as used in this Section shall not include a  
9 mortgage or pledge transaction entered into to secure a bona  
10 fide borrowing by the party granting the mortgage or making the  
11 pledge.

12 In addition to the foregoing, "reorganization" shall  
13 include for purposes of this Section any transaction which,  
14 regardless of the means by which it is accomplished, will have  
15 the effect of terminating the affiliated interest status of any  
16 entity as defined in paragraphs (a), (b), (c) or (d) of  
17 subsection (2) of Section 7-101 of this Act where such entity  
18 had transactions with the public utility, in the 12 calendar  
19 months immediately preceding the date of termination of such  
20 affiliated interest status subject to subsection (3) of Section  
21 7-101 of this Act with a value greater than 15% of the public  
22 utility's revenues for that same 12-month period. If the  
23 proposed transaction would have the effect of terminating the  
24 affiliated interest status of more than one Illinois public  
25 utility, the utility with the greatest revenues for the  
26 12-month period shall be used to determine whether such



1 proposed transaction is a reorganization for the purposes of  
2 this Section. The Commission shall have jurisdiction over any  
3 reorganization as defined herein.

4 (b) No reorganization shall take place without prior  
5 Commission approval. The Commission shall not approve any  
6 proposed reorganization if the Commission finds, after notice  
7 and hearing, that the reorganization will adversely affect the  
8 utility's ability to perform its duties under this Act. The  
9 Commission shall not approve any proposed reorganization  
10 unless the Commission finds, after notice and hearing, ~~in~~  
11 reviewing any proposed reorganization, the Commission must  
12 find that:

13 (1) the proposed reorganization will not diminish the  
14 utility's ability to provide adequate, reliable,  
15 efficient, safe and least-cost public utility service;

16 (2) the proposed reorganization will not result in the  
17 unjustified subsidization of non-utility activities by the  
18 utility or its customers;

19 (3) costs and facilities are fairly and reasonably  
20 allocated between utility and non-utility activities in  
21 such a manner that the Commission may identify those costs  
22 and facilities which are properly included by the utility  
23 for ratemaking purposes;

24 (4) the proposed reorganization will not significantly  
25 impair the utility's ability to raise necessary capital on  
26 reasonable terms or to maintain a reasonable capital

1 structure;

2 (5) the utility will remain subject to all applicable  
3 laws, regulations, rules, decisions and policies governing  
4 the regulation of Illinois public utilities;

5 (6) the proposed reorganization is not likely to have a  
6 significant adverse effect on competition in those markets  
7 over which the Commission has jurisdiction;

8 (7) the proposed reorganization is not likely to result  
9 in any adverse rate impacts on retail customers.

10 (c) The Commission shall not approve a reorganization  
11 without ruling on: (i) the allocation of any savings resulting  
12 from the proposed reorganization; and (ii) whether the  
13 companies should be allowed to recover any costs incurred in  
14 accomplishing the proposed reorganization and, if so, the  
15 amount of costs eligible for recovery and how the costs will be  
16 allocated.

17 (d) The Commission shall issue its Order approving or  
18 denying the proposed reorganization within 11 months after the  
19 application is filed. The Commission may extend the deadline  
20 for a period equivalent to the length of any delay which the  
21 Commission finds to have been caused by the Applicant's failure  
22 to provide data or information requested by the Commission or  
23 that the Commission ordered the Applicant to provide to the  
24 parties. The Commission may also extend the deadline by an  
25 additional period not to exceed 3 months to consider amendments  
26 to the Applicant's filing, or to consider reasonably

1 unforeseeable changes in circumstances subsequent to the  
2 Applicant's initial filing.

3 (e) Subsections (c) and (d) and subparagraphs (6) and (7)  
4 of subsection (b) of this Section shall apply only to merger  
5 applications submitted to the Commission subsequent to April  
6 23, 1997. No other Commission approvals shall be required for  
7 mergers that are subject to this Section.

8 (f) In approving any proposed reorganization pursuant to  
9 this Section the Commission may impose such terms, conditions  
10 or requirements as, in its judgment, are necessary to protect  
11 the interests of the public utility and its customers.

12 (Source: P.A. 90-561, eff. 12-16-97.)

13 (220 ILCS 5/8-103B)

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

16 (a) It is the policy of the State that electric utilities  
17 are required to use cost-effective energy efficiency and  
18 demand-response measures to reduce delivery load. Requiring  
19 investment in cost-effective energy efficiency and  
20 demand-response measures will reduce direct and indirect costs  
21 to consumers by decreasing environmental impacts and by  
22 avoiding or delaying the need for new generation, transmission,  
23 and distribution infrastructure. It serves the public interest  
24 to allow electric utilities to recover costs for reasonably and  
25 prudently incurred expenditures for energy efficiency and

1 demand-response measures. As used in this Section,  
2 "cost-effective" means that the measures satisfy the total  
3 resource cost test. The low-income measures described in  
4 subsection (c) of this Section shall not be required to meet  
5 the total resource cost test. For purposes of this Section, the  
6 terms "energy-efficiency", "demand-response", "electric  
7 utility", and "total resource cost test" have the meanings set  
8 forth in the Illinois Power Agency Act.

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

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

1 deemed value of cumulative persisting annual savings from  
2 energy efficiency measures and programs implemented during the  
3 period beginning January 1, 2012 and ending December 31, 2017,  
4 shall be reduced each year, as follows, and the applicable  
5 value shall be applied to and count toward the utility's  
6 achievement of the cumulative persisting annual savings goals  
7 set forth in subsection (b-5):

8 (1) 5.8% deemed cumulative persisting annual savings  
9 for the year ending December 31, 2018;

10 (2) 5.2% deemed cumulative persisting annual savings  
11 for the year ending December 31, 2019;

12 (3) 4.5% deemed cumulative persisting annual savings  
13 for the year ending December 31, 2020;

14 (4) 4.0% deemed cumulative persisting annual savings  
15 for the year ending December 31, 2021;

16 (5) 3.5% deemed cumulative persisting annual savings  
17 for the year ending December 31, 2022;

18 (6) 3.1% deemed cumulative persisting annual savings  
19 for the year ending December 31, 2023;

20 (7) 2.8% deemed cumulative persisting annual savings  
21 for the year ending December 31, 2024;

22 (8) 2.5% deemed cumulative persisting annual savings  
23 for the year ending December 31, 2025;

24 (9) 2.3% deemed cumulative persisting annual savings  
25 for the year ending December 31, 2026;

26 (10) 2.1% deemed cumulative persisting annual savings

1 for the year ending December 31, 2027;

2 (11) 1.8% deemed cumulative persisting annual savings  
3 for the year ending December 31, 2028;

4 (12) 1.7% deemed cumulative persisting annual savings  
5 for the year ending December 31, 2029; and

6 (13) 1.5% deemed cumulative persisting annual savings  
7 for the year ending December 31, 2030.

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

14 (b-5) Beginning in 2018, electric utilities subject to this  
15 Section that serve more than 3,000,000 retail customers in the  
16 State shall achieve the following cumulative persisting annual  
17 savings goals, as modified by subsection (f) of this Section  
18 and as compared to the deemed baseline of 88,000,000 MWhs of  
19 electric power and energy sales set forth in subsection (b), as  
20 reduced by the number of MWhs equal to the sum of the annual  
21 consumption of customers that are exempt from subsections (a)  
22 through (j) of this Section under subsection (l) of this  
23 Section as averaged across the calendar years 2014, 2015, and  
24 2016, through the implementation of energy efficiency measures  
25 during the applicable year and in prior years, but no earlier  
26 than January 1, 2012:

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

3 (2) 9.1% cumulative persisting annual savings for the  
4 year ending December 31, 2019;

5 (3) 10.4% cumulative persisting annual savings for the  
6 year ending December 31, 2020;

7 (4) 11.8% cumulative persisting annual savings for the  
8 year ending December 31, 2021;

9 (5) 13.1% cumulative persisting annual savings for the  
10 year ending December 31, 2022;

11 (6) 14.4% cumulative persisting annual savings for the  
12 year ending December 31, 2023;

13 (7) 15.7% cumulative persisting annual savings for the  
14 year ending December 31, 2024;

15 (8) 17% cumulative persisting annual savings for the  
16 year ending December 31, 2025;

17 (9) 17.9% cumulative persisting annual savings for the  
18 year ending December 31, 2026;

19 (10) 18.8% cumulative persisting annual savings for  
20 the year ending December 31, 2027;

21 (11) 19.7% cumulative persisting annual savings for  
22 the year ending December 31, 2028;

23 (12) 20.6% cumulative persisting annual savings for  
24 the year ending December 31, 2029; and

25 (13) 21.5% cumulative persisting annual savings for  
26 the year ending December 31, 2030.

1 (b-10) For purposes of this Section, electric utilities  
2 subject to this Section that serve less than 3,000,000 retail  
3 customers but more than 500,000 retail customers in the State  
4 shall be deemed to have achieved a cumulative persisting annual  
5 savings of 6.6% from energy efficiency measures and programs  
6 implemented during the period beginning January 1, 2012 and  
7 ending December 31, 2017, which is based on the deemed average  
8 weather normalized sales of electric power and energy during  
9 calendar years 2014, 2015, and 2016 of 36,900,000 MWhs. For the  
10 purposes of this subsection (b-10) and subsection (b-15), the  
11 36,900,000 MWhs of deemed electric power and energy sales shall  
12 be reduced by the number of MWhs equal to the sum of the annual  
13 consumption of customers that are exempt from subsections (a)  
14 through (j) of this Section under subsection (1) of this  
15 Section, as averaged across the calendar years 2014, 2015, and  
16 2016. After 2017, the deemed value of cumulative persisting  
17 annual savings from energy efficiency measures and programs  
18 implemented during the period beginning January 1, 2012 and  
19 ending December 31, 2017, shall be reduced each year, as  
20 follows, and the applicable value shall be applied to and count  
21 toward the utility's achievement of the cumulative persisting  
22 annual savings goals set forth in subsection (b-15):

23 (1) 5.8% deemed cumulative persisting annual savings  
24 for the year ending December 31, 2018;

25 (2) 5.2% deemed cumulative persisting annual savings  
26 for the year ending December 31, 2019;



1 (3) 4.5% deemed cumulative persisting annual savings  
2 for the year ending December 31, 2020;

3 (4) 4.0% deemed cumulative persisting annual savings  
4 for the year ending December 31, 2021;

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

7 (6) 3.1% deemed cumulative persisting annual savings  
8 for the year ending December 31, 2023;

9 (7) 2.8% deemed cumulative persisting annual savings  
10 for the year ending December 31, 2024;

11 (8) 2.5% deemed cumulative persisting annual savings  
12 for the year ending December 31, 2025;

13 (9) 2.3% deemed cumulative persisting annual savings  
14 for the year ending December 31, 2026;

15 (10) 2.1% deemed cumulative persisting annual savings  
16 for the year ending December 31, 2027;

17 (11) 1.8% deemed cumulative persisting annual savings  
18 for the year ending December 31, 2028;

19 (12) 1.7% deemed cumulative persisting annual savings  
20 for the year ending December 31, 2029; and

21 (13) 1.5% deemed cumulative persisting annual savings  
22 for the year ending December 31, 2030.

23 (b-15) Beginning in 2018, electric utilities subject to  
24 this Section that serve less than 3,000,000 retail customers  
25 but more than 500,000 retail customers in the State shall  
26 achieve the following cumulative persisting annual savings

1 goals, as modified by subsection (b-20) and subsection (f) of  
2 this Section and as compared to the deemed baseline as reduced  
3 by the number of MWhs equal to the sum of the annual  
4 consumption of customers that are exempt from subsections (a)  
5 through (j) of this Section under subsection (l) of this  
6 Section as averaged across the calendar years 2014, 2015, and  
7 2016, through the implementation of energy efficiency measures  
8 during the applicable year and in prior years, but no earlier  
9 than January 1, 2012:

10 (1) 7.4% cumulative persisting annual savings for the  
11 year ending December 31, 2018;

12 (2) 8.2% cumulative persisting annual savings for the  
13 year ending December 31, 2019;

14 (3) 9.0% cumulative persisting annual savings for the  
15 year ending December 31, 2020;

16 (4) 9.8% cumulative persisting annual savings for the  
17 year ending December 31, 2021;

18 (5) 10.6% cumulative persisting annual savings for the  
19 year ending December 31, 2022;

20 (6) 11.4% cumulative persisting annual savings for the  
21 year ending December 31, 2023;

22 (7) 12.2% cumulative persisting annual savings for the  
23 year ending December 31, 2024;

24 (8) 13% cumulative persisting annual savings for the  
25 year ending December 31, 2025;

26 (9) 13.6% cumulative persisting annual savings for the

1 year ending December 31, 2026;

2 (10) 14.2% cumulative persisting annual savings for  
3 the year ending December 31, 2027;

4 (11) 14.8% cumulative persisting annual savings for  
5 the year ending December 31, 2028;

6 (12) 15.4% cumulative persisting annual savings for  
7 the year ending December 31, 2029; and

8 (13) 16% cumulative persisting annual savings for the  
9 year ending December 31, 2030.

10 The difference between the cumulative persisting annual  
11 savings goal for the applicable calendar year and the  
12 cumulative persisting annual savings goal for the immediately  
13 preceding calendar year is 0.8% for the period of January 1,  
14 2018 through December 31, 2025 and 0.6% for the period of  
15 January 1, 2026 through December 31, 2030.

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

26 Within 270 days after the effective date of this amendatory

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

16 (1) 0.0% of cumulative persisting annual savings for  
17 the year ending December 31, 2018;

18 (2) 0.17% of cumulative persisting annual savings for  
19 the year ending December 31, 2019;

20 (3) 0.17% of cumulative persisting annual savings for  
21 the year ending December 31, 2020;

22 (4) 0.33% of cumulative persisting annual savings for  
23 the year ending December 31, 2021;

24 (5) 0.5% of cumulative persisting annual savings for  
25 the year ending December 31, 2022;

26 (6) 0.67% of cumulative persisting annual savings for

1 the year ending December 31, 2023;

2 (7) 0.83% of cumulative persisting annual savings for  
3 the year ending December 31, 2024; and

4 (8) 1.0% of cumulative persisting annual savings for  
5 the year ending December 31, 2025.

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

19 For those energy efficiency measures or programs that save  
20 both electricity and other fuels but are not jointly offered  
21 with a gas utility under plans approved under this Section and  
22 Section 8-104 or not offered with an affiliated gas utility  
23 under paragraph (6) of subsection (f) of Section 8-104 of this  
24 Act, the electric utility may count savings of fuels other than  
25 electricity toward the achievement of its annual savings goal,  
26 and the energy savings value associated with such other fuels

1 shall be converted to electric energy savings on an equivalent  
2 Btu basis at the premises.

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

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

24 The utilities shall also implement energy efficiency  
25 measures targeted at low-income households, which, for  
26 purposes of this Section, shall be defined as households at or

1 below 80% of area median income, and expenditures to implement  
2 the measures shall be no less than \$25,000,000 per year for  
3 electric utilities that serve more than 3,000,000 retail  
4 customers in the State and no less than \$8,350,000 per year for  
5 electric utilities that serve less than 3,000,000 retail  
6 customers but more than 500,000 retail customers in the State.

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

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

23 Each electric utility shall develop and implement  
24 reporting procedures that address and assist in determining the  
25 amount of energy savings that can be applied to the low-income  
26 procurement and expenditure requirements set forth in this

1 subsection (c).

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

11 (d) Notwithstanding any other provision of law to the  
12 contrary, a utility providing approved energy efficiency  
13 measures and, if applicable, demand-response measures in the  
14 State shall be permitted to recover all reasonable and  
15 prudently incurred costs of those measures from all retail  
16 customers, except as provided in subsection (l) of this  
17 Section, as follows, provided that nothing in this subsection  
18 (d) permits the double recovery of such costs from customers:

19 (1) The utility may recover its costs through an  
20 automatic adjustment clause tariff filed with and approved  
21 by the Commission. The tariff shall be established outside  
22 the context of a general rate case. Each year the  
23 Commission shall initiate a review to reconcile any amounts  
24 collected with the actual costs and to determine the  
25 required adjustment to the annual tariff factor to match  
26 annual expenditures. To enable the financing of the



1 incremental capital expenditures, including regulatory  
2 assets, for electric utilities that serve less than  
3 3,000,000 retail customers but more than 500,000 retail  
4 customers in the State, the utility's actual year-end  
5 capital structure that includes a common equity ratio,  
6 excluding goodwill, of up to and including 50% of the total  
7 capital structure shall be deemed reasonable and used to  
8 set rates.

9 (2) A utility may recover its costs through an energy  
10 efficiency formula rate approved by the Commission under a  
11 filing under subsections (f) and (g) of this Section, which  
12 shall specify the cost components that form the basis of  
13 the rate charged to customers with sufficient specificity  
14 to operate in a standardized manner and be updated annually  
15 with transparent information that reflects the utility's  
16 actual costs to be recovered during the applicable rate  
17 year, which is the period beginning with the first billing  
18 day of January and extending through the last billing day  
19 of the following December. The energy efficiency formula  
20 rate shall be implemented through a tariff filed with the  
21 Commission under subsections (f) and (g) of this Section  
22 that is consistent with the provisions of this paragraph  
23 (2) and that shall be applicable to all delivery services  
24 customers. The Commission shall conduct an investigation  
25 of the tariff in a manner consistent with the provisions of  
26 this paragraph (2), subsections (f) and (g) of this

1 Section, and the provisions of Article IX of this Act to  
2 the extent they do not conflict with this paragraph (2).  
3 The energy efficiency formula rate approved by the  
4 Commission shall remain in effect at the discretion of the  
5 utility and shall do the following:

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

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

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

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

8 (ii) 580 basis points.

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

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

22 (i) recovery of incentive compensation expense  
23 that is based on the achievement of operational  
24 metrics, including metrics related to budget  
25 controls, outage duration and frequency, safety,  
26 customer service, efficiency and productivity, and

1 environmental compliance; however, this protocol  
2 shall not apply if such expense related to costs  
3 incurred under this Section is recovered under  
4 Article IX or Section 16-108.5 of this Act;  
5 incentive compensation expense that is based on  
6 net income or an affiliate's earnings per share  
7 shall not be recoverable under the energy  
8 efficiency formula rate;

9 (ii) recovery of pension and other  
10 post-employment benefits expense, provided that  
11 such costs are supported by an actuarial study;  
12 however, this protocol shall not apply if such  
13 expense related to costs incurred under this  
14 Section is recovered under Article IX or Section  
15 16-108.5 of this Act;

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

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

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

24 (E) Provide for an annual reconciliation, as  
25 described in paragraph (3) of this subsection (d), less  
26 any deferred taxes related to the reconciliation, with

1 interest at an annual rate of return equal to the  
2 utility's weighted average cost of capital, including  
3 a revenue conversion factor calculated to recover or  
4 refund all additional income taxes that may be payable  
5 or receivable as a result of that return, of the energy  
6 efficiency revenue requirement reflected in rates for  
7 each calendar year, beginning with the calendar year in  
8 which the utility files its energy efficiency formula  
9 rate tariff under this paragraph (2), with what the  
10 revenue requirement would have been had the actual cost  
11 information for the applicable calendar year been  
12 available at the filing date.

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

23 The Commission shall review the proposed tariff in  
24 conjunction with its review of a proposed multi-year plan,  
25 as specified in paragraph (5) of subsection (g) of this  
26 Section. The review shall be based on the same evidentiary

1 standards, including, but not limited to, those concerning  
2 the prudence and reasonableness of the costs incurred by  
3 the utility, the Commission applies in a hearing to review  
4 a filing for a general increase in rates under Article IX  
5 of this Act. The initial rates shall take effect beginning  
6 with the January monthly billing period following the  
7 Commission's approval.

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

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

22 (3) The provisions of this paragraph (3) shall only  
23 apply to an electric utility that has elected to file an  
24 energy efficiency formula rate under paragraph (2) of this  
25 subsection (d). Subsequent to the Commission's issuance of  
26 an order approving the utility's energy efficiency formula

1 rate structure and protocols, and initial rates under  
2 paragraph (2) of this subsection (d), the utility shall  
3 file, on or before June 1 of each year, with the Chief  
4 Clerk of the Commission its updated cost inputs to the  
5 energy efficiency formula rate for the applicable rate year  
6 and the corresponding new charges, as well as the  
7 information described in paragraph (9) of subsection (g) of  
8 this Section. Each such filing shall conform to the  
9 following requirements and include the following  
10 information:

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

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

23 Notwithstanding any other provision of law to the  
24 contrary, the intent of the reconciliation is to  
25 ultimately reconcile both the revenue requirement  
26 reflected in rates for each calendar year, beginning



1 with the calendar year in which the utility files its  
2 energy efficiency formula rate tariff under paragraph  
3 (2) of this subsection (d), with what the revenue  
4 requirement determined using a year-end rate base for  
5 the applicable calendar year would have been had the  
6 actual cost information for the applicable calendar  
7 year been available at the filing date.

8 For purposes of this Section, "FERC Form 1" means  
9 the Annual Report of Major Electric Utilities,  
10 Licensees and Others that electric utilities are  
11 required to file with the Federal Energy Regulatory  
12 Commission under the Federal Power Act, Sections 3,  
13 4(a), 304 and 209, modified as necessary to be  
14 consistent with 83 Ill. Admin. Code Part 415 as of May  
15 1, 2011. Nothing in this Section is intended to allow  
16 costs that are not otherwise recoverable to be  
17 recoverable by virtue of inclusion in FERC Form 1.

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

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

1 required.

2 Within 45 days after the utility files its annual  
3 update of cost inputs to the energy efficiency formula  
4 rate, the Commission shall with reasonable notice,  
5 initiate a proceeding concerning whether the projected  
6 costs to be incurred by the utility and recovered during  
7 the applicable rate year, and that are reflected in the  
8 inputs to the energy efficiency formula rate, are  
9 consistent with the utility's approved multi-year plan  
10 under subsections (f) and (g) of this Section and whether  
11 the costs incurred by the utility during the prior rate  
12 year were prudent and reasonable. The Commission shall also  
13 have the authority to investigate the information and data  
14 described in paragraph (9) of subsection (g) of this  
15 Section, including the proposed adjustment to the  
16 utility's return on equity component of its weighted  
17 average cost of capital. During the course of the  
18 proceeding, each objection shall be stated with  
19 particularity and evidence provided in support thereof,  
20 after which the utility shall have the opportunity to rebut  
21 the evidence. Discovery shall be allowed consistent with  
22 the Commission's Rules of Practice, which Rules of Practice  
23 shall be enforced by the Commission or the assigned  
24 administrative law judge ~~hearing examiner~~. The Commission  
25 shall apply the same evidentiary standards, including, but  
26 not limited to, those concerning the prudence and

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

1 shall prohibit a party from petitioning the Commission to  
2 rehear or appeal to the courts the order under the  
3 provisions of this Act.

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

1 Reserve System in its weekly H.15 Statistical Release or  
2 successor publication; and (ii) 580 basis points, including a  
3 revenue conversion factor calculated to recover or refund all  
4 additional income taxes that may be payable or receivable as a  
5 result of that return. Capital investment costs shall be  
6 depreciated and recovered over their useful lives consistent  
7 with generally accepted accounting principles. The weighted  
8 average cost of capital shall be applied to the capital  
9 investment cost balance, less any accumulated depreciation and  
10 accumulated deferred income taxes, as of December 31 for a  
11 given year.

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

25 (f) Beginning in 2017, each electric utility shall file an  
26 energy efficiency plan with the Commission to meet the energy

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

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

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

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

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

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



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

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

1 31, 2021, the Commission shall seek public comment on the  
2 utility's plan and shall issue an order approving or  
3 disapproving each plan within 6 months after its submission. If  
4 the Commission disapproves a plan, the Commission shall, within  
5 30 days, describe in detail the reasons for the disapproval and  
6 describe a path by which the utility may file a revised draft  
7 of the plan to address the Commission's concerns  
8 satisfactorily. If the utility does not refile with the  
9 Commission within 60 days, the utility shall be subject to  
10 penalties at a rate of \$100,000 per day until the plan is  
11 filed. This process shall continue, and penalties shall accrue,  
12 until the utility has successfully filed a portfolio of energy  
13 efficiency and demand-response measures. Penalties shall be  
14 deposited into the Energy Efficiency Trust Fund.

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

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

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

26 (3) Demonstrate that its overall portfolio of

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

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

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

23 (B) during 2018, the utility shall conduct a  
24 solicitation process for purposes of requesting  
25 proposals from third-party vendors for those  
26 third-party energy efficiency programs to be offered

1 during one or more of the years commencing January 1,  
2 2019, January 1, 2020, and January 1, 2021; for those  
3 multi-year plans commencing on January 1, 2022 and  
4 January 1, 2026, the utility shall conduct a  
5 solicitation process during 2021 and 2025,  
6 respectively, for purposes of requesting proposals  
7 from third-party vendors for those third-party energy  
8 efficiency programs to be offered during one or more  
9 years of the respective multi-year plan period; for  
10 each solicitation process, the utility shall identify  
11 the sector, technology, or geographical area for which  
12 it is seeking requests for proposals;

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

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

25 The electric utility shall recover all costs  
26 associated with Commission-approved, third-party

1 administered programs regardless of the success of those  
2 programs.

3 (4.5) Implement cost-effective demand-response measures  
4 to reduce peak demand by 0.1% over the prior year for  
5 eligible retail customers, as defined in Section 16-111.5  
6 of this Act, and for customers that elect hourly service  
7 from the utility pursuant to Section 16-107 of this Act,  
8 provided those customers have not been declared  
9 competitive. This requirement continues until December 31,  
10 2026.

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

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

25 (7) For electric utilities that serve more than  
26 3,000,000 retail customers in the State:

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

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

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

1 increased by 8 basis points for each percent by  
2 which the utility achieved above the goal. If the  
3 applicable annual incremental goal was reduced  
4 under paragraphs (1) or (2) of subsection (f) of  
5 this Section, then the following adjustments shall  
6 be made to the calculations described in this item  
7 (ii):

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

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

25 (B) For the period January 1, 2026 through December  
26 31, 2030, provide for an adjustment to the return on

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

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

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



1           which the utility achieved above the goal. If the  
2           applicable annual incremental goal was reduced  
3           under paragraph (3) of subsection (f) of this  
4           Section, then the following adjustments shall be  
5           made to the calculations described in this item  
6           (ii):

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

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

24           (7.5) For purposes of this Section, the term  
25           "applicable annual incremental goal" means the difference  
26           between the cumulative persisting annual savings goal for

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

22 (8) For electric utilities that serve less than  
23 3,000,000 retail customers but more than 500,000 retail  
24 customers in the State:

25 (A) Through December 31, 2025, the applicable  
26 annual incremental goal shall be compared to the annual

1 incremental savings as determined by the independent  
2 evaluator.

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

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

11 (iii) The return on equity component shall not  
12 be increased or decreased if the annual  
13 incremental savings as determined by the  
14 independent evaluator is greater than 84.4% of the  
15 applicable annual incremental goal and less than  
16 100% of the applicable annual incremental goal.

17 (iv) The return on equity component shall not  
18 be increased or decreased by an amount greater than  
19 200 basis points pursuant to this subparagraph  
20 (A).

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

25 (i) The return on equity component shall be  
26 reduced by 6 basis points for each percent by which

1 the utility did not achieve 100% of the applicable  
2 annual incremental goal.

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

7 (iii) The return on equity component shall not  
8 be increased or decreased by an amount greater than  
9 200 basis points pursuant to this subparagraph  
10 (B).

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

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

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

1 shall use the unreduced goal to set the value for  
2 125% achievement. The 8 basis point value shall  
3 also be modified, as necessary, so that the 200  
4 basis points are evenly apportioned among each  
5 percentage point value between 100% and 125%  
6 achievement.

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

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

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

16 For those utilities that must submit the informational  
17 filing, the Commission may, on its own motion or by  
18 petition, initiate an investigation of such filing,  
19 provided, however, that the utility's proposed return on  
20 equity calculation shall be deemed the final, approved  
21 calculation on December 15 of the year in which it is filed  
22 unless the Commission enters an order on or before December  
23 15, after notice and hearing, that modifies such  
24 calculation consistent with this Section.

25 The adjustments to the return on equity component  
26 described in paragraphs (7) and (8) of this subsection (g)

1 shall be applied as described in such paragraphs through a  
2 separate tariff mechanism, which shall be filed by the  
3 utility under subsections (f) and (g) of this Section.

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

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

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

22 (k) Notwithstanding any provision of law to the contrary,  
23 an electric utility subject to the requirements of this Section  
24 may file a tariff cancelling an automatic adjustment clause  
25 tariff in effect under this Section or Section 8-103, which  
26 shall take effect no later than one business day after the date

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



1 (k). The tariff approved by the Commission shall take effect no  
2 later than 5 days after the Commission enters its order  
3 approving the tariff.

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

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

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

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

15 (1) 3.5% for the each of the 4 years beginning January  
16 1, 2018,

17 (2) 3.75% for each of the 4 years beginning January 1,  
18 2022, and

19 (3) 4% for each of the 5 years beginning January 1,  
20 2026,

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

1 the calendar year 2015, adjusted to reflect the proportion of  
2 the utility's load attributable to customers who are exempt  
3 from subsections (a) through (j) of this Section under  
4 subsection (l) of this Section. For purposes of this subsection  
5 (m), the amount paid per kilowatthour includes, without  
6 limitation, estimated amounts paid for supply, transmission,  
7 distribution, surcharges, and add-on taxes. For purposes of  
8 this Section, "eligible retail customers" shall have the  
9 meaning set forth in Section 16-111.5 of this Act. Once the  
10 Commission has approved a plan under subsections (f) and (g) of  
11 this Section, no subsequent rate impact determinations shall be  
12 made.

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

14 (220 ILCS 5/8-508) (from Ch. 111 2/3, par. 8-508)

15 Sec. 8-508. ~~No Except as provided in Section 12-306, no~~  
16 public utility shall abandon or discontinue any service or, in  
17 the case of an electric utility, make any modification as  
18 herein defined, without first having secured the approval of  
19 the Commission, except in case of assignment, transfer, lease  
20 or sale of the whole or any part of its franchises, licenses,  
21 permits, plant, equipment, business, or other property to any  
22 political subdivision or municipal corporation of this State.  
23 In the case of the assignment, transfer, lease or sale, in  
24 whole or in part, of any franchise, license, permit, plant,  
25 equipment, business or other property to any political

1 subdivision or municipal corporation of this State, the public  
2 utility shall notify the Commission of such transaction.  
3 "Modification" as used in this Section means any change of fuel  
4 type which would result in an annual net systemwide decreased  
5 use of 10% or more of coal mined in Illinois. The Commission  
6 shall conduct public hearings on any request by a public  
7 utility to make such modification and shall accept testimony  
8 from interested parties qualified to provide evidence  
9 regarding the cost or cost savings of the proposed modification  
10 as compared with the cost or cost savings of alternative  
11 actions by the utility and shall consider the impact on  
12 employment related to the production of coal in Illinois. Such  
13 hearings shall be commenced no later than 30 days after the  
14 filing of the request by the public utility and shall be  
15 concluded within 120 days from the date of filing. The  
16 Commission must issue its final determination within 60 days of  
17 the conclusion of the hearing. In making its determination the  
18 Commission shall attach primary weight to the cost or cost  
19 savings to the customers of the utility. In granting its  
20 approval, the Commission may impose such terms, conditions or  
21 requirements as in its judgment are necessary to protect the  
22 public interest. Provided, however, that any public utility  
23 abandoning or discontinuing service in pursuance of authority  
24 granted by the Commission shall be deemed to have waived any  
25 and all objections to the terms, conditions or requirements  
26 imposed by the Commission in that regard. Provided, further,

1 that nothing in this Section shall be construed to limit the  
2 right of a public utility to discontinue service to individual  
3 patrons in accordance with the effective rules, regulations,  
4 and practices of such public utility.

5 The Commission, after a hearing upon its own motion or upon  
6 petition of any public utility, shall have power by order to  
7 authorize or require any public utility to curtail or  
8 discontinue service to individual customers or classes  
9 thereof, or for specific purposes or uses, and otherwise to  
10 regulate the furnishing of service, provided that preference  
11 for service shall be given to those customers serving essential  
12 human needs and governmental agencies performing law  
13 enforcement functions, whenever and to the extent such action  
14 is required by the convenience and necessity of the public  
15 during time of war, invasion, insurrection or martial law, or  
16 by reason of a catastrophe, emergency, or shortage of fuel,  
17 supplies or equipment employed or service furnished by such  
18 public utility; provided, however, that an interim order,  
19 effective for a period not exceeding 15 days, may be made  
20 without a hearing if the circumstances do not reasonably permit  
21 the holding of a hearing. Orders for the curtailment or  
22 discontinuance of service pursuant to this paragraph shall not  
23 be continued in effect for any period beyond that which is  
24 reasonably necessary, shall be vacated by the Commission as  
25 soon as public convenience and necessity permit, and shall  
26 include such arrangements for substitute service in the interim

1 as the Commission in its judgment may impose. Every such order,  
2 during the period it is in effect and for such further period,  
3 if any, as the Commission may provide, shall have the effect of  
4 suspending the operation of all prior orders or parts of orders  
5 of the Commission inconsistent therewith. No public utility  
6 shall be held liable for any damage resulting from any action  
7 taken, or any omission to act, pursuant to or in compliance  
8 with any order under this paragraph for the curtailment or  
9 discontinuance of service unless such order was procured by the  
10 fraud of the public utility.

11 (Source: P.A. 87-173.)

12 (220 ILCS 5/8-509) (from Ch. 111 2/3, par. 8-509)

13 Sec. 8-509. When necessary for the construction of any  
14 alterations, additions, extensions or improvements ordered or  
15 authorized under Section 8-406.1 or, 8-503, ~~or 12-218~~ of this  
16 Act, any public utility may enter upon, take or damage private  
17 property in the manner provided for by the law of eminent  
18 domain. If a public utility seeks relief under this Section in  
19 the same proceeding in which it seeks a certificate of public  
20 convenience and necessity under Section 8-406.1 of this Act,  
21 the Commission shall enter its order under this Section either  
22 as part of the Section 8-406.1 order or at the same time it  
23 enters the Section 8-406.1 order. If a public utility seeks  
24 relief under this Section after the Commission enters its order  
25 in the Section 8-406.1 proceeding, the Commission shall issue

1 its order under this Section within 45 days after the utility  
2 files its petition under this Section.

3 This Section applies to the exercise of eminent domain  
4 powers by telephone companies or telecommunications carriers  
5 only when the facilities to be constructed are intended to be  
6 used in whole or in part for providing one or more intrastate  
7 telecommunications services classified as "noncompetitive"  
8 under Section 13-502 in a tariff filed by the condemnor. The  
9 exercise of eminent domain powers by telephone companies or  
10 telecommunications carriers in all other cases shall be  
11 governed solely by "An Act relating to the powers, duties and  
12 property of telephone companies", approved May 16, 1903, as now  
13 or hereafter amended.

14 (Source: P.A. 96-1348, eff. 7-28-10.)

15 (220 ILCS 5/9-102.1)

16 Sec. 9-102.1. Negotiated rates.

17 (a) Notwithstanding anything to the contrary in any other  
18 Section of Article IX of this Act, the Commission may approve  
19 one or more rate schedules filed by a public utility that  
20 enable the public utility to provide service to customers under  
21 contracts that are treated as proprietary and confidential by  
22 the Commission notwithstanding the filing thereof. Service  
23 under the contracts shall be provided on such terms and for  
24 such rates or charges as the public utility and the customer  
25 agree upon, without regard to any rate schedules the public

1 utility may have filed with the Commission under any other  
2 Section of Article IX of this Act. The contracts shall be filed  
3 with the Commission, notwithstanding anything to the contrary  
4 in any schedule referred to in subsection (b) of this Section.  
5 For purposes of Section 3-121 of this Act, the amounts  
6 collected under the contracts shall be treated as having been  
7 collected under rates that the public utility is required to  
8 file under Section 9-102 of this Act.

9 (b) Each schedule described in subsection (a) that became  
10 effective before August 25, 1995, and any contract thereunder,  
11 shall be deemed to have become effective in accordance with its  
12 terms, subject to the provisions of any Commission order that  
13 purported to authorize the schedule.

14 (c) In any determination of the rates to be charged by an  
15 electric public utility having contracts in effect pursuant to  
16 schedules filed under this Section or schedules referred to in  
17 subsection (b) of this Section, the revenues received, or to be  
18 received, by the electric public utility under each such  
19 contract shall be deemed to be equal to the revenues, based on  
20 the actual usage of the customer, that would have been, or  
21 would be, received under the lowest rates available under  
22 schedules on file pursuant to Section 9-201, applicable to a  
23 class of consumers that includes the customer, including any  
24 applicable riders or surcharges, plus any revenues that would  
25 have been, or would be required to pay for investment or  
26 expenses incurred by the electric public utility that would not



1 be incurred if service were provided under such lowest rates.  
2 The cost of capital used to determine rates to be charged by  
3 the electric public utility shall be that which would have  
4 obtained if service were provided under such lowest rates. The  
5 provisions of this subsection (c) shall not apply: (1) in any  
6 determination of the rates to be charged by a gas public  
7 utility, and (2) in any determination of the rates to be  
8 charged by an electric public utility, to contracts in effect  
9 prior to the effective date of this amendatory Act of 1996  
10 pursuant to economic development schedules referred to in  
11 Section 9-241 of this Act, under which the electric public  
12 utility is authorized to provide discounts for new electrical  
13 sales that result from the location of new or expanded  
14 industrial facilities in the electric public utility's service  
15 territory. The preceding sentence shall not be construed to  
16 diminish the Commission's existing authority as of the  
17 effective date of this amendatory Act of 1996 to allocate the  
18 costs of all public utilities equitably, in any determination  
19 of rates, so as to set rates which are just and reasonable.

20 (d) Any contract filed pursuant to the provisions of  
21 subsection (a) of this Section shall be accorded proprietary  
22 and confidential treatment by the Commission and otherwise  
23 deemed to be exempt from the requirements of Sections 9-102,  
24 9-103, 9-104, 9-201, 9-240, 9-241, and 9-243, except to the  
25 extent the Commission may, in its discretion, order otherwise.  
26 The Commission shall permit any statutory consumer protection

1 agency to have access to any such contract, provided that: (i)  
2 the agency, and each individual that will have access on behalf  
3 of the agency, agree in writing to keep such contract  
4 confidential, such agreement to be in a form established by the  
5 Commission; and (ii) access is limited to full-time employees  
6 of the agency and such other persons as are acceptable to the  
7 public utility or, if the agency and the public utility are  
8 unable to agree, are determined to be acceptable by the  
9 Commission. "Statutory consumer protection agency" means any  
10 office, corporation, or other agency created by ~~Article XI of~~  
11 ~~this Act or any other~~ Illinois statute as of the effective date  
12 of this amendatory Act of 1996 that has an express statutory  
13 duty to represent the interest of public utility customers, any  
14 such agency subsequently created by act of the General Assembly  
15 that expressly authorizes the agency to access the information  
16 described in this subsection, or the Attorney General of the  
17 State of Illinois.

18 (e) Nothing in this Section shall be construed to give a  
19 public utility the authority to provide electric or natural gas  
20 service to a customer the public utility is not otherwise  
21 lawfully entitled to serve. Nothing in this Section shall be  
22 construed to affect in any way the service rights of electric  
23 suppliers as granted under the Electric Supplier Act.

24 (f) The provisions of subsection (b) of this Section  
25 9-102.1 are intended to be severable from the remaining  
26 provisions of this Act; and therefore, no determination of the

1 validity of the provisions of subsection (b) shall affect the  
2 validity of the remaining provisions of this Section 9-102.1.

3 (g) After January 1, 2001, no contract for electric service  
4 may be entered into under any schedule filed pursuant to the  
5 provisions of subsection (a) of this Section or under any  
6 schedule referred to in subsection (b) of this Section. The  
7 foregoing provision shall not affect any contract entered into  
8 prior to January 1, 2001.

9 (h) Nothing contained in this Section shall be construed as  
10 preventing any customer or other appropriate party from filing  
11 a complaint or otherwise requesting that the Commission  
12 investigate the reasonableness of the terms and conditions of  
13 any schedule filed under this Section or referred to in  
14 subsection (b) of this Section. Nothing contained in this  
15 Section shall be construed as affecting the right of any  
16 customer or public utility to enter into and enforce any  
17 contract providing for the amounts to be charged for service  
18 where the contract is or has been filed pursuant to any other  
19 Section of this Act. Nothing contained in this Section shall be  
20 construed to limit any Commission authority to authorize a  
21 public utility to engage in experimental programs relating to  
22 competition, including direct access programs.

23 (Source: P.A. 89-600, eff. 8-2-96.)

24 (220 ILCS 5/9-201) (from Ch. 111 2/3, par. 9-201)

25 Sec. 9-201. (a) Unless the Commission otherwise orders, and

1 except as otherwise provided in this Section, no change shall  
2 be made by any public utility in any rate or other charge or  
3 classification, or in any rule, regulation, practice or  
4 contract relating to or affecting any rate or other charge,  
5 classification or service, or in any privilege or facility,  
6 except after 45 days' notice to the Commission and to the  
7 public as herein provided. Such notice shall be given by filing  
8 with the Commission and keeping open for public inspection new  
9 schedules or supplements stating plainly the change or changes  
10 to be made in the schedule or schedules then in force, and the  
11 time when the change or changes will go into effect, and by  
12 publication in a newspaper of general circulation or such other  
13 notice to persons affected by such change as may be prescribed  
14 by rule of the Commission. The Commission, for good cause  
15 shown, may allow changes without requiring the 45 days' notice  
16 herein provided for, by an order specifying the changes so to  
17 be made and the time when they shall take effect and the manner  
18 in which they shall be filed and published.

19 When any change is proposed in any rate or other charge, or  
20 classification, or in any rule, regulation, practice, or  
21 contract relating to or affecting any rate or other charge,  
22 classification or service, or in any privilege or facility,  
23 such proposed change shall be plainly indicated on the new  
24 schedule filed with the Commission, by some character to be  
25 designated by the Commission, immediately preceding or  
26 following the item.

1           When any public utility providing water or sewer service  
2 proposes any change in any rate or other charge, or  
3 classification, or in any rule, regulation, practice, or  
4 contract relating to or affecting any rate or other charge,  
5 classification or service, or in any privilege or facility,  
6 such utility shall, in addition to the other notice  
7 requirements of this Act, provide notice of such change to all  
8 customers potentially affected by including a notice and  
9 description of such change, and of Commission procedures for  
10 intervention, in the first bill sent to each such customer  
11 after the filing of the proposed change.

12           For water or sewer utilities with greater than 15,000 total  
13 customers, the following notice requirements are applicable,  
14 in addition to the other notice requirements of this Act:

15           (1) As a separate bill insert, an initial notice in the  
16 first bill sent to all customers potentially affected by  
17 the proposed change after the filing of the proposed change  
18 shall include:

19           (A) the approximate date when the change or changes  
20 shall go into effect assuming the Commission utilizes  
21 the 11-month process as described in this Section;

22           (B) a statement indicating that the estimated bill  
23 impact may vary based on multiple factors, including,  
24 but not limited to, meter size, usage volume, and the  
25 fire protection district;

26           (C) the water or sewer utility's customer service

1 number or other number as may be appropriate where an  
2 authorized agent of the water or sewer utility can  
3 explain how the proposed increase might impact an  
4 individual customer's bill;

5 (D) if the proposed change involves a change from a  
6 flat to a volumetric rate, an explanation of volumetric  
7 rate;

8 (E) a reference to the water or sewer utility's  
9 website where customers can find tips on water  
10 conservation; and

11 (F) for customers receiving both water and sewer  
12 service from a utility and if the customer has an  
13 option to install a separate meter for irrigation to  
14 mitigate sewer charges, an explanation of the water and  
15 sewer utility's and the customer's responsibilities  
16 for installation of a separate meter if such a change  
17 is approved.

18 (2) A second notice to all customers shall be included  
19 on the first bill after the Commission suspends the tariffs  
20 initiating the rate case.

21 (3) Final notice of such change shall be sent to all  
22 customers potentially affected by the proposed change by  
23 including information required under this paragraph (3)  
24 with the first bill after the effective date of the rates  
25 approved by the Final Order of the Commission in a rate  
26 case. The notice shall include the following:

1 (A) the date when the change or changes went into  
2 effect;

3 (B) the water or sewer utility's customer service  
4 number or other number as may be appropriate where an  
5 authorized agent of the water or sewer utility can  
6 explain how the proposed increase might impact an  
7 individual customer's bill;

8 (C) an explanation that usage shall now be charged  
9 at a volumetric rate rather than a flat rate, if  
10 applicable;

11 (D) a reference to the water or sewer utility's  
12 website where the customer can find tips on water  
13 conservation; and

14 (E) for customers receiving both water and sewer  
15 service from a utility and if the customer has an  
16 option to install a separate meter for irrigation to  
17 mitigate sewer charges, an explanation of the water and  
18 sewer utility's and the customer's responsibilities  
19 for installation of a separate meter if such a change  
20 is approved.

21 (b) Whenever there shall be filed with the Commission any  
22 schedule stating an individual or joint rate or other charge,  
23 classification, contract, practice, rule or regulation, the  
24 Commission shall have power, and it is hereby given authority,  
25 either upon complaint or upon its own initiative without  
26 complaint, at once, and if it so orders, without answer or

1 other formal pleadings by the interested public utility or  
2 utilities, but upon reasonable notice, to enter upon a hearing  
3 concerning the propriety of such rate or other charge,  
4 classification, contract, practice, rule or regulation, and  
5 pending the hearing and decision thereon, such rate or other  
6 charge, classification, contract, practice, rule or regulation  
7 shall not go into effect. The period of suspension of such rate  
8 or other charge, classification, contract, practice, rule or  
9 regulation shall not extend more than 105 days beyond the time  
10 when such rate or other charge, classification, contract,  
11 practice, rule or regulation would otherwise go into effect  
12 unless the Commission, in its discretion, extends the period of  
13 suspension for a further period not exceeding 6 months.

14 All rates or other charges, classifications, contracts,  
15 practices, rules or regulations not so suspended shall, on the  
16 expiration of 45 days from the time of filing the same with the  
17 Commission, or of such lesser time as the Commission may grant,  
18 go into effect and be the established and effective rates or  
19 other charges, classifications, contracts, practices, rules  
20 and regulations, subject to the power of the Commission, after  
21 a hearing had on its own motion or upon complaint, as herein  
22 provided, to alter or modify the same.

23 Within 30 days after such changes have been authorized by  
24 the Commission, copies of the new or revised schedules shall be  
25 posted or filed in accordance with the terms of Section 9-103  
26 of this Act, in such a manner that all changes shall be plainly



1 indicated. The Commission shall incorporate into the period of  
2 suspension a review period of 4 business days during which the  
3 Commission may review and determine whether the new or revised  
4 schedules comply with the Commission's decision approving a  
5 change to the public utility's rates. Such review period shall  
6 not extend the suspension period by more than 2 days. Absent  
7 notification to the contrary within the 4 business day period,  
8 the new or revised schedules shall be deemed approved.

9 (c) If the Commission enters upon a hearing concerning the  
10 propriety of any proposed rate or other charge, classification,  
11 contract, practice, rule or regulation, the Commission shall  
12 establish the rates or other charges, classifications,  
13 contracts, practices, rules or regulations proposed, in whole  
14 or in part, or others in lieu thereof, which it shall find to  
15 be just and reasonable. In such hearing, the burden of proof to  
16 establish the justness and reasonableness of the proposed rates  
17 or other charges, classifications, contracts, practices, rules  
18 or regulations, in whole and in part, shall be upon the  
19 utility. The utility, the staff of the Commission, the Attorney  
20 General, or any party to a proceeding initiated under this  
21 Section who has been granted intervenor status and submitted a  
22 post-hearing brief must be given the opportunity to present  
23 oral argument, if requested no later than the date for filing  
24 exceptions, on the propriety of any proposed rate or other  
25 charge, classification, contract, practice, rule, or  
26 regulation. No rate or other charge, classification, contract,

1 practice, rule or regulation shall be found just and reasonable  
2 unless it is consistent with Sections of this Article.

3 (d) Except where compliance with Section 8-401 of this Act  
4 is of urgent and immediate concern, no representative of a  
5 public utility may discuss with a commissioner, commissioner's  
6 assistant, or administrative law judge ~~hearing examiner~~ in a  
7 non-public setting a planned filing for a general rate  
8 increase. If a public utility makes a filing under this  
9 Section, then no substantive communication by any such person  
10 with a commissioner, commissioner's assistant, or  
11 administrative law judge ~~hearing examiner~~ concerning the  
12 filing is permitted until a notice of hearing has been issued.  
13 After the notice of hearing has been issued, the only  
14 communications by any such person with a commissioner,  
15 commissioner's assistant, or administrative law judge ~~hearing~~  
16 ~~examiner~~ concerning the filing permitted are communications  
17 permitted under Section 10-103 of this Act. If any such  
18 communication does occur, then within 5 days of the docket  
19 being initiated all details relating to the communication shall  
20 be placed on the public record of the proceeding. The record  
21 shall include any materials, whether written, recorded,  
22 filmed, or graphic in nature, produced or reproduced on any  
23 media, used in connection with the communication. The record  
24 shall reflect the names of all persons who transmitted,  
25 received, or were otherwise involved in the communication, the  
26 duration of the communication, and whether the communication

1 occurred in person or by other means. In the case of an oral  
2 communication, the record shall also reflect the location or  
3 locations of all persons involved in the communication and, if  
4 the communication occurred by telephone, the telephone numbers  
5 for the callers and recipients of the communication. A  
6 commissioner, commissioner's assistant, or administrative law  
7 judge ~~hearing examiner~~ who is involved in any such  
8 communication shall be recused from the affected proceeding.  
9 The Commission, or any commissioner or administrative law judge  
10 ~~hearing examiner~~ presiding over the proceeding shall, in the  
11 event of a violation of this Section, take action necessary to  
12 ensure that such violation does not prejudice any party or  
13 adversely affect the fairness of the proceedings including  
14 dismissing the affected proceeding. Nothing in this subsection  
15 (d) is intended to preclude otherwise allowable updates on  
16 issues that may be indirectly related to a general rate case  
17 filing because cost recovery for the underlying activity may be  
18 requested. Such updates may include, without limitation,  
19 issues related to outages and restoration, credit ratings,  
20 security issuances, reliability, Federal Energy Regulatory  
21 Commission matters, Federal Communications Commission matters,  
22 regional reliability organizations, consumer education, or  
23 labor matters, provided that such updates may not include cost  
24 recovery in a planned rate case.

25 (Source: P.A. 98-191, eff. 1-1-14.)

1 (220 ILCS 5/9-214) (from Ch. 111 2/3, par. 9-214)

2 Sec. 9-214. (a) As used in this Section:

3 (1) "CWIP" means those assets which are recorded as  
4 construction work in progress on a public utility's books  
5 of accounts maintained in accordance with the applicable  
6 regulations and orders of the Commission.

7 (2) "Rate base" means the original cost value of the  
8 property on which a return is allowed.

9 (3) "CWIP ratio" means the fraction, expressed as a  
10 percentage, calculated by dividing the amount of CWIP  
11 included in a public utility's rate base by the utility's  
12 rate base.

13 (4) "Existing CWIP" means the amount of CWIP included  
14 in the rate base on December 1, 1983.

15 (b) In any determination under Section 9-201, 9-202 or  
16 9-250 of this Act in a proceeding begun on or after December 1,  
17 1983:

18 (1) For any public utility with a CWIP ratio on  
19 December 1, 1983, which is less than 15%, the Commission  
20 shall not include in the rate base for such public utility  
21 an amount for CWIP to exceed 80% of existing CWIP for the  
22 period from December 1, 1983 through December 31, 1984, and  
23 60% of existing CWIP for the period from January 1, 1985  
24 through December 31, 1985 and 40% of existing CWIP for the  
25 period from January 1, 1986 through December 31, 1986, and  
26 20% of existing CWIP for the period from January 1, 1987

1 through December 31, 1987.

2 (2) For any public utility with a CWIP ratio on  
3 December 1, 1983 which is greater than or equal to 15%, the  
4 Commission shall not include in the rate base for such  
5 public utility an amount for CWIP in excess of the amount  
6 of CWIP included in the rate base on December 1, 1983, plus  
7 50% of the allowed construction expenses incurred by the  
8 public utility from the date of the most recent rate  
9 determination by the Commission prior to December 1, 1983.

10 (c) The limitations set forth in paragraph (b) of this  
11 Section shall not be interpreted as an expansion of the  
12 Commission's authority to include CWIP in the rate base, but  
13 rather solely as a limitation thereon.

14 (d) The Commission shall not include an amount for CWIP in  
15 the rate base for any public utility for the period after  
16 December 31, 1988.

17 (e) Notwithstanding the provisions of paragraphs (b) and  
18 (d) of this Section the Commission may include in the rate base  
19 of a public utility an amount for CWIP for a public utility's  
20 investment which is scheduled to be placed in service within 12  
21 months of the date of the rate determination. For the purposes  
22 of this paragraph nuclear generating facilities shall be  
23 considered to be in service upon the commencement of electric  
24 generation.

25 (f) Notwithstanding the provisions of paragraph (b) and  
26 (d), the Commission may include in the rate base of a public

1 utility an amount of CWIP for a public utility's investment in  
2 pollution control devices for the control of sulfur dioxide  
3 emissions and the purification of water and sewage; provided,  
4 however, that upon application by a public utility which is  
5 constructing one or more pollution control devices for the  
6 control of sulfur dioxide emissions as part of a Clean Air Act  
7 compliance plan approved by the Commission pursuant to  
8 subsection (e) of Section 8-402.1, the Commission shall include  
9 in such public utility's rate base an amount of CWIP equal to  
10 its investment in such pollution control device or devices, but  
11 not to exceed the estimated cost of such facilities specified  
12 in the Commission's order or supplemental order pursuant to  
13 subsection (e) of Section 8-402.1. For purposes of this  
14 subsection (f), the public utility's investment shall not  
15 include the amount of any state, federal or other grants  
16 provided to the public utility to fund the design, acquisition,  
17 construction, installation and testing of pollution control  
18 devices for the control of sulfur dioxide emissions.

19 (g) Except for those amounts of CWIP described in  
20 paragraphs (e) and (f) of this Section, the Commission shall  
21 consider, in any rate filing subsequent to the coming on line  
22 of any new utility plant where CWIP funds have been allowed in  
23 rate base, a rate moderation plan directed towards allowing an  
24 appropriate return to ratepayers for previous amounts  
25 attributable to CWIP funds.

26 ~~The Commission shall conduct an investigation and study of~~

1 ~~the costs and benefits to ratepayers of the inclusion of~~  
2 ~~construction work in progress in rate base. Such study shall~~  
3 ~~include a full opportunity for participation by the public~~  
4 ~~through notice and hearings. If the Commission determines that~~  
5 ~~in certain circumstances the inclusion of CWIP in rate base~~  
6 ~~would be demonstrably beneficial to ratepayers, the Commission~~  
7 ~~shall report its findings with recommendations to the General~~  
8 ~~Assembly by December 31, 1988.~~

9 (Source: P.A. 87-173.)

10 (220 ILCS 5/9-222.2) (from Ch. 111 2/3, par. 9-222.2)

11 Sec. 9-222.2. Additional Charge - Recovery. The additional  
12 charge authorized by Section 9-221 or Section 9-222 shall be  
13 made (i) in the case of a tax measured by gross receipts or  
14 gross revenue, by adding to the customer's bill a uniform  
15 percentage to those amounts payable by the customer for  
16 intrastate utility service which are includible in the measure  
17 of such tax, except, however, such method is not required where  
18 practical considerations justify a utility's or  
19 telecommunications carrier's use of another just and  
20 reasonable method of recovering its entire liability for such  
21 tax, and (ii) in the case of a tax measured by the number of  
22 therms or kilowatt-hours distributed, supplied, furnished,  
23 sold, transported or transmitted, by adding to the customer's  
24 bill an amount equal to the number of therms or kilowatt-hours  
25 which are includible in the measure of such tax, multiplied by

1 the applicable tax rate. ~~Without limiting the generality of the~~  
2 ~~foregoing, it shall not be deemed unjust and unreasonable or a~~  
3 ~~violation of Section 9-241 for telecommunications carriers to~~  
4 ~~recover the expense of taxes imposed by any municipality~~  
5 ~~pursuant to Section 8-11-2 of the Illinois Municipal Code on~~  
6 ~~coin revenues generated by coin operated telecommunications~~  
7 ~~devices by including the expense of the tax within the coin~~  
8 ~~rates for intra state coin paid telecommunications services.~~

9 (Source: P.A. 87-750.)

10 (220 ILCS 5/9-223) (from Ch. 111 2/3, par. 9-223)

11 Sec. 9-223. Fire protection charge.

12 (a) The Commission may authorize any public utility engaged  
13 in the production, storage, transmission, sale, delivery or  
14 furnishing of water to impose a fire protection charge, in  
15 addition to any rate authorized by this Act, sufficient to  
16 cover a reasonable portion of the cost of providing the  
17 capacity, facilities and the water necessary to meet the fire  
18 protection needs of any municipality or public fire protection  
19 district. Such fire protection charge shall be in the form of a  
20 fixed amount per bill and shall be shown separately on the  
21 utility bill of each customer of the municipality or fire  
22 protection district. Any filing by a public utility to impose  
23 such a fire protection charge or to modify a charge shall be  
24 made pursuant to Section 9-201 of this Act. Any fire protection  
25 charge imposed shall reflect the costs associated with



1 providing fire protection service for each municipality or fire  
2 protection district. No such charge shall be imposed directly  
3 on any municipality or fire protection district for a  
4 reasonable level of fire protection services unless provided  
5 for in a separate agreement between the municipality or the  
6 fire protection district and the utility.

7 (b) (Blank). ~~By December 31, 2007, the Commission shall~~  
8 ~~conduct at least 3 public forums to evaluate the purpose and~~  
9 ~~use of each fire protection charge imposed under this Section.~~  
10 ~~At least one forum must be held in northern Illinois, at least~~  
11 ~~one forum must be held in central Illinois, and at least one~~  
12 ~~forum must be held in southern Illinois. The Commission must~~  
13 ~~invite a representative from each municipality and fire~~  
14 ~~protection district affected by a fire protection charge under~~  
15 ~~this Section to attend a public forum. The Commission shall~~  
16 ~~report its findings concerning recommendations concerning the~~  
17 ~~purpose and use of each fire protection charge to the General~~  
18 ~~Assembly no later than the last day of the veto session in~~  
19 ~~2008.~~

20 (Source: P.A. 94-950, eff. 6-27-06.)

21 (220 ILCS 5/10-101) (from Ch. 111 2/3, par. 10-101)

22 Sec. 10-101. The Commission, or any commissioner or  
23 administrative law judge hearing examiner designated by the  
24 Commission, shall have power to hold investigations, inquiries  
25 and hearings concerning any matters covered by the provisions

1 of this Act, or by any other Acts relating to public utilities  
2 subject to such rules and regulations as the Commission may  
3 establish. In the conduct of any investigation, inquiry or  
4 hearing the provisions of the Illinois Administrative  
5 Procedure Act, including but not limited to Sections 10-25 and  
6 10-35 of that Act, shall be applicable and the Commission's  
7 rules shall be consistent therewith. Complaint cases initiated  
8 pursuant to any Section of this Act, investigative proceedings  
9 and ratemaking cases shall be considered "contested cases" as  
10 defined in Section 1-30 of the Illinois Administrative  
11 Procedure Act, any contrary provision therein notwithstanding.  
12 Any proceeding intended to lead to the establishment of  
13 policies, practices, rules or programs applicable to more than  
14 one utility may, in the Commission's discretion, be conducted  
15 pursuant to either rulemaking or contested case provisions,  
16 provided such choice is clearly indicated at the beginning of  
17 such proceeding and subsequently adhered to. No violation of  
18 this Section or the Illinois Administrative Procedure Act and  
19 no informality in any proceeding or in the manner of taking  
20 testimony before the Commission, any commissioner or  
21 administrative law judge ~~hearing examiner~~ of the Commission  
22 shall invalidate any order, decision, rule or regulation made,  
23 approved, or confirmed by the Commission in the absence of  
24 prejudice. All hearings conducted by the Commission shall be  
25 open to the public.

26 Each commissioner and every administrative law judge

1 ~~hearing examiner~~ of the Commission designated by it to hold any  
2 inquiry, investigation or hearing, shall have the power to  
3 administer oaths and affirmations, certify to all official  
4 acts, issue subpoenas, compel the attendance and testimony of  
5 witnesses, and the production of papers, books, accounts and  
6 documents.

7 Hearings shall be held either by the Commission or by one  
8 or more commissioners or administrative law judges ~~hearing~~  
9 ~~examiners~~.

10 When any attorney who is not admitted to the practice of  
11 law in Illinois by unlimited or conditional admission, but who  
12 is licensed in another state, territory, or commonwealth of the  
13 United States, the District of Columbia, or a foreign country  
14 may desire to appear before the Commission, such attorney shall  
15 be allowed to appear before the Commission as provided in  
16 Supreme Court Rule 707.

17 All evidence presented at hearings held by the Commission  
18 or under its authority shall become a part of the records of  
19 the Commission. In all cases in which the Commission bases any  
20 action on reports of investigation or inquiries not conducted  
21 as hearings, such reports shall be made a part of the records  
22 of the Commission. All proceedings of the Commission and all  
23 documents and records in its possession shall be public  
24 records, except as in this Act otherwise provided.

25 To the extent consistent with this Section and the Illinois  
26 Administrative Procedure Act, the Commission may adopt

1 reasonable and proper rules and regulations relative to the  
2 exercise of its powers, and proper rules to govern its  
3 proceedings, and regulate the mode and manner of all  
4 investigations and hearings, and alter and amend the same.

5 (Source: P.A. 98-895, eff. 1-1-15.)

6 (220 ILCS 5/10-101.1)

7 Sec. 10-101.1. Mediation; arbitration; case management.

8 (a) It is the intent of the General Assembly that  
9 proceedings before the Commission shall be concluded as  
10 expeditiously as is possible consistent with the right of the  
11 parties to the due process of law and protection of the public  
12 interest. It is further the intent of the General Assembly to  
13 permit and encourage voluntary mediation and voluntary binding  
14 arbitration of disputes arising under this Act.

15 (b) Nothing in this Act shall prevent parties to contested  
16 cases brought before the Commission from resolving those cases,  
17 or other disputes arising under this Act, in part or in their  
18 entirety, by agreement of all parties, by compromise and  
19 settlement, or by voluntary mediation; provided, however, that  
20 nothing in this Section shall limit the Commission's authority  
21 to conduct such investigations and enter such orders as it  
22 shall deem necessary to enforce the provisions of this Act or  
23 otherwise protect the public interest. Evidence of conduct or  
24 statements made by a party in furtherance of voluntary  
25 mediation or in compromise negotiations is not admissible as

1 evidence should the matter subsequently be heard by the  
2 Commission; provided, however that evidence otherwise  
3 discoverable is not excluded or deemed inadmissible merely  
4 because it is presented in the course of voluntary mediation or  
5 compromise negotiations. No civil penalty shall be imposed upon  
6 parties that reach an agreement pursuant to the mediation  
7 procedures in this Section.

8 (c) The Commission shall prescribe by rule such procedures  
9 and facilities as are necessary to permit parties to resolve  
10 disputes through voluntary mediation prior to the filing of, or  
11 at any point during, the pendency of a contested matter.  
12 Parties to disputes arising under this Act are encouraged to  
13 submit disputes to the Commission for voluntary mediation,  
14 which shall not be binding upon the parties. Submission of a  
15 dispute to voluntary mediation shall not compromise the right  
16 of any party to bring action under this Act.

17 (d) In any contested case before the Commission, at the  
18 Commission's or administrative law judge's ~~hearing examiner's~~  
19 direction or on motion of any party, a case management  
20 conference may be held at such time in the proceeding prior to  
21 evidentiary hearing as the administrative law judge ~~hearing~~  
22 ~~examiner~~ deems proper. Prior to the conference, when directed  
23 to do so, all parties shall file a case management memorandum  
24 that addresses items (1) through (9) as directed by the  
25 administrative law judge ~~hearing examiner~~. At the conference,  
26 the following shall be considered:

1           (1) the identification and simplification of the  
2 issues; provided, however, that the identification of  
3 issues by a party shall not foreclose that party from  
4 raising such other meritorious issues as that party might  
5 subsequently identify;

6           (2) amendments to the pleadings;

7           (3) the possibility of obtaining admissions of fact and  
8 of documents which will avoid unnecessary proof;

9           (4) limitations on discovery including:

10           (A) the area of expertise and the number of  
11 witnesses who will likely be called; provided,  
12 however, that the identification of witnesses by a  
13 party shall not foreclose that party from producing  
14 such other witnesses as that party might subsequently  
15 identify; and

16           (B) schedules for responses to and completion of  
17 discovery; provided, however, that such responses  
18 shall under no circumstances be provided later than 28  
19 days after such discovery or requests are served,  
20 unless the administrative law judge ~~hearing examiner~~  
21 shall order or the parties agree to some other time  
22 period for response;

23           (5) the possibility of settlement and scheduling of a  
24 settlement conference;

25           (6) the advisability of alternative dispute resolution  
26 including, but not limited to, mediation or arbitration;

1           (7) the date on which the matter should be ready for  
2           evidentiary hearing and the likely duration of the hearing;

3           (8) the advisability of holding subsequent case  
4           management conferences; and

5           (9) any other matters that may aid in the disposition  
6           of the action.

7           (e) The Commission is hereby authorized, if requested by  
8           all parties to any complaint brought under this Act, to  
9           arbitrate the complaint and to enter a binding arbitration  
10          award disposing of the complaint. The Commission shall  
11          prescribe by rule procedures for arbitration.

12          (Source: P.A. 92-22, eff. 6-30-01.)

13          (220 ILCS 5/10-103) (from Ch. 111 2/3, par. 10-103)

14          Sec. 10-103. In all proceedings, investigations or  
15          hearings conducted by the Commission, except in the disposition  
16          of matters which the Commission is authorized to entertain or  
17          dispose of on an ex parte basis, any finding, decision or order  
18          made by the Commission shall be based exclusively on the record  
19          for decision in the case, which shall include only the  
20          transcript of testimony and exhibits together with all papers  
21          and requests filed in the proceeding, including, in contested  
22          cases, the documents and information described in Section 10-35  
23          of the Illinois Administrative Procedure Act.

24          The provisions of Section 10-60 of the Illinois  
25          Administrative Procedure Act shall apply in full to Commission

1 proceedings, including ratemaking cases, any provision of the  
2 Illinois Administrative Procedure Act to the contrary  
3 notwithstanding.

4 The provisions of Section 10-60 shall not apply, however,  
5 to communications between Commission employees who are engaged  
6 in investigatory, prosecutorial or advocacy functions and  
7 other parties to the proceeding, provided that such Commission  
8 employees are still prohibited from communicating on an ex  
9 parte basis, as designated in Section 10-60, directly or  
10 indirectly, with members of the Commission, any administrative  
11 law judge ~~hearing examiner~~ in the proceeding, or any Commission  
12 employee who is or may reasonably be expected to be involved in  
13 the decisional process of the proceeding. Any commissioner,  
14 administrative law judge ~~hearing examiner~~, or other person who  
15 is or may reasonably be expected to be involved in the  
16 decisional process of a proceeding, who receives, or who makes  
17 or knowingly causes to be made, a communication prohibited by  
18 this Section or Section 10-60 of the Illinois Administrative  
19 Procedure Act as modified by this Section, shall place on the  
20 public record of the proceeding (1) any and all such written  
21 communications; (2) memoranda stating the substance of any and  
22 all such oral communications; and (3) any and all written  
23 responses and memoranda stating the substance of any and all  
24 oral responses to the materials described in clauses (1) and  
25 (2).

26 The Commission, or any commissioner or administrative law



1 ~~judge hearing examiner~~ presiding over the proceeding, shall in  
2 the event of a violation of this Section, take whatever action  
3 is necessary to ensure that such violation does not prejudice  
4 any party or adversely affect the fairness of the proceedings,  
5 including dismissing the affected matter.

6 (Source: P.A. 96-33, eff. 7-10-09.)

7 (220 ILCS 5/10-104) (from Ch. 111 2/3, par. 10-104)

8 Sec. 10-104. All hearings before the Commission or any  
9 commissioner or administrative law judge ~~hearing examiner~~  
10 shall be held within the county in which the subject matter of  
11 the hearing is situated, or if the subject matter of the  
12 hearing is situated in more than one county, then at a place or  
13 places designated by the Commission, or agreed upon by the  
14 parties in interest, within one or more such counties, or at  
15 the place which in the judgment of the Commission shall be most  
16 convenient to the parties to be heard.

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

18 (220 ILCS 5/10-105) (from Ch. 111 2/3, par. 10-105)

19 Sec. 10-105. No person shall be excused from testifying or  
20 from producing any papers, books, accounts or documents in any  
21 investigation or inquiry or upon any hearing ordered by the  
22 Commission, when ordered to do so by the Commission or any  
23 commissioner or administrative law judge ~~hearing examiner~~,  
24 upon the ground that the testimony or evidence, documentary or

1 otherwise, may tend to incriminate him or subject him to a  
2 penalty or forfeiture. But no person shall be prosecuted or  
3 subjected to any penalty or forfeiture for or on account of any  
4 transaction, matter or thing concerning which he may testify or  
5 produce evidence, documentary or otherwise, before the  
6 Commission or a commissioner or administrative law judge  
7 ~~hearing examiner~~: Provided, that such immunity shall extend  
8 only to a natural person, who in obedience to a subpoena, gives  
9 testimony under oath or produces evidence, documentary or  
10 otherwise under oath. No person so testifying shall be exempt  
11 from prosecution and punishment for perjury committed in so  
12 testifying. The Commission or a commissioner or administrative  
13 law judge ~~hearing examiner~~ may, on the motion of a party or on  
14 its own motion, strike, in whole or in part, the testimony of a  
15 person who is not reasonably prepared to respond to questions  
16 under cross-examination intending to elicit information  
17 directly related to matters raised by that person in his  
18 testimony.

19 (Source: P.A. 93-457, eff. 8-8-03.)

20 (220 ILCS 5/10-106) (from Ch. 111 2/3, par. 10-106)

21 Sec. 10-106. All subpoenas issued under the terms of this  
22 Act may be served by any person of full age. The fees of  
23 witnesses for attendance and travel shall be the same as fees  
24 of witnesses before the circuit courts of this State, such fees  
25 to be paid when the witness is excused from further attendance,

1 when the witness is subpoenaed at the instance of the  
2 Commission, or any commissioner or administrative law judge  
3 ~~hearing examiner~~; and the disbursements made in the payment of  
4 such fees shall be audited and paid in the same manner as are  
5 other expenses of the Commission. Whenever a subpoena is issued  
6 at the instance of a complainant, respondent, or other party to  
7 any proceeding before the Commission, the Commission may  
8 require that the cost of service thereof and the fee of the  
9 witness shall be borne by the party at whose instance the  
10 witness is summoned, and the Commission shall have power, in  
11 its discretion, to require a deposit to cover the cost of such  
12 service and witness fees and the payment of the legal witness  
13 fee and mileage to the witness when served with subpoena. A  
14 subpoena issued as aforesaid shall be served in the same manner  
15 as a subpoena issued out of a court.

16 Any person who shall be served with a subpoena to appear  
17 and testify, or to produce books, papers, accounts or  
18 documents, issued by the Commission or by any commissioner or  
19 administrative law judge ~~hearing examiner~~, in the course of an  
20 inquiry, investigation or hearing conducted under any of the  
21 provisions of this Act, and who refuse or neglect to appear, or  
22 to testify, or to produce books, papers, accounts and documents  
23 relevant to said inquiry, investigation or hearing as commanded  
24 in such subpoena, shall be guilty of a Class A misdemeanor.

25 Any circuit court of this State, upon application of the  
26 Commission, or a commissioner or administrative law judge

1 ~~hearing examiner~~, may, in its discretion, compel the attendance  
2 of witnesses, the production of books, papers, accounts and  
3 documents, and the giving of testimony before the Commission,  
4 or before any such commissioner or administrative law judge  
5 ~~hearing examiner~~, by an attachment for contempt or otherwise,  
6 in the same manner as production of evidence may be compelled  
7 before the court.

8 The Commission or a commissioner or administrative law  
9 judge ~~hearing examiner~~ or any party may in any investigation or  
10 hearing before the Commission, cause the deposition of  
11 witnesses residing within or without the State to be taken in  
12 the manner prescribed by law for like depositions in civil  
13 actions in the courts of this State and to that end may compel  
14 the attendance of witnesses and the production of papers,  
15 books, accounts and documents.

16 The Commission may require, by order served on any public  
17 utility in the manner provided herein for the service of  
18 orders, the production within this State at such time and place  
19 as it may designate, of any books, accounts, papers or  
20 documents kept by any public utility operating within this  
21 State in any office or place without this State, or, at its  
22 option, verified copies in lieu thereof, so that an examination  
23 thereof may be made by the Commission or under its direction.

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

1           Sec. 10-107. The Commission, each commissioner and each  
2 employee of the Commission properly authorized thereby shall  
3 have the right, at any and all times to inspect the papers,  
4 books, accounts and documents, plant, equipment or other  
5 property of any public utility, and the Commission, each  
6 commissioner and any administrative law judge ~~hearing examiner~~  
7 of the Commission authorized to administer oaths shall have the  
8 power to examine under oath any officer, agent or employee of  
9 such public utility in relation to any matter within the  
10 jurisdiction of the Commission. A person other than a  
11 commissioner or administrative law judge ~~hearing examiner~~  
12 demanding such inspection shall produce under the seal of the  
13 Commission his authority to make such inspection. A written  
14 record of the testimony or statement so given under oath shall  
15 be made and filed with the Commission. Information so obtained  
16 shall not be admitted in evidence or used in any proceeding  
17 except in proceedings provided for in this Act.

18           Any party to a proceeding before the Commission shall have  
19 the right to inspect the records of all hearings,  
20 investigations or inquiries conducted by or under the authority  
21 of the Commission, which may relate to the issues involved in  
22 such proceeding; and to submit suggestions as to other matters  
23 to be investigated or as to questions to be propounded. If the  
24 Commission is satisfied that such suggested investigation  
25 should be made or such suggested questions answered, and that  
26 the information desired is within the power of either party to

1 furnish, it shall enter an order requiring the investigation to  
2 be made or the questions to be answered, and upon failure or  
3 refusal to comply with such order, the Commission shall either  
4 refuse to grant the relief prayed for by the party refusing to  
5 comply, or may grant the relief prayed for by the opposing  
6 party against the party refusing to comply.

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

8 (220 ILCS 5/10-110) (from Ch. 111 2/3, par. 10-110)

9 Sec. 10-110. At the time fixed for any hearing upon a  
10 complaint, the complainant and the person or corporation  
11 complained of, and such persons or corporations as the  
12 Commission may allow to intervene, shall be entitled to be  
13 heard and to introduce evidence. The Commission shall issue  
14 process to enforce the attendance of all necessary witnesses.  
15 At the conclusion of such hearing the Commission shall make and  
16 render findings concerning the subject matter and facts  
17 inquired into and enter its order based thereon. A copy of such  
18 order, certified under the seal of the Commission, shall be  
19 served upon the person or corporation complained of, or his or  
20 its attorney, which order shall, of its own force, take effect  
21 and become operative twenty days after the service thereof,  
22 except as otherwise provided, and shall continue in force  
23 either for a period which may be designated therein or until  
24 changed or abrogated by the Commission. Where an order cannot,  
25 in the judgment of the Commission, be complied with within

1 twenty days, the Commission may prescribe such additional time  
2 as in its judgment is reasonably necessary to comply with the  
3 order, and may, on application and for good cause shown, extend  
4 the time for compliance fixed in its order. A full and complete  
5 record shall be preserved of all proceedings had before the  
6 Commission, or any member thereof, or any administrative law  
7 judge ~~hearing-examiner~~, on any formal hearing had, and all  
8 testimony shall be taken down by a stenographer appointed by  
9 the Commission, and the parties shall be entitled to be heard  
10 in person or by attorney.

11 In any proceeding involving a public utility in which the  
12 lawfulness of any of its rates or other charges shall be called  
13 in question by any person or corporation furnishing a commodity  
14 or service in competition with said public utility at prices or  
15 charges not subject to regulation, the Commission may  
16 investigate the competitive prices or other charges demanded or  
17 received by such person or corporation for such commodity or  
18 service, including the rates or other charges applicable to the  
19 transportation thereof. The Commission may, on its own motion  
20 or that of any party to such proceeding, issue subpoenas to  
21 secure the appearance of witnesses or the production of books,  
22 papers, accounts and documents necessary to ascertain the  
23 prices, rates or other charges for such commodity or service or  
24 for the transportation thereof, and shall dismiss from such  
25 proceeding any party failing to comply with a subpoena so  
26 issued.

1           In case of an appeal from any order or decision of the  
2 Commission, under the terms of Sections 10-201 and 10-202 of  
3 this Act, a transcript of such testimony, together with all  
4 exhibits or copies thereof introduced and all information  
5 secured by the Commission on its own initiative and considered  
6 by it in rendering its order or decision (and required by this  
7 Act to be made a part of its records) and of the pleadings,  
8 records and proceedings in the case, including transcripts of  
9 Commission meetings prepared in accordance with Section 10-102  
10 of this Act, shall constitute the record of the Commission:  
11 Provided, that on appeal from an order or decision of the  
12 Commission, the person or corporation taking the appeal and the  
13 Commission may stipulate that a certain question or certain  
14 questions alone and a specified portion only of the evidence  
15 shall be certified to the court for its judgment, whereupon  
16 such stipulation and the question or questions and the evidence  
17 therein specified shall constitute the record on appeal.

18           Copies of all official documents and orders filed or  
19 deposited according to law in the office of the Commission,  
20 certified by the Chairman of the Commission or his or her  
21 designee to be true copies of the originals, under the official  
22 seal of the Commission, shall be evidence in like manner as the  
23 originals.

24           In any matter concerning which the Commission is authorized  
25 to hold a hearing, upon complaint or application or upon its  
26 own motion, notice shall be given to the public utility and to



1 such other interested persons as the Commission shall deem  
2 necessary in the manner provided in Section 10-108, and the  
3 hearing shall be conducted in like manner as if complaint had  
4 been made to or by the Commission. But nothing in this Act  
5 shall be taken to limit or restrict the power of the  
6 Commission, summarily, of its own motion, with or without  
7 notice, to conduct any investigations or inquiries authorized  
8 by this Act, in such manner and by such means as it may deem  
9 proper, and to take such action as it may deem necessary in  
10 connection therewith. With respect to any rules, regulations,  
11 decisions or orders which the Commission is authorized to issue  
12 without a hearing, and so issues, any public utility or other  
13 person or corporation affected thereby and deeming such rules,  
14 regulations, decisions or orders, or any of them, improper,  
15 unreasonable or contrary to law, may apply for a hearing  
16 thereon, setting forth specifically in such application every  
17 ground of objection which the applicant desires to urge against  
18 such rule, regulation, decision or order. The Commission may,  
19 in its discretion, grant or deny the application, and a  
20 hearing, if had, shall be subject to the provisions of this and  
21 the preceding Sections.

22 (Source: P.A. 96-33, eff. 7-10-09.)

23 (220 ILCS 5/10-111) (from Ch. 111 2/3, par. 10-111)

24 Sec. 10-111. In any hearing, proceeding, investigation, or  
25 rulemaking conducted by the Commission, the Commission,

1 commissioner, or administrative law judge ~~hearing examiner~~  
2 presiding, shall, after the close of evidentiary hearings,  
3 prepare a recommended or tentative decision, finding, or order,  
4 including a statement of findings and conclusions and the  
5 reasons or basis therefore, on all the material issues of fact,  
6 law, or discretion presented on the record. Such recommended or  
7 tentative decision, finding, or order shall be served on all  
8 parties who shall be entitled to a reasonable opportunity to  
9 respond thereto, either in briefs or comments otherwise to be  
10 filed or separately. The recommended or tentative decision,  
11 finding, or order and any responses thereto, shall be included  
12 in the record for decision. This Section shall not apply to any  
13 hearing, proceeding, or investigation conducted under Section  
14 13-515.

15 (Source: P.A. 96-33, eff. 7-10-09.)

16 (220 ILCS 5/10-201) (from Ch. 111 2/3, par. 10-201)

17 Sec. 10-201. (a) Jurisdiction. Within 35 days from the date  
18 that a copy of the order or decision sought to be reviewed was  
19 served upon the party affected by any order or decision of the  
20 Commission refusing an application for a rehearing of any rule,  
21 regulation, order or decision of the Commission, including any  
22 order granting or denying interim rate relief, or within 35  
23 days from the date that a copy of the order or decision sought  
24 to be reviewed was served upon the party affected by any final  
25 order or decision of the Commission upon and after a rehearing

1 of any rule, regulation, order or decision of the Commission,  
2 including any order granting or denying interim rate relief,  
3 any person or corporation affected by such rule, regulation,  
4 order or decision, may appeal to the appellate court of the  
5 judicial district in which the subject matter of the hearing is  
6 situated, or if the subject matter of the hearing is situated  
7 in more than one district, then of any one of such districts,  
8 for the purpose of having the reasonableness or lawfulness of  
9 the rule, regulation, order or decision inquired into and  
10 determined.

11 The court first acquiring jurisdiction of any appeal from  
12 any rule, regulation, order or decision shall have and retain  
13 jurisdiction of such appeal and of all further appeals from the  
14 same rule, regulation, order or decision until such appeal is  
15 disposed of in such appellate court.

16 (b) Pleadings and Record. No proceeding to contest any  
17 rule, regulation, decision or order which the Commission is  
18 authorized to issue without a hearing and has so issued shall  
19 be brought in any court unless application shall have been  
20 first made to the Commission for a hearing thereon and until  
21 after such application has been acted upon by the Commission,  
22 nor shall any person or corporation in any court urge or rely  
23 upon any grounds not set forth in such application for a  
24 hearing before the Commission, but the Commission shall decide  
25 the questions presented by the application with all possible  
26 expedition consistent with the duties of the Commission. The

1 party taking such an appeal shall file with the Commission  
2 written notice of the appeal. The Commission, upon the filing  
3 of such notice of appeal, shall, within 5 days thereafter, file  
4 with the clerk of the appellate court to which such appeal is  
5 taken a certified copy of the order appealed. The Commission  
6 shall prepare a copy of the transcript of the evidence,  
7 including exhibits and transcripts of Commission meetings  
8 prepared in accordance with Section 10-102 of this Act, or any  
9 portion of the record designated in a stipulation that only  
10 certain questions are involved on appeal, which stipulation is  
11 to be included in the record provided for in Section 10-110.  
12 The Commission shall certify the record and file the same with  
13 the clerk of the appellate court to which such appeal is taken  
14 within 35 days of the filing of the notice of appeal. The party  
15 serving such notice of appeal shall, within 5 days after the  
16 service of such notice upon the Commission, file a copy of the  
17 notice, with proof of service, with the clerk of the court to  
18 which such appeal is taken, and thereupon the appellate court  
19 shall have jurisdiction over the appeal. The appeal shall be  
20 heard according to the rules governing other civil cases, so  
21 far as the same are applicable.

22 (c) No appellate court shall permit a party affected by any  
23 rule, regulation, order or decision of the Commission to  
24 intervene or become a party plaintiff or appellant in such  
25 court who has not taken an appeal from such rule, regulation,  
26 order or decision in the manner as herein provided.

1           (d) No new or additional evidence may be introduced in any  
2 proceeding upon appeal from a rule, regulation, order or  
3 decision of the Commission, issued or confirmed after a  
4 hearing, but the appeal shall be heard on the record of the  
5 Commission as certified by it. The findings and conclusions of  
6 the Commission on questions of fact shall be held prima facie  
7 to be true and as found by the Commission; rules, regulations,  
8 orders or decisions of the Commission shall be held to be prima  
9 facie reasonable, and the burden of proof upon all issues  
10 raised by the appeal shall be upon the person or corporation  
11 appealing from such rules, regulations, orders or decisions.

12           (e) Powers and duties of Reviewing Court:

13           (i) An appellate court to which any such appeal is  
14 taken shall have the power, and it shall be its duty, to  
15 hear and determine such appeal with all convenient speed.  
16 Any proceeding in any court in this State directly  
17 affecting a rule, regulation, order or decision of the  
18 Commission, or to which the Commission is a party, shall  
19 have priority in hearing and determination over all other  
20 civil proceedings pending in such court, excepting  
21 election contests.

22           (ii) If it appears that the Commission failed to  
23 receive evidence properly proffered, on a hearing or a  
24 rehearing, or an application therefor, the court shall  
25 remand the case, in whole or in part, to the Commission  
26 with instructions to receive the testimony so proffered and

1 rejected, and to enter a new order based upon the evidence  
2 theretofore taken, and such new evidence as it is directed  
3 to receive, unless it shall appear that such new evidence  
4 would not be controlling, in which case the court shall so  
5 find in its order. If the court remands only part of the  
6 Commission's rule, regulation, order or decision, it shall  
7 determine without delay the lawfulness and reasonableness  
8 of any independent portions of the rule, regulation, order  
9 or decision subject to appeal.

10 (iii) If the court determines that the Commission's  
11 rule, regulation, order or decision does not contain  
12 findings or analysis sufficient to allow an informed  
13 judicial review thereof, the court shall remand the rule,  
14 regulation, order or decision, in whole or in part, with  
15 instructions to the Commission to make the necessary  
16 findings or analysis.

17 (iv) The court shall reverse a Commission rule,  
18 regulation, order or decision, in whole or in part, if it  
19 finds that:

20 A. The findings of the Commission are not supported  
21 by substantial evidence based on the entire record of  
22 evidence presented to or before the Commission for and  
23 against such rule, regulation, order or decision; or

24 B. The rule, regulation, order or decision is  
25 without the jurisdiction of the Commission; or

26 C. The rule, regulation, order or decision is in

1 violation of the State or federal constitution or laws;  
2 or

3 D. The proceedings or manner by which the  
4 Commission considered and decided its rule,  
5 regulation, order or decision were in violation of the  
6 State or federal constitution or laws, to the prejudice  
7 of the appellant.

8 (v) The court may affirm or reverse the rule,  
9 regulation, order or decision of the Commission in whole or  
10 in part, or ~~to~~ remand the decision in whole or in part  
11 where a hearing has been held before the Commission, and ~~to~~  
12 state the questions requiring further hearings or  
13 proceedings and ~~to~~ give such other instructions as may be  
14 proper.

15 (vi) When the court remands a rule, regulation, order  
16 or decision of the Commission, in whole or in part, the  
17 Commission shall enter its final order with respect to the  
18 remanded rule, regulation, order or decision no later than  
19 6 months after the date of issuance of the court's mandate.  
20 The Commission shall enter its final order, with respect to  
21 any remanded matter pending before it on the effective date  
22 of this amendatory Act of 1988, no later than 6 months  
23 after the effective date of this amendatory Act of 1988.  
24 However, when the court mandates, or grants an extension of  
25 time which the court determines to be necessary for, the  
26 taking of additional evidence, the Commission shall enter

1 an interim order within 6 months after the issuance of the  
2 mandate (or within 6 months after the effective date of  
3 this amendatory Act of 1988 in the case of a remanded  
4 matter pending before it on the effective date of this  
5 amendatory Act of 1988), and the Commission shall enter its  
6 final order within 5 months after the date the interim  
7 order was entered.

8 (f) When no appeal is taken from a rule, regulation, order  
9 or decision of the Commission, as herein provided, parties  
10 affected by such rule, regulation, order or decision, shall be  
11 deemed to have waived the right to have the merits of the  
12 controversy reviewed by a court and there shall be no trial of  
13 the merits of any controversy in which such rule, regulation,  
14 order or decision was made, by any court to which application  
15 may be made for the enforcement of the same, or in any other  
16 judicial proceedings.

17 (Source: P.A. 96-33, eff. 7-10-09.)

18 (220 ILCS 5/10-204) (from Ch. 111 2/3, par. 10-204)

19 Sec. 10-204. (a) The pendency of an appeal shall not of  
20 itself stay or suspend the operation of the rule, regulation,  
21 order or decision of the Commission, but during the pendency of  
22 the appeal the reviewing court may in its discretion stay or  
23 suspend, in whole or in part, the operation of the Commission's  
24 rule, regulation, order or decision. Any stocks or stock  
25 certificates, bonds, notes, or other evidence of indebtedness



1 issued pursuant to and in accordance with an order of the  
2 Commission shall be valid and binding in accordance with their  
3 terms notwithstanding such order of the Commission is later  
4 vacated, modified, or otherwise held to be wholly or partly  
5 invalid unless operation of such order of the Commission has  
6 been stayed or suspended by the reviewing court prior to such  
7 issuance.

8 (b) No order so staying or suspending a rule, regulation,  
9 order or decision of the Commission shall be made by the court  
10 otherwise than upon 3 days' notice to the Commission and after  
11 a hearing, and if the rule, regulation, order or decision of  
12 the Commission is suspended, the order suspending the same  
13 shall contain a specific finding based upon evidence submitted  
14 to the court, and identified by reference thereto, that great  
15 or irreparable damage would otherwise result to the petitioner,  
16 and specifying the nature of the damage.

17 (c) In case the rule, regulation, order or decision of the  
18 Commission is stayed or suspended, the order of the court shall  
19 not become effective until a suspending bond shall first have  
20 been executed and filed with, and approved by the Commission  
21 (or approved, on review, by the court) payable to the people of  
22 the State of Illinois, and sufficient in amount and security to  
23 insure the prompt payment, by the party petitioning for the  
24 review, of all damages caused by the delay in the enforcement  
25 of the rule, regulation, order or decision of the Commission,  
26 and of all moneys which any person or corporation may be

1 compelled to pay, pending the review proceedings, for  
2 transportation, transmission, product, commodity or service in  
3 excess of the charges fixed by the rule, regulation, order or  
4 decision of the Commission, in case said rule, regulation,  
5 order or decision is sustained. However, no bond shall be  
6 required in the case of any stay or suspension granted on  
7 application of the State or people of the State, represented by  
8 the Attorney General or Public Counsel, or of any city or other  
9 governmental body. The court in case it stays or suspends the  
10 rule, regulation, order or decision of the Commission in any  
11 manner affecting rates or other charges or classifications, may  
12 in its discretion, also by order direct the public utility  
13 affected to pay into court, from time to time thereto to be  
14 impounded until the final decision of the case or into some  
15 bank or trust company paying interest on deposits, under such  
16 conditions as the court may prescribe, all sums of money which  
17 it may collect from any corporation or person in excess of the  
18 sum such corporation or person would have been compelled to pay  
19 if the rule, regulation, order or decision of the Commission  
20 had not been stayed or suspended.

21 (d) When any rate or other charge has been in force for any  
22 length of time exceeding one year, and that rate or other  
23 charge is advanced by the public utility and the order of the  
24 Commission reinstates that ~~such~~ prior rate or other charge, in  
25 whole or in part, no suspending order shall be allowed in any  
26 case from the reinstating order pending the final determination

1 of the case in the reviewing court, pending the final  
2 determination by such reviewing court.

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

4 (220 ILCS 5/13-506.2)

5 (Section scheduled to be repealed on December 31, 2020)

6 Sec. 13-506.2. Market regulation for competitive retail  
7 services.

8 (a) Definitions. As used in this Section:

9 (1) "Electing Provider" means a telecommunications  
10 carrier that is subject to either rate regulation pursuant  
11 to Section 13-504 or Section 13-505 or alternative  
12 regulation pursuant to Section 13-506.1 and that elects to  
13 have the rates, terms, and conditions of its competitive  
14 retail telecommunications services solely determined and  
15 regulated pursuant to the terms of this Article.

16 (2) "Basic local exchange service" means either a  
17 stand-alone residence network access line and per-call  
18 usage or, for any geographic area in which such stand-alone  
19 service is not offered, a stand-alone flat rate residence  
20 network access line for which local calls are not charged  
21 for frequency or duration. Extended Area Service shall be  
22 included in basic local exchange service.

23 (3) "Existing customer" means a residential customer  
24 who was subscribing to one of the optional packages  
25 described in subsection (d) of this Section as of the

1 effective date of this amendatory Act of the 99th General  
2 Assembly. A customer who was subscribing to one of the  
3 optional packages on that date but stops subscribing  
4 thereafter shall not be considered an "existing customer"  
5 as of the date the customer stopped subscribing to the  
6 optional package, unless the stoppage is temporary and  
7 caused by the customer changing service address locations,  
8 or unless the customer resumes subscribing and is eligible  
9 to receive discounts on monthly telephone service under the  
10 federal Lifeline program, 47 C.F.R. Part 54, Subpart E.

11 (4) "New customer" means a residential customer who was  
12 not subscribing to one of the optional packages described  
13 in subsection (d) of this Section as of the effective date  
14 of this amendatory Act of the 99th General Assembly and who  
15 is eligible to receive discounts on monthly telephone  
16 service under the federal Lifeline program, 47 C.F.R. Part  
17 54, Subpart E.

18 (b) Election for market regulation. Notwithstanding any  
19 other provision of this Act, an Electing Provider may elect to  
20 have the rates, terms, and conditions of its competitive retail  
21 telecommunications services solely determined and regulated  
22 pursuant to the terms of this Section by filing written notice  
23 of its election for market regulation with the Commission. The  
24 notice of election shall designate the geographic area of the  
25 Electing Provider's service territory where the market  
26 regulation shall apply, either on a state-wide basis or in one

1 or more specified Market Service Areas ("MSA") or Exchange  
2 areas. An Electing Provider shall not make an election for  
3 market regulation under this Section unless it commits in its  
4 written notice of election for market regulation to fulfill the  
5 conditions and requirements in this Section in each geographic  
6 area in which market regulation is elected. Immediately upon  
7 filing the notice of election for market regulation, the  
8 Electing Provider shall be subject to the jurisdiction of the  
9 Commission to the extent expressly provided in this Section.

10 (c) Competitive classification. Market regulation shall be  
11 available for competitive retail telecommunications services  
12 as provided in this subsection.

13 (1) For geographic areas in which telecommunications  
14 services provided by the Electing Provider were classified  
15 as competitive either through legislative action or a  
16 tariff filing pursuant to Section 13-502 prior to January  
17 1, 2010, and that are included in the Electing Provider's  
18 notice of election pursuant to subsection (b) of this  
19 Section, such services, and all recurring and nonrecurring  
20 charges associated with, related to or used in connection  
21 with such services, shall be classified as competitive  
22 without further Commission review. For services classified  
23 as competitive pursuant to this subsection, the  
24 requirements or conditions in any order or decision  
25 rendered by the Commission pursuant to Section 13-502 prior  
26 to the effective date of this amendatory Act of the 96th

1 General Assembly, except for the commitments made by the  
2 Electing Provider in such order or decision concerning the  
3 optional packages required in subsection (d) of this  
4 Section and basic local exchange service as defined in this  
5 Section, shall no longer be in effect and no Commission  
6 investigation, review, or proceeding under Section 13-502  
7 shall be continued, conducted, or maintained with respect  
8 to such services, charges, requirements, or conditions. If  
9 an Electing Provider has ceased providing optional  
10 packages to customers pursuant to subdivision (d)(8) of  
11 this Section, the commitments made by the Electing Provider  
12 in such order or decision concerning the optional packages  
13 under subsection (d) of this Section shall no longer be in  
14 effect and no Commission investigation, review, or  
15 proceeding under Section 13-502 shall be continued,  
16 conducted, or maintained with respect to such packages.

17 (2) For those geographic areas in which residential  
18 local exchange telecommunications services have not been  
19 classified as competitive as of the effective date of this  
20 amendatory Act of the 96th General Assembly, all  
21 telecommunications services provided to residential and  
22 business end users by an Electing Provider in the  
23 geographic area that is included in its notice of election  
24 pursuant to subsection (b) shall be classified as  
25 competitive for purposes of this Article without further  
26 Commission review.

1           (3) If an Electing Provider was previously subject to  
2 alternative regulation pursuant to Section 13-506.1 of  
3 this Article, the alternative regulation plan shall  
4 terminate in whole for all services subject to that plan  
5 and be of no force or effect, without further Commission  
6 review or action, when the Electing Provider's residential  
7 local exchange telecommunications service in each MSA in  
8 its telecommunications service area in the State has been  
9 classified as competitive pursuant to either subdivision  
10 (c) (1) or (c) (2) of this Section.

11           (4) The service packages described in Section 13-518  
12 shall be classified as competitive for purposes of this  
13 Section if offered by an Electing Provider in a geographic  
14 area in which local exchange telecommunications service  
15 has been classified as competitive pursuant to either  
16 subdivision (c) (1) or (c) (2) of this Section.

17           (5) Where a service, or its functional equivalent, or a  
18 substitute service offered by a carrier that is not an  
19 Electing Provider or the incumbent local exchange carrier  
20 for that area is also being offered by an Electing Provider  
21 for some identifiable class or group of customers in an  
22 exchange, group of exchanges, or some other clearly defined  
23 geographical area, the service offered by a carrier that is  
24 not an Electing Provider or the incumbent local exchange  
25 carrier for that area shall be classified as competitive  
26 without further Commission review.

1           (6) Notwithstanding any other provision of this Act,  
2           retail telecommunications services classified as  
3           competitive pursuant to Section 13-502 or subdivision  
4           (c)(5) of this Section shall have their rates, terms, and  
5           conditions solely determined and regulated pursuant to the  
6           terms of this Section in the same manner and to the same  
7           extent as the competitive retail telecommunications  
8           services of an Electing Provider, except that subsections  
9           (d), (g), and (j) of this Section shall not apply to a  
10          carrier that is not an Electing Provider or to the  
11          competitive telecommunications services of a carrier that  
12          is not an Electing Provider. The access services of a  
13          carrier that is not an Electing Provider shall remain  
14          subject to Section 13-900.2. The requirements in  
15          subdivision (e)(3) of this Section shall not apply to  
16          retail telecommunications services classified as  
17          competitive pursuant to Section 13-502 or subdivision  
18          (c)(5) of this Section, except that, upon request from the  
19          Commission, the telecommunications carrier providing  
20          competitive retail telecommunications services shall  
21          provide a report showing the number of credits and  
22          exemptions for the requested time period.

23          (d) Consumer choice safe harbor options.

24                 (1) Subject to subdivision (d)(8) of this Section, an  
25                 Electing Provider in each of the MSA or Exchange areas  
26                 classified as competitive pursuant to subdivision (c)(1)



1 or (c)(2) of this Section shall offer to all residential  
2 customers who choose to subscribe the following optional  
3 packages of services priced at the same rate levels in  
4 effect on January 1, 2010:

5 (A) A basic package, which shall consist of a  
6 stand-alone residential network access line and 30  
7 local calls. If the Electing Provider offers a  
8 stand-alone residential access line and local usage on  
9 a per call basis, the price for the basic package shall  
10 be the Electing Provider's applicable price in effect  
11 on January 1, 2010 for the sum of a residential access  
12 line and 30 local calls, additional calls over 30 calls  
13 shall be provided at the current per call rate.  
14 However, this basic package is not required if  
15 stand-alone residential network access lines or  
16 per-call local usage are not offered by the Electing  
17 Provider in the geographic area on January 1, 2010 or  
18 if the Electing Provider has not increased its  
19 stand-alone network access line and local usage rates,  
20 including Extended Area Service rates, since January  
21 1, 2010.

22 (B) An extra package, which shall consist of  
23 residential basic local exchange network access line  
24 and unlimited local calls. The price for the extra  
25 package shall be the Electing Provider's applicable  
26 price in effect on January 1, 2010 for a residential

1 access line with unlimited local calls.

2 (C) A plus package, which shall consist of  
3 residential basic local exchange network access line,  
4 unlimited local calls, and the customer's choice of 2  
5 vertical services offered by the Electing Provider.  
6 The term "vertical services" as used in this  
7 subsection, includes, but is not limited to, call  
8 waiting, call forwarding, 3-way calling, caller ID,  
9 call tracing, automatic callback, repeat dialing, and  
10 voicemail. The price for the plus package shall be the  
11 Electing Provider's applicable price in effect on  
12 January 1, 2010 for the sum of a residential access  
13 line with unlimited local calls and 2 times the average  
14 price for the vertical features included in the  
15 package.

16 (2) Subject to subdivision (d) (8) of this Section, for  
17 those geographic areas in which local exchange  
18 telecommunications services were classified as competitive  
19 on the effective date of this amendatory Act of the 96th  
20 General Assembly, an Electing Provider in each such MSA or  
21 Exchange area shall be subject to the same terms and  
22 conditions as provided in commitments made by the Electing  
23 Provider in connection with such previous competitive  
24 classifications, which shall apply with equal force under  
25 this Section, except as follows: (i) the limits on price  
26 increases on the optional packages required by this Section

1 shall be extended consistent with subsection (d) (1) of this  
2 Section and (ii) the price for the extra package required  
3 by subsection (d) (1) (B) shall be reduced by one dollar from  
4 the price in effect on January 1, 2010. In addition, if an  
5 Electing Provider obtains a competitive classification  
6 pursuant to subsection (c) (1) and (c) (2), the price for the  
7 optional packages shall be determined in such area in  
8 compliance with subsection (d) (1), except the price for the  
9 plus package required by subsection (d) (1) (C) shall be the  
10 lower of the price for such area or the price of the plus  
11 package in effect on January 1, 2010 for areas classified  
12 as competitive pursuant to subsection (c) (1).

13 (3) To the extent that the requirements in Section  
14 13-518 applied to a telecommunications carrier prior to the  
15 effective date of this Section and that telecommunications  
16 carrier becomes an Electing Provider in accordance with the  
17 provisions of this Section, the requirements in Section  
18 13-518 shall cease to apply to that Electing Provider in  
19 those geographic areas included in the Electing Provider's  
20 notice of election pursuant to subsection (b) of this  
21 Section.

22 (4) Subject to subdivision (d) (8) of this Section, an  
23 Electing Provider shall make the optional packages  
24 required by this subsection and stand-alone residential  
25 network access lines and local usage, where offered,  
26 readily available to the public by providing information,

1 in a clear manner, to residential customers. Information  
2 shall be made available on a website, and an Electing  
3 Provider shall provide notification to its customers every  
4 6 months, provided that notification may consist of a bill  
5 page message that provides an objective description of the  
6 safe harbor options that includes a telephone number and  
7 website address where the customer may obtain additional  
8 information about the packages from the Electing Provider.  
9 The optional packages shall be offered on a monthly basis  
10 with no term of service requirement. An Electing Provider  
11 shall allow online electronic ordering of the optional  
12 packages and stand-alone residential network access lines  
13 and local usage, where offered, on its website in a manner  
14 similar to the online electronic ordering of its other  
15 residential services.

16 (5) Subject to subdivision (d)(8) of this Section, an  
17 Electing Provider shall comply with the Commission's  
18 existing rules, regulations, and notices in Title 83, Part  
19 735 of the Illinois Administrative Code when offering or  
20 providing the optional packages required by this  
21 subsection (d) and stand-alone residential network access  
22 lines.

23 (6) Subject to subdivision (d)(8) of this Section, an  
24 Electing Provider shall provide to the Commission  
25 semi-annual subscribership reports as of June 30 and  
26 December 31 that contain the number of its customers

1        subscribing to each of the consumer choice safe harbor  
2        packages required by subsection (d)(1) of this Section and  
3        the number of its customers subscribing to retail  
4        residential basic local exchange service as defined in  
5        subsection (a)(2) of this Section. The first semi-annual  
6        reports shall be made on April 1, 2011 for December 31,  
7        2010, and on September 1, 2011 for June 30, 2011, and  
8        semi-annually on April 1 and September 1 thereafter. Such  
9        subscribership information shall be accorded confidential  
10       and proprietary treatment upon request by the Electing  
11       Provider.

12       (7) The Commission shall have the power, after notice  
13       and hearing as provided in this Article, upon complaint or  
14       upon its own motion, to take corrective action if the  
15       requirements of this Section are not complied with by an  
16       Electing Provider.

17       (8) On and after the effective date of this amendatory  
18       Act of the 99th General Assembly, an Electing Provider  
19       shall continue to offer and provide the optional packages  
20       described in this subsection (d) to existing customers and  
21       new customers. On and after July 1, 2017, an Electing  
22       Provider may immediately stop offering the optional  
23       packages described in this subsection (d) and, upon  
24       providing two notices to affected customers and to the  
25       Commission, may stop providing the optional packages  
26       described in this subsection (d) to all customers who

1 subscribe to one of the optional packages. The first notice  
2 shall be provided at least 90 days before the date upon  
3 which the Electing Provider intends to stop providing the  
4 optional packages, and the second notice must be provided  
5 at least 30 days before that date. The first notice shall  
6 not be provided prior to July 1, 2017. Each notice must  
7 identify the date on which the Electing Provider intends to  
8 stop providing the optional packages, at least one  
9 alternative service available to the customer, and a  
10 telephone number by which the customer may contact a  
11 service representative of the Electing Provider. After  
12 July 1, 2017 with respect to new customers, and upon the  
13 expiration of the second notice period with respect to  
14 customers who were subscribing to one of the optional  
15 packages, subdivisions (d)(1), (d)(2), (d)(4), (d)(5),  
16 (d)(6), and (d)(7) of this Section shall not apply to the  
17 Electing Provider. Notwithstanding any other provision of  
18 this Article, an Electing Provider that has ceased  
19 providing the optional packages under this subdivision  
20 (d)(8) is not subject to Section 13-301(1)(c) of this Act.  
21 Notwithstanding any other provision of this Act, and  
22 subject to subdivision (d)(7) of this Section, the  
23 Commission's authority over the discontinuance of the  
24 optional packages described in this subsection (d) by an  
25 Electing Provider shall be governed solely by this  
26 subsection (d)(8).

1 (e) Service quality and customer credits for basic local  
2 exchange service.

3 (1) An Electing Provider shall meet the following  
4 service quality standards in providing basic local  
5 exchange service, which for purposes of this subsection  
6 (e), includes both basic local exchange service and any  
7 consumer choice safe harbor options that may be required by  
8 subsection (d) of this Section.

9 (A) Install basic local exchange service within 5  
10 business days after receipt of an order from the  
11 customer unless the customer requests an installation  
12 date that is beyond 5 business days after placing the  
13 order for basic service and to inform the customer of  
14 the Electing Provider's duty to install service within  
15 this timeframe. If installation of service is  
16 requested on or by a date more than 5 business days in  
17 the future, the Electing Provider shall install  
18 service by the date requested.

19 (B) Restore basic local exchange service for the  
20 customer within 30 hours after receiving notice that  
21 the customer is out of service.

22 (C) Keep all repair and installation appointments  
23 for basic local exchange service if a customer premises  
24 visit requires a customer to be present. The  
25 appointment window shall be either a specific time or,  
26 at a maximum, a 4-hour time block during evening,

1 weekend, and normal business hours.

2 (D) Inform a customer when a repair or installation  
3 appointment requires the customer to be present.

4 (2) Customers shall be credited by the Electing  
5 Provider for violations of basic local exchange service  
6 quality standards described in subdivision (e)(1) of this  
7 Section. The credits shall be applied automatically on the  
8 statement issued to the customer for the next monthly  
9 billing cycle following the violation or following the  
10 discovery of the violation. The next monthly billing cycle  
11 following the violation or the discovery of the violation  
12 means the billing cycle immediately following the billing  
13 cycle in process at the time of the violation or discovery  
14 of the violation, provided the total time between the  
15 violation or discovery of the violation and the issuance of  
16 the credit shall not exceed 60 calendar days. The Electing  
17 Provider is responsible for providing the credits and the  
18 customer is under no obligation to request such credits.  
19 The following credits shall apply:

20 (A) If an Electing Provider fails to repair an  
21 out-of-service condition for basic local exchange  
22 service within 30 hours, the Electing Provider shall  
23 provide a credit to the customer. If the service  
24 disruption is for more than 30 hours, but not more than  
25 48 hours, the credit must be equal to a pro-rata  
26 portion of the monthly recurring charges for all basic



1 local exchange services disrupted. If the service  
2 disruption is for more than 48 hours, but not more than  
3 72 hours, the credit must be equal to at least 33% of  
4 one month's recurring charges for all local services  
5 disrupted. If the service disruption is for more than  
6 72 hours, but not more than 96 hours, the credit must  
7 be equal to at least 67% of one month's recurring  
8 charges for all basic local exchange services  
9 disrupted. If the service disruption is for more than  
10 96 hours, but not more than 120 hours, the credit must  
11 be equal to one month's recurring charges for all basic  
12 local exchange services disrupted. For each day or  
13 portion thereof that the service disruption continues  
14 beyond the initial 120-hour period, the Electing  
15 Provider shall also provide an additional credit of \$20  
16 per calendar day.

17 (B) If an Electing Provider fails to install basic  
18 local exchange service as required under subdivision  
19 (e)(1) of this Section, the Electing Provider shall  
20 waive 50% of any installation charges, or in the  
21 absence of an installation charge or where  
22 installation is pursuant to the Link Up program, the  
23 Electing Provider shall provide a credit of \$25. If an  
24 Electing Provider fails to install service within 10  
25 business days after the service application is placed,  
26 or fails to install service within 5 business days

1 after the customer's requested installation date, if  
2 the requested date was more than 5 business days after  
3 the date of the order, the Electing Provider shall  
4 waive 100% of the installation charge, or in the  
5 absence of an installation charge or where  
6 installation is provided pursuant to the Link Up  
7 program, the Electing Provider shall provide a credit  
8 of \$50. For each day that the failure to install  
9 service continues beyond the initial 10 business days,  
10 or beyond 5 business days after the customer's  
11 requested installation date, if the requested date was  
12 more than 5 business days after the date of the order,  
13 the Electing Provider shall also provide an additional  
14 credit of \$20 per calendar day until the basic local  
15 exchange service is installed.

16 (C) If an Electing Provider fails to keep a  
17 scheduled repair or installation appointment when a  
18 customer premises visit requires a customer to be  
19 present as required under subdivision (e)(1) of this  
20 Section, the Electing Provider shall credit the  
21 customer \$25 per missed appointment. A credit required  
22 by this subdivision does not apply when the Electing  
23 Provider provides the customer notice of its inability  
24 to keep the appointment no later than 8:00 pm of the  
25 day prior to the scheduled date of the appointment.

26 (D) Credits required by this subsection do not

1 apply if the violation of a service quality standard:

2 (i) occurs as a result of a negligent or  
3 willful act on the part of the customer;

4 (ii) occurs as a result of a malfunction of  
5 customer-owned telephone equipment or inside  
6 wiring;

7 (iii) occurs as a result of, or is extended by,  
8 an emergency situation as defined in 83 Ill. Adm.  
9 Code 732.10;

10 (iv) is extended by the Electing Provider's  
11 inability to gain access to the customer's  
12 premises due to the customer missing an  
13 appointment, provided that the violation is not  
14 further extended by the Electing Provider;

15 (v) occurs as a result of a customer request to  
16 change the scheduled appointment, provided that  
17 the violation is not further extended by the  
18 Electing Provider;

19 (vi) occurs as a result of an Electing  
20 Provider's right to refuse service to a customer as  
21 provided in Commission rules; or

22 (vii) occurs as a result of a lack of  
23 facilities where a customer requests service at a  
24 geographically remote location, where a customer  
25 requests service in a geographic area where the  
26 Electing Provider is not currently offering

1 service, or where there are insufficient  
2 facilities to meet the customer's request for  
3 service, subject to an Electing Provider's  
4 obligation for reasonable facilities planning.

5 (3) Each Electing Provider shall provide to the  
6 Commission on a quarterly basis and in a form suitable for  
7 posting on the Commission's website in conformance with the  
8 rules adopted by the Commission and in effect on April 1,  
9 2010, a public report that includes the following data for  
10 basic local exchange service quality of service:

11 (A) With regard to credits due in accordance with  
12 subdivision (e) (2) (A) as a result of out-of-service  
13 conditions lasting more than 30 hours:

14 (i) the total dollar amount of any customer  
15 credits paid;

16 (ii) the number of credits issued for repairs  
17 between 30 and 48 hours;

18 (iii) the number of credits issued for repairs  
19 between 49 and 72 hours;

20 (iv) the number of credits issued for repairs  
21 between 73 and 96 hours;

22 (v) the number of credits used for repairs  
23 between 97 and 120 hours;

24 (vi) the number of credits issued for repairs  
25 greater than 120 hours; and

26 (vii) the number of exemptions claimed for

1 each of the categories identified in subdivision  
2 (e) (2) (D) .

3 (B) With regard to credits due in accordance with  
4 subdivision (e) (2) (B) as a result of failure to install  
5 basic local exchange service:

6 (i) the total dollar amount of any customer  
7 credits paid;

8 (ii) the number of installations after 5  
9 business days;

10 (iii) the number of installations after 10  
11 business days;

12 (iv) the number of installations after 11  
13 business days; and

14 (v) the number of exemptions claimed for each  
15 of the categories identified in subdivision  
16 (e) (2) (D) .

17 (C) With regard to credits due in accordance with  
18 subdivision (e) (2) (C) as a result of missed  
19 appointments:

20 (i) the total dollar amount of any customer  
21 credits paid;

22 (ii) the number of any customers receiving  
23 credits; and

24 (iii) the number of exemptions claimed for  
25 each of the categories identified in subdivision  
26 (e) (2) (D) .

1           (D) The Electing Provider's annual report required  
2           by this subsection shall also include, for  
3           informational reporting, the performance data  
4           described in subdivisions (e)(2)(A), (e)(2)(B), and  
5           (e)(2)(C), and trouble reports per 100 access lines  
6           calculated using the Commission's existing applicable  
7           rules and regulations for such measures, including the  
8           requirements for service standards established in this  
9           Section.

10          (4) It is the intent of the General Assembly that the  
11          service quality rules and customer credits in this  
12          subsection (e) of this Section and other enforcement  
13          mechanisms, including fines and penalties authorized by  
14          Section 13-305, shall apply on a nondiscriminatory basis to  
15          all Electing Providers. Accordingly, notwithstanding any  
16          provision of any service quality rules promulgated by the  
17          Commission, any alternative regulation plan adopted by the  
18          Commission, or any other order of the Commission, any  
19          Electing Provider that is subject to any other order of the  
20          Commission and that violates or fails to comply with the  
21          service quality standards promulgated pursuant to this  
22          subsection (e) or any other order of the Commission shall  
23          not be subject to any fines, penalties, customer credits,  
24          or enforcement mechanisms other than such fines or  
25          penalties or customer credits as may be imposed by the  
26          Commission in accordance with the provisions of this

1 subsection (e) and Section 13-305, which are to be  
2 generally applicable to all Electing Providers. The amount  
3 of any fines or penalties imposed by the Commission for  
4 failure to comply with the requirements of this subsection  
5 (e) shall be an appropriate amount, taking into account, at  
6 a minimum, the Electing Provider's gross annual intrastate  
7 revenue; the frequency, duration, and recurrence of the  
8 violation; and the relative harm caused to the affected  
9 customers or other users of the network. In imposing fines  
10 and penalties, the Commission shall take into account  
11 compensation or credits paid by the Electing Provider to  
12 its customers pursuant to this subsection (e) in  
13 compensation for any violation found pursuant to this  
14 subsection (e), and in any event the fine or penalty shall  
15 not exceed an amount equal to the maximum amount of a civil  
16 penalty that may be imposed under Section 13-305.

17 (5) An Electing Provider in each of the MSA or Exchange  
18 areas classified as competitive pursuant to subsection (c)  
19 of this Section shall fulfill the requirements in  
20 subdivision (e)(3) of this Section for 3 years after its  
21 notice of election becomes effective. After such 3 years,  
22 the requirements in subdivision (e)(3) of this Section  
23 shall not apply to such Electing Provider, except that,  
24 upon request from the Commission, the Electing Provider  
25 shall provide a report showing the number of credits and  
26 exemptions for the requested time period.

1           (f) Commission jurisdiction over competitive retail  
2 telecommunications services. Except as otherwise expressly  
3 stated in this Section, the Commission shall thereafter have no  
4 jurisdiction or authority over any aspect of competitive retail  
5 telecommunications service of an Electing Provider in those  
6 geographic areas included in the Electing Provider's notice of  
7 election pursuant to subsection (b) of this Section or of a  
8 retail telecommunications service classified as competitive  
9 pursuant to Section 13-502 or subdivision (c)(5) of this  
10 Section, heretofore subject to the jurisdiction of the  
11 Commission, including but not limited to, any requirements of  
12 this Article related to the terms, conditions, rates, quality  
13 of service, availability, classification or any other aspect of  
14 any competitive retail telecommunications services. No  
15 telecommunications carrier shall commit any unfair or  
16 deceptive act or practice in connection with any aspect of the  
17 offering or provision of any competitive retail  
18 telecommunications service. Nothing in this Article shall  
19 limit or affect any provisions in the Consumer Fraud and  
20 Deceptive Business Practices Act with respect to any unfair or  
21 deceptive act or practice by a telecommunications carrier.

22           (g) Commission authority over access services upon  
23 election for market regulation.

24           (1) As part of its Notice of Election for Market  
25 Regulation, the Electing Provider shall reduce its  
26 intrastate switched access rates to rates no higher than



1 its interstate switched access rates in 4 installments. The  
2 first reduction must be made 30 days after submission of  
3 its complete application for Notice of Election for Market  
4 Regulation, and the Electing Provider must reduce its  
5 intrastate switched access rates by an amount equal to 33%  
6 of the difference between its current intrastate switched  
7 access rates and its current interstate switched access  
8 rates. The second reduction must be made no later than one  
9 year after the first reduction, and the Electing Provider  
10 must reduce its then current intrastate switched access  
11 rates by an amount equal to 41% of the difference between  
12 its then current intrastate switched access rates and its  
13 then current interstate switched access rates. The third  
14 reduction must be made no later than one year after the  
15 second reduction, and the Electing Provider must reduce its  
16 then current intrastate switched access rates by an amount  
17 equal to 50% of the difference between its then current  
18 intrastate switched access rate and its then current  
19 interstate switched access rates. The fourth reduction  
20 must be made on or before June 30, 2013, and the Electing  
21 Provider must reduce its intrastate switched access rate to  
22 mirror its then current interstate switched access rates  
23 and rate structure. Following the fourth reduction, each  
24 Electing Provider must continue to set its intrastate  
25 switched access rates to mirror its interstate switched  
26 access rates and rate structure. For purposes of this

1 subsection, the rate for intrastate switched access  
2 service means the composite, per-minute rate for that  
3 service, including all applicable fixed and  
4 traffic-sensitive charges, including, but not limited to,  
5 carrier common line charges.

6 (2) Nothing in paragraph (1) of this subsection (g)  
7 prohibits an Electing Provider from electing to offer  
8 intrastate switched access service at rates lower than its  
9 interstate switched access rates.

10 (3) The Commission shall have no authority to order an  
11 Electing Provider to set its rates for intrastate switched  
12 access at a level lower than its interstate switched access  
13 rates.

14 (4) The Commission's authority under this subsection  
15 (g) shall only apply to Electing Providers under Market  
16 Regulation. The Commission's authority over switched  
17 access services for all other carriers is retained under  
18 Section 13-900.2 of this Act.

19 (h) Safety of service equipment and facilities.

20 (1) An Electing Provider shall furnish, provide, and  
21 maintain such service instrumentalities, equipment, and  
22 facilities as shall promote the safety, health, comfort,  
23 and convenience of its patrons, employees, and public and  
24 as shall be in all respects adequate, reliable, and  
25 efficient without discrimination or delay. Every Electing  
26 Provider shall provide service and facilities that are in

1 all respects environmentally safe.

2 (2) The Commission is authorized to conduct an  
3 investigation of any Electing Provider or part thereof. The  
4 investigation may examine the reasonableness, prudence, or  
5 efficiency of any aspect of the Electing Provider's  
6 operations or functions that may affect the adequacy,  
7 safety, efficiency, or reliability of telecommunications  
8 service. The Commission may conduct or order an  
9 investigation only when it has reasonable grounds to  
10 believe that the investigation is necessary to assure that  
11 the Electing Provider is providing adequate, efficient,  
12 reliable, and safe service. The Commission shall, before  
13 initiating any such investigation, issue an order  
14 describing the grounds for the investigation and the  
15 appropriate scope and nature of the investigation, which  
16 shall be reasonably related to the grounds relied upon by  
17 the Commission in its order.

18 (i) (Blank).

19 (j) Application of Article VII. The provisions of Sections  
20 7-101, 7-102, 7-104, 7-204, 7-205, and 7-206 of this Act are  
21 applicable to an Electing Provider offering or providing retail  
22 telecommunications service, and the Commission's regulation  
23 thereof, except that (1) the approval of contracts and  
24 arrangements with affiliated interests required by paragraph  
25 (3) of Section 7-101 shall not apply to such telecommunications  
26 carriers provided that, except as provided in item (2), those

1 contracts and arrangements shall be filed with the Commission;  
2 (2) affiliated interest contracts or arrangements entered into  
3 by such telecommunications carriers where the increased  
4 obligation thereunder does not exceed the lesser of \$5,000,000  
5 or 5% of such carrier's prior annual revenue from  
6 noncompetitive services are not required to be filed with the  
7 Commission; and (3) any consent and approval of the Commission  
8 required by Section 7-102 is not required for the sale, lease,  
9 assignment, or transfer by any Electing Provider of any  
10 property that is not necessary or useful in the performance of  
11 its duties to the public.

12 (k) Notwithstanding other provisions of this Section, the  
13 Commission retains its existing authority to enforce the  
14 provisions, conditions, and requirements of the following  
15 Sections of this Article: 13-101, 13-103, 13-201, 13-301,  
16 13-301.1, 13-301.2, 13-301.3, 13-303, 13-303.5, 13-304,  
17 13-305, 13-401, 13-401.1, 13-402, 13-403, 13-404, 13-404.1,  
18 13-404.2, 13-405, 13-406, ~~13-407~~, 13-501, 13-501.5, 13-503,  
19 13-505, 13-509, 13-510, 13-512, 13-513, 13-514, 13-515,  
20 13-516, 13-519, 13-702, 13-703, 13-704, 13-705, 13-706,  
21 13-707, 13-709, 13-713, 13-801, 13-802.1, 13-804, 13-900,  
22 13-900.1, 13-900.2, 13-901, 13-902, and 13-903, which are fully  
23 and equally applicable to Electing Providers and to  
24 telecommunications carriers providing retail  
25 telecommunications service classified as competitive pursuant  
26 to Section 13-502 or subdivision (c) (5) of this Section subject

1 to the provisions of this Section. On the effective date of  
2 this amendatory Act of the 98th General Assembly, the following  
3 Sections of this Article shall cease to apply to Electing  
4 Providers and to telecommunications carriers providing retail  
5 telecommunications service classified as competitive pursuant  
6 to Section 13-502 or subdivision (c)(5) of this Section:  
7 13-302, 13-405.1, 13-502, 13-502.5, 13-504, 13-505.2,  
8 13-505.3, 13-505.4, 13-505.5, 13-505.6, 13-506.1, 13-507,  
9 13-507.1, 13-508, 13-508.1, 13-517, 13-518, 13-601, 13-701,  
10 and 13-712.

11 (Source: P.A. 99-6, eff. 6-29-15; 100-20, eff. 7-1-17.)

12 (220 ILCS 5/13-515)

13 (Section scheduled to be repealed on December 31, 2020)

14 Sec. 13-515. Enforcement.

15 (a) The following expedited procedures shall be used to  
16 enforce the provisions of Section 13-514 of this Act, provided  
17 that, for a violation of paragraph (8) of Section 13-514 to  
18 qualify for the expedited procedures of this Section, the  
19 violation must be in a manner that unreasonably delays,  
20 increases the cost, or impedes the availability of  
21 telecommunications services to consumers. However, the  
22 Commission, the complainant, and the respondent may mutually  
23 agree to adjust the procedures established in this Section.

24 (b) (Blank).

25 (c) No complaint may be filed under this Section until the

1 complainant has first notified the respondent of the alleged  
2 violation and offered the respondent 48 hours to correct the  
3 situation. Provision of notice and the opportunity to correct  
4 the situation creates a rebuttable presumption of knowledge  
5 under Section 13-514. After the filing of a complaint under  
6 this Section, the parties may agree to follow the mediation  
7 process under Section 10-101.1 of this Act. The time periods  
8 specified in subdivision (d) (7) of this Section shall be tolled  
9 during the time spent in mediation under Section 10-101.1.

10 (d) A telecommunications carrier may file a complaint with  
11 the Commission alleging a violation of Section 13-514 in  
12 accordance with this subsection:

13 (1) The complaint shall be filed with the Chief Clerk  
14 of the Commission and shall be served in hand upon the  
15 respondent, the executive director, and the general  
16 counsel of the Commission at the time of the filing.

17 (2) A complaint filed under this subsection shall  
18 include a statement that the requirements of subsection (c)  
19 have been fulfilled and that the respondent did not correct  
20 the situation as requested.

21 (3) Reasonable discovery specific to the issue of the  
22 complaint may commence upon filing of the complaint.  
23 Requests for discovery must be served in hand and responses  
24 to discovery must be provided in hand to the requester  
25 within 14 days after a request for discovery is made.

26 (4) An answer and any other responsive pleading to the

1 complaint shall be filed with the Commission and served in  
2 hand at the same time upon the complainant, the executive  
3 director, and the general counsel of the Commission within  
4 7 days after the date on which the complaint is filed.

5 (5) If the answer or responsive pleading raises the  
6 issue that the complaint violates subsection (i) of this  
7 Section, the complainant may file a reply to such  
8 allegation within 3 days after actual service of such  
9 answer or responsive pleading. Within 4 days after the time  
10 for filing a reply has expired, the hearing officer or  
11 arbitrator shall either issue a written decision  
12 dismissing the complaint as frivolous in violation of  
13 subsection (i) of this Section including the reasons for  
14 such disposition or shall issue an order directing that the  
15 complaint shall proceed.

16 (6) A pre-hearing conference shall be held within 14  
17 days after the date on which the complaint is filed.

18 (7) The hearing shall commence within 30 days of the  
19 date on which the complaint is filed. The hearing may be  
20 conducted by an administrative law judge ~~a hearing examiner~~  
21 or by an arbitrator. Parties and the Commission staff shall  
22 be entitled to present evidence and legal argument in oral  
23 or written form as deemed appropriate by the administrative  
24 law judge ~~hearing examiner~~ or arbitrator. The  
25 administrative law judge ~~hearing examiner~~ or arbitrator  
26 shall issue a written decision within 60 days after the

1 date on which the complaint is filed. The decision shall  
2 include reasons for the disposition of the complaint and,  
3 if a violation of Section 13-514 is found, directions and a  
4 deadline for correction of the violation.

5 (8) Any party may file a petition requesting the  
6 Commission to review the decision of the administrative law  
7 judge ~~hearing examiner~~ or arbitrator within 5 days of such  
8 decision. Any party may file a response to a petition for  
9 review within 3 business days after actual service of the  
10 petition. After the time for filing of the petition for  
11 review, but no later than 15 days after the decision of the  
12 administrative law judge ~~hearing examiner~~ or arbitrator,  
13 the Commission shall decide to adopt the decision of the  
14 administrative law judge ~~hearing examiner~~ or arbitrator or  
15 shall issue its own final order.

16 (e) If the alleged violation has a substantial adverse  
17 effect on the ability of the complainant to provide service to  
18 customers, the complainant may include in its complaint a  
19 request for an order for emergency relief. The Commission,  
20 acting through its designated administrative law judge ~~hearing~~  
21 ~~examiner~~ or arbitrator, shall act upon such a request within 2  
22 business days of the filing of the complaint. An order for  
23 emergency relief may be granted, without an evidentiary  
24 hearing, upon a verified factual showing that the party seeking  
25 relief will likely succeed on the merits, that the party will  
26 suffer irreparable harm in its ability to serve customers if



1 emergency relief is not granted, and that the order is in the  
2 public interest. An order for emergency relief shall include a  
3 finding that the requirements of this subsection have been  
4 fulfilled and shall specify the directives that must be  
5 fulfilled by the respondent and deadlines for meeting those  
6 directives. The decision of the administrative law judge  
7 ~~hearing examiner~~ or arbitrator to grant or deny emergency  
8 relief shall be considered an order of the Commission unless  
9 the Commission enters its own order within 2 calendar days of  
10 the decision of the administrative law judge ~~hearing examiner~~  
11 or arbitrator. The order for emergency relief may require the  
12 responding party to act or refrain from acting so as to protect  
13 the provision of competitive service offerings to customers.  
14 Any action required by an emergency relief order must be  
15 technically feasible and economically reasonable and the  
16 respondent must be given a reasonable period of time to comply  
17 with the order.

18 (f) The Commission is authorized to obtain outside  
19 resources including, but not limited to, arbitrators and  
20 consultants for the purposes of the hearings authorized by this  
21 Section. Any arbitrator or consultant obtained by the  
22 Commission shall be approved by both parties to the hearing.  
23 The cost of such outside resources including, but not limited  
24 to, arbitrators and consultants shall be borne by the parties.  
25 The Commission shall review the bill for reasonableness and  
26 assess the parties for reasonable costs dividing the costs

1 according to the resolution of the complaint brought under this  
2 Section. Such costs shall be paid by the parties directly to  
3 the arbitrators, consultants, and other providers of outside  
4 resources within 60 days after receiving notice of the  
5 assessments from the Commission. Interest at the statutory rate  
6 shall accrue after expiration of the 60-day period. The  
7 Commission, arbitrators, consultants, or other providers of  
8 outside resources may apply to a court of competent  
9 jurisdiction for an order requiring payment.

10 (g) The Commission shall assess the parties under this  
11 subsection for all of the Commission's costs of investigation  
12 and conduct of the proceedings brought under this Section  
13 including, but not limited to, the prorated salaries of staff,  
14 attorneys, administrative law judges ~~hearing examiners~~, and  
15 support personnel and including any travel and per diem,  
16 directly attributable to the complaint brought pursuant to this  
17 Section, but excluding those costs provided for in subsection  
18 (f), dividing the costs according to the resolution of the  
19 complaint brought under this Section. All assessments made  
20 under this subsection shall be paid into the Public Utility  
21 Fund within 60 days after receiving notice of the assessments  
22 from the Commission. Interest at the statutory rate shall  
23 accrue after the expiration of the 60 day period. The  
24 Commission is authorized to apply to a court of competent  
25 jurisdiction for an order requiring payment.

26 (h) If the Commission determines that there is an imminent

1 threat to competition or to the public interest, the Commission  
2 may, notwithstanding any other provision of this Act, seek  
3 temporary, preliminary, or permanent injunctive relief from a  
4 court of competent jurisdiction either prior to or after the  
5 hearing.

6 (i) A party shall not bring or defend a proceeding brought  
7 under this Section or assert or controvert an issue in a  
8 proceeding brought under this Section, unless there is a  
9 non-frivolous basis for doing so. By presenting a pleading,  
10 written motion, or other paper in complaint or defense of the  
11 actions or inaction of a party under this Section, a party is  
12 certifying to the Commission that to the best of that party's  
13 knowledge, information, and belief, formed after a reasonable  
14 inquiry of the subject matter of the complaint or defense, that  
15 the complaint or defense is well grounded in law and fact, and  
16 under the circumstances:

17 (1) it is not being presented to harass the other  
18 party, cause unnecessary delay in the provision of  
19 competitive telecommunications services to consumers, or  
20 create needless increases in the cost of litigation; and

21 (2) the allegations and other factual contentions have  
22 evidentiary support or, if specifically so identified, are  
23 likely to have evidentiary support after reasonable  
24 opportunity for further investigation or discovery as  
25 defined herein.

26 (j) If, after notice and a reasonable opportunity to

1 respond, the Commission determines that subsection (i) has been  
2 violated, the Commission shall impose appropriate sanctions  
3 upon the party or parties that have violated subsection (i) or  
4 are responsible for the violation. The sanctions shall be not  
5 more than \$30,000, plus the amount of expenses accrued by the  
6 Commission for conducting the hearing. Payment of sanctions  
7 imposed under this subsection shall be made to the Common  
8 School Fund within 30 days of imposition of such sanctions.

9 (k) An appeal of a Commission Order made pursuant to this  
10 Section shall not effectuate a stay of the Order unless a court  
11 of competent jurisdiction specifically finds that the party  
12 seeking the stay will likely succeed on the merits, that the  
13 party will suffer irreparable harm without the stay, and that  
14 the stay is in the public interest.

15 (Source: P.A. 100-20, eff. 7-1-17.)

16 (220 ILCS 5/16-108.5)

17 Sec. 16-108.5. Infrastructure investment and  
18 modernization; regulatory reform.

19 (a) (Blank).

20 (b) For purposes of this Section, "participating utility"  
21 means an electric utility or a combination utility serving more  
22 than 1,000,000 customers in Illinois that voluntarily elects  
23 and commits to undertake (i) the infrastructure investment  
24 program consisting of the commitments and obligations  
25 described in this subsection (b) and (ii) the customer

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

15 During the infrastructure investment program's peak  
16 program year, a participating utility other than a combination  
17 utility shall create 2,000 full-time equivalent jobs in  
18 Illinois, and a participating utility that is a combination  
19 utility shall create 450 full-time equivalent jobs in Illinois  
20 related to the provision of electric service. These jobs shall  
21 include direct jobs, contractor positions, and induced jobs,  
22 but shall not include any portion of a job commitment, not  
23 specifically contingent on an amendatory Act of the 97th  
24 General Assembly becoming law, between a participating utility  
25 and a labor union that existed on December 30, 2011 (the  
26 effective date of Public Act 97-646) and that has not yet been

1 fulfilled. A portion of the full-time equivalent jobs created  
2 by each participating utility shall include incremental  
3 personnel hired subsequent to December 30, 2011 (the effective  
4 date of Public Act 97-646). For purposes of this Section, "peak  
5 program year" means the consecutive 12-month period with the  
6 highest number of full-time equivalent jobs that occurs between  
7 the beginning of investment year 2 and the end of investment  
8 year 4.

9 A participating utility shall meet one of the following  
10 commitments, as applicable:

11 (1) Beginning no later than 180 days after a  
12 participating utility other than a combination utility  
13 files a performance-based formula rate tariff pursuant to  
14 subsection (c) of this Section, or, beginning no later than  
15 January 1, 2012 if such utility files such  
16 performance-based formula rate tariff within 14 days of  
17 October 26, 2011 (the effective date of Public Act 97-616),  
18 the participating utility shall, except as provided in  
19 subsection (b-5):

20 (A) over a 5-year period, invest an estimated  
21 \$1,300,000,000 in electric system upgrades,  
22 modernization projects, and training facilities,  
23 including, but not limited to:

24 (i) distribution infrastructure improvements  
25 totaling an estimated \$1,000,000,000, including  
26 underground residential distribution cable

1 injection and replacement and mainline cable  
2 system refurbishment and replacement projects;

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

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

20 (iv) an estimated \$200,000,000 for reducing  
21 the susceptibility of certain circuits to  
22 storm-related damage, including, but not limited  
23 to, high winds, thunderstorms, and ice storms;  
24 improvements may include, but are not limited to,  
25 overhead to underground conversion and other  
26 engineered outcomes for circuits; the

1 participating utility shall prioritize the  
2 selection of circuits based on each circuit's  
3 historical susceptibility to storm-related damage  
4 and the ability to provide the greatest customer  
5 benefit upon completion of the improvements; to be  
6 eligible for improvement, the participating  
7 utility's ability to maintain proper tree  
8 clearances surrounding the overhead circuit must  
9 not have been impeded by third parties; and

10 (B) over a 10-year period, invest an estimated  
11 \$1,300,000,000 to upgrade and modernize its  
12 transmission and distribution infrastructure and in  
13 Smart Grid electric system upgrades, including, but  
14 not limited to:

15 (i) additional smart meters;

16 (ii) distribution automation;

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

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

21 (2) Beginning no later than 180 days after a  
22 participating utility that is a combination utility files a  
23 performance-based formula rate tariff pursuant to  
24 subsection (c) of this Section, or, beginning no later than  
25 January 1, 2012 if such utility files such  
26 performance-based formula rate tariff within 14 days of



1           October 26, 2011 (the effective date of Public Act 97-616),  
2           the participating utility shall, except as provided in  
3           subsection (b-5):

4                   (A) over a 10-year period, invest an estimated  
5                   \$265,000,000 in electric system upgrades,  
6                   modernization projects, and training facilities,  
7                   including, but not limited to:

8                           (i) distribution infrastructure improvements  
9                           totaling an estimated \$245,000,000, which may  
10                           include bulk supply substations, transformers,  
11                           reconductoring, and rebuilding overhead  
12                           distribution and sub-transmission lines,  
13                           underground residential distribution cable  
14                           injection and replacement and mainline cable  
15                           system refurbishment and replacement projects;

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

24                           (iii) wood pole inspection, treatment, and  
25                           replacement programs; and

26                   (B) over a 10-year period, invest an estimated

1           \$360,000,000 to upgrade and modernize its transmission  
2           and distribution infrastructure and in Smart Grid  
3           electric system upgrades, including, but not limited  
4           to:

5                       (i) additional smart meters;

6                       (ii) distribution automation;

7                       (iii) associated cyber secure data  
8                       communication network; and

9                       (iv) substation micro-processor relay  
10                      upgrades.

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

14           The investments in the infrastructure investment program  
15           described in this subsection (b) shall be incremental to the  
16           participating utility's annual capital investment program, as  
17           defined by, for purposes of this subsection (b), the  
18           participating utility's average capital spend for calendar  
19           years 2008, 2009, and 2010 as reported in the applicable  
20           Federal Energy Regulatory Commission (FERC) Form 1; provided  
21           that where one or more utilities have merged, the average  
22           capital spend shall be determined using the aggregate of the  
23           merged utilities' capital spend reported in FERC Form 1 for the  
24           years 2008, 2009, and 2010. A participating utility may add  
25           reasonable construction ramp-up and ramp-down time to the  
26           investment periods specified in this subsection (b). For each

1 such investment period, the ramp-up and ramp-down time shall  
2 not exceed a total of 6 months.

3       Within 60 days after filing a tariff under subsection (c)  
4 of this Section, a participating utility shall submit to the  
5 Commission its plan, including scope, schedule, and staffing,  
6 for satisfying its infrastructure investment program  
7 commitments pursuant to this subsection (b). The submitted plan  
8 shall include a schedule and staffing plan for the next  
9 calendar year. The plan shall also include a plan for the  
10 creation, operation, and administration of a Smart Grid test  
11 bed as described in subsection (c) of Section 16-108.8. The  
12 plan need not allocate the work equally over the respective  
13 periods, but should allocate material increments throughout  
14 such periods commensurate with the work to be undertaken. No  
15 later than April 1 of each subsequent year, the utility shall  
16 submit to the Commission a report that includes any updates to  
17 the plan, a schedule for the next calendar year, the  
18 expenditures made for the prior calendar year and cumulatively,  
19 and the number of full-time equivalent jobs created for the  
20 prior calendar year and cumulatively. If the utility is  
21 materially deficient in satisfying a schedule or staffing plan,  
22 then the report must also include a corrective action plan to  
23 address the deficiency. The fact that the plan, implementation  
24 of the plan, or a schedule changes shall not imply the  
25 imprudence or unreasonableness of the infrastructure  
26 investment program, plan, or schedule. Further, no later than

1 45 days following the last day of the first, second, and third  
2 quarters of each year of the plan, a participating utility  
3 shall submit to the Commission a verified quarterly report for  
4 the prior quarter that includes (i) the total number of  
5 full-time equivalent jobs created during the prior quarter,  
6 (ii) the total number of employees as of the last day of the  
7 prior quarter, (iii) the total number of full-time equivalent  
8 hours in each job classification or job title, (iv) the total  
9 number of incremental employees and contractors in support of  
10 the investments undertaken pursuant to this subsection (b) for  
11 the prior quarter, and (v) any other information that the  
12 Commission may require by rule.

13 With respect to the participating utility's peak job  
14 commitment, if, after considering the utility's corrective  
15 action plan and compliance thereunder, the Commission enters an  
16 order finding, after notice and hearing, that a participating  
17 utility did not satisfy its peak job commitment described in  
18 this subsection (b) for reasons that are reasonably within its  
19 control, then the Commission shall also determine, after  
20 consideration of the evidence, including, but not limited to,  
21 evidence submitted by the Department of Commerce and Economic  
22 Opportunity and the utility, the deficiency in the number of  
23 full-time equivalent jobs during the peak program year due to  
24 such failure. The Commission shall notify the Department of any  
25 proceeding that is initiated pursuant to this paragraph. For  
26 each full-time equivalent job deficiency during the peak

1 program year that the Commission finds as set forth in this  
2 paragraph, the participating utility shall, within 30 days  
3 after the entry of the Commission's order, pay \$6,000 to a fund  
4 for training grants administered under Section 605-800 of the  
5 Department of Commerce and Economic Opportunity Law, which  
6 shall not be a recoverable expense.

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

20 If the Commission finds that a participating utility is no  
21 longer eligible to update the performance-based formula rate  
22 tariff pursuant to subsection (d) of this Section, or the  
23 performance-based formula rate is otherwise terminated, then  
24 the participating utility's voluntary commitments and  
25 obligations under this subsection (b) shall immediately  
26 terminate, except for the utility's obligation to pay an amount

1 already owed to the fund for training grants pursuant to a  
2 Commission order.

3 In meeting the obligations of this subsection (b), to the  
4 extent feasible and consistent with State and federal law, the  
5 investments under the infrastructure investment program should  
6 provide employment opportunities for all segments of the  
7 population and workforce, including minority-owned and  
8 female-owned business enterprises, and shall not, consistent  
9 with State and federal law, discriminate based on race or  
10 socioeconomic status.

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

21 If the participating utility finds that it is implementing  
22 its plan for satisfying the infrastructure investment program  
23 commitments described in subsection (b) of this Section at a  
24 cost below the estimated amounts specified in subsection (b) of  
25 this Section, then the utility may file a petition with the  
26 Commission requesting that it be permitted to satisfy its

1 commitments by spending less than the estimated amounts  
2 specified in subsection (b) of this Section. The Commission  
3 shall, after notice and hearing, enter its order approving, or  
4 approving as modified, or denying each such petition within 150  
5 days after the filing of the petition.

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

1 established pursuant to subparagraphs (5) through (8) of  
2 subsection (f) of this Section, and the Commission may modify  
3 the metrics and incremental savings goals established pursuant  
4 to subsection (f) of this Section accordingly.

5 (b-10) All participating utilities shall make  
6 contributions for an energy low-income and support program in  
7 accordance with this subsection. Beginning no later than 180  
8 days after a participating utility files a performance-based  
9 formula rate tariff pursuant to subsection (c) of this Section,  
10 or beginning no later than January 1, 2012 if such utility  
11 files such performance-based formula rate tariff within 14 days  
12 of December 30, 2011 (the effective date of Public Act 97-646),  
13 and without obtaining any approvals from the Commission or any  
14 other agency other than as set forth in this Section,  
15 regardless of whether any such approval would otherwise be  
16 required, a participating utility other than a combination  
17 utility shall pay \$10,000,000 per year for 5 years and a  
18 participating utility that is a combination utility shall pay  
19 \$1,000,000 per year for 10 years to the energy low-income and  
20 support program, which is intended to fund customer assistance  
21 programs with the primary purpose being avoidance of imminent  
22 disconnection. Such programs may include:

23 (1) a residential hardship program that may partner  
24 with community-based organizations, including senior  
25 citizen organizations, and provides grants to low-income  
26 residential customers, including low-income senior



1 citizens, who demonstrate a hardship;

2 (2) a program that provides grants and other bill  
3 payment concessions to veterans with disabilities who  
4 demonstrate a hardship and members of the armed services or  
5 reserve forces of the United States or members of the  
6 Illinois National Guard who are on active duty pursuant to  
7 an executive order of the President of the United States,  
8 an act of the Congress of the United States, or an order of  
9 the Governor and who demonstrate a hardship;

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

14 (4) a non-residential special hardship program that  
15 provides grants to non-residential customers such as small  
16 businesses and non-profit organizations that demonstrate a  
17 hardship, including those providing services to senior  
18 citizen and low-income customers; and

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

23 The payments made by a participating utility pursuant to  
24 this subsection (b-10) shall not be a recoverable expense. A  
25 participating utility may elect to fund either new or existing  
26 customer assistance programs, including, but not limited to,

1 those that are administered by the utility.

2 Programs that use funds that are provided by a  
3 participating utility to reduce utility bills may be  
4 implemented through tariffs that are filed with and reviewed by  
5 the Commission. If a utility elects to file tariffs with the  
6 Commission to implement all or a portion of the programs, those  
7 tariffs shall, regardless of the date actually filed, be deemed  
8 accepted and approved, and shall become effective on December  
9 30, 2011 (the effective date of Public Act 97-646). The  
10 participating utilities whose customers benefit from the funds  
11 that are disbursed as contemplated in this Section shall file  
12 annual reports documenting the disbursement of those funds with  
13 the Commission. The Commission has the authority to audit  
14 disbursement of the funds to ensure they were disbursed  
15 consistently with this Section.

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

23 (c) A participating utility may elect to recover its  
24 delivery services costs through a performance-based formula  
25 rate approved by the Commission, which shall specify the cost  
26 components that form the basis of the rate charged to customers

1 with sufficient specificity to operate in a standardized manner  
2 and be updated annually with transparent information that  
3 reflects the utility's actual costs to be recovered during the  
4 applicable rate year, which is the period beginning with the  
5 first billing day of January and extending through the last  
6 billing day of the following December. In the event the utility  
7 recovers a portion of its costs through automatic adjustment  
8 clause tariffs on October 26, 2011 (the effective date of  
9 Public Act 97-616), the utility may elect to continue to  
10 recover these costs through such tariffs, but then these costs  
11 shall not be recovered through the performance-based formula  
12 rate. In the event the participating utility, prior to December  
13 30, 2011 (the effective date of Public Act 97-646), filed  
14 electric delivery services tariffs with the Commission  
15 pursuant to Section 9-201 of this Act that are related to the  
16 recovery of its electric delivery services costs that are still  
17 pending on December 30, 2011 (the effective date of Public Act  
18 97-646), the participating utility shall, at the time it files  
19 its performance-based formula rate tariff with the Commission,  
20 also file a notice of withdrawal with the Commission to  
21 withdraw the electric delivery services tariffs previously  
22 filed pursuant to Section 9-201 of this Act. Upon receipt of  
23 such notice, the Commission shall dismiss with prejudice any  
24 docket that had been initiated to investigate the electric  
25 delivery services tariffs filed pursuant to Section 9-201 of  
26 this Act, and such tariffs and the record related thereto shall

1 not be the subject of any further hearing, investigation, or  
2 proceeding of any kind related to rates for electric delivery  
3 services.

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

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

26 (2) Reflect the utility's actual year-end capital

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

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

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

19 (B) 580 basis points.

20 At such time as the Board of Governors of the Federal  
21 Reserve System ceases to include the monthly average yields  
22 of 30-year U.S. Treasury bonds in its weekly H.15  
23 Statistical Release or successor publication, the monthly  
24 average yields of the U.S. Treasury bonds then having the  
25 longest duration published by the Board of Governors in its  
26 weekly H.15 Statistical Release or successor publication

1 shall instead be used for purposes of this paragraph (3).

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

5 (A) recovery of incentive compensation expense  
6 that is based on the achievement of operational  
7 metrics, including metrics related to budget controls,  
8 outage duration and frequency, safety, customer  
9 service, efficiency and productivity, and  
10 environmental compliance. Incentive compensation  
11 expense that is based on net income or an affiliate's  
12 earnings per share shall not be recoverable under the  
13 performance-based formula rate;

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

17 (C) recovery of severance costs, provided that if  
18 the amount is over \$3,700,000 for a participating  
19 utility that is a combination utility or \$10,000,000  
20 for a participating utility that serves more than 3  
21 million retail customers, then the full amount shall be  
22 amortized consistent with subparagraph (F) of this  
23 paragraph (4);

24 (D) investment return at a rate equal to the  
25 utility's weighted average cost of long-term debt, on  
26 the pension assets as, and in the amount, reported in

1 Account 186 (or in such other Account or Accounts as  
2 such asset may subsequently be recorded) of the  
3 utility's most recently filed FERC Form 1, net of  
4 deferred tax benefits;

5 (E) recovery of the expenses related to the  
6 Commission proceeding under this subsection (c) to  
7 approve this performance-based formula rate and  
8 initial rates or to subsequent proceedings related to  
9 the formula, provided that the recovery shall be  
10 amortized over a 3-year period; recovery of expenses  
11 related to the annual Commission proceedings under  
12 subsection (d) of this Section to review the inputs to  
13 the performance-based formula rate shall be expensed  
14 and recovered through the performance-based formula  
15 rate;

16 (F) amortization over a 5-year period of the full  
17 amount of each charge or credit that exceeds \$3,700,000  
18 for a participating utility that is a combination  
19 utility or \$10,000,000 for a participating utility  
20 that serves more than 3 million retail customers in the  
21 applicable calendar year and that relates to a  
22 workforce reduction program's severance costs, changes  
23 in accounting rules, changes in law, compliance with  
24 any Commission-initiated audit, or a single storm or  
25 other similar expense, provided that any unamortized  
26 balance shall be reflected in rate base. For purposes

1 of this subparagraph (F), changes in law includes any  
2 enactment, repeal, or amendment in a law, ordinance,  
3 rule, regulation, interpretation, permit, license,  
4 consent, or order, including those relating to taxes,  
5 accounting, or to environmental matters, or in the  
6 interpretation or application thereof by any  
7 governmental authority occurring after October 26,  
8 2011 (the effective date of Public Act 97-616);

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

11 (H) historical weather normalized billing  
12 determinants; and

13 (I) allocation methods for common costs.

14 (5) Provide that if the participating utility's earned  
15 rate of return on common equity related to the provision of  
16 delivery services for the prior rate year (calculated using  
17 costs and capital structure approved by the Commission as  
18 provided in subparagraph (2) of this subsection (c),  
19 consistent with this Section, in accordance with  
20 Commission rules and orders, including, but not limited to,  
21 adjustments for goodwill, and after any Commission-ordered  
22 disallowances and taxes) is more than 50 basis points  
23 higher than the rate of return on common equity calculated  
24 pursuant to paragraph (3) of this subsection (c) (after  
25 adjusting for any penalties to the rate of return on common  
26 equity applied pursuant to the performance metrics



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

1 equal to the value of that portion of the earned rate of  
2 return on common equity that is more than 50 basis points  
3 less than the rate of return on common equity calculated  
4 pursuant to paragraph (3) of this subsection (c) (after  
5 adjusting for any penalties to the rate of return on common  
6 equity applied pursuant to the performance metrics  
7 provision of subsection (f) of this Section) for the prior  
8 rate year, adjusted for taxes.

9 (6) Provide for an annual reconciliation, as described  
10 in subsection (d) of this Section, with interest, of the  
11 revenue requirement reflected in rates for each calendar  
12 year, beginning with the calendar year in which the utility  
13 files its performance-based formula rate tariff pursuant  
14 to subsection (c) of this Section, with what the revenue  
15 requirement would have been had the actual cost information  
16 for the applicable calendar year been available at the  
17 filing date.

18 The utility shall file, together with its tariff, final  
19 data based on its most recently filed FERC Form 1, plus  
20 projected plant additions and correspondingly updated  
21 depreciation reserve and expense for the calendar year in which  
22 the tariff and data are filed, that shall populate the  
23 performance-based formula rate and set the initial delivery  
24 services rates under the formula. For purposes of this Section,  
25 "FERC Form 1" means the Annual Report of Major Electric  
26 Utilities, Licensees and Others that electric utilities are

1 required to file with the Federal Energy Regulatory Commission  
2 under the Federal Power Act, Sections 3, 4(a), 304 and 209,  
3 modified as necessary to be consistent with 83 Ill. Admin. Code  
4 Part 415 as of May 1, 2011. Nothing in this Section is intended  
5 to allow costs that are not otherwise recoverable to be  
6 recoverable by virtue of inclusion in FERC Form 1.

7 After the utility files its proposed performance-based  
8 formula rate structure and protocols and initial rates, the  
9 Commission shall initiate a docket to review the filing. The  
10 Commission shall enter an order approving, or approving as  
11 modified, the performance-based formula rate, including the  
12 initial rates, as just and reasonable within 270 days after the  
13 date on which the tariff was filed, or, if the tariff is filed  
14 within 14 days after October 26, 2011 (the effective date of  
15 Public Act 97-616), then by May 31, 2012. Such review shall be  
16 based on the same evidentiary standards, including, but not  
17 limited to, those concerning the prudence and reasonableness of  
18 the costs incurred by the utility, the Commission applies in a  
19 hearing to review a filing for a general increase in rates  
20 under Article IX of this Act. The initial rates shall take  
21 effect within 30 days after the Commission's order approving  
22 the performance-based formula rate tariff.

23 Until such time as the Commission approves a different rate  
24 design and cost allocation pursuant to subsection (e) of this  
25 Section, rate design and cost allocation across customer  
26 classes shall be consistent with the Commission's most recent

1 order regarding the participating utility's request for a  
2 general increase in its delivery services rates.

3 Subsequent changes to the performance-based formula rate  
4 structure or protocols shall be made as set forth in Section  
5 9-201 of this Act, but nothing in this subsection (c) is  
6 intended to limit the Commission's authority under Article IX  
7 and other provisions of this Act to initiate an investigation  
8 of a participating utility's performance-based formula rate  
9 tariff, provided that any such changes shall be consistent with  
10 paragraphs (1) through (6) of this subsection (c). Any change  
11 ordered by the Commission shall be made at the same time new  
12 rates take effect following the Commission's next order  
13 pursuant to subsection (d) of this Section, provided that the  
14 new rates take effect no less than 30 days after the date on  
15 which the Commission issues an order adopting the change.

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

20 In the event the performance-based formula rate is  
21 terminated, the then current rates shall remain in effect until  
22 such time as new rates are set pursuant to Article IX of this  
23 Act, subject to retroactive rate adjustment, with interest, to  
24 reconcile rates charged with actual costs. At such time that  
25 the performance-based formula rate is terminated, the  
26 participating utility's voluntary commitments and obligations

1 under subsection (b) of this Section shall immediately  
2 terminate, except for the utility's obligation to pay an amount  
3 already owed to the fund for training grants pursuant to a  
4 Commission order issued under subsection (b) of this Section.

5 (d) Subsequent to the Commission's issuance of an order  
6 approving the utility's performance-based formula rate  
7 structure and protocols, and initial rates under subsection (c)  
8 of this Section, the utility shall file, on or before May 1 of  
9 each year, with the Chief Clerk of the Commission its updated  
10 cost inputs to the performance-based formula rate for the  
11 applicable rate year and the corresponding new charges. Each  
12 such filing shall conform to the following requirements and  
13 include the following information:

14 (1) The inputs to the performance-based formula rate  
15 for the applicable rate year shall be based on final  
16 historical data reflected in the utility's most recently  
17 filed annual FERC Form 1 plus projected plant additions and  
18 correspondingly updated depreciation reserve and expense  
19 for the calendar year in which the inputs are filed. The  
20 filing shall also include a reconciliation of the revenue  
21 requirement that was in effect for the prior rate year (as  
22 set by the cost inputs for the prior rate year) with the  
23 actual revenue requirement for the prior rate year  
24 (determined using a year-end rate base) that uses amounts  
25 reflected in the applicable FERC Form 1 that reports the  
26 actual costs for the prior rate year. Any over-collection

1 or under-collection indicated by such reconciliation shall  
2 be reflected as a credit against, or recovered as an  
3 additional charge to, respectively, with interest  
4 calculated at a rate equal to the utility's weighted  
5 average cost of capital approved by the Commission for the  
6 prior rate year, the charges for the applicable rate year.  
7 Provided, however, that the first such reconciliation  
8 shall be for the calendar year in which the utility files  
9 its performance-based formula rate tariff pursuant to  
10 subsection (c) of this Section and shall reconcile (i) the  
11 revenue requirement or requirements established by the  
12 rate order or orders in effect from time to time during  
13 such calendar year (weighted, as applicable) with (ii) the  
14 revenue requirement determined using a year-end rate base  
15 for that calendar year calculated pursuant to the  
16 performance-based formula rate using (A) actual costs for  
17 that year as reflected in the applicable FERC Form 1, and  
18 (B) for the first such reconciliation only, the cost of  
19 equity, which shall be calculated as the sum of 590 basis  
20 points plus the average for the applicable calendar year of  
21 the monthly average yields of 30-year U.S. Treasury bonds  
22 published by the Board of Governors of the Federal Reserve  
23 System in its weekly H.15 Statistical Release or successor  
24 publication. The first such reconciliation is not intended  
25 to provide for the recovery of costs previously excluded  
26 from rates based on a prior Commission order finding of

1           imprudence or unreasonableness. Each reconciliation shall  
2           be certified by the participating utility in the same  
3           manner that FERC Form 1 is certified. The filing shall also  
4           include the charge or credit, if any, resulting from the  
5           calculation required by paragraph (6) of subsection (c) of  
6           this Section.

7           Notwithstanding anything that may be to the contrary,  
8           the intent of the reconciliation is to ultimately reconcile  
9           the revenue requirement reflected in rates for each  
10          calendar year, beginning with the calendar year in which  
11          the utility files its performance-based formula rate  
12          tariff pursuant to subsection (c) of this Section, with  
13          what the revenue requirement determined using a year-end  
14          rate base for the applicable calendar year would have been  
15          had the actual cost information for the applicable calendar  
16          year been available at the filing date.

17          (2) The new charges shall take effect beginning on the  
18          first billing day of the following January billing period  
19          and remain in effect through the last billing day of the  
20          next December billing period regardless of whether the  
21          Commission enters upon a hearing pursuant to this  
22          subsection (d).

23          (3) The filing shall include relevant and necessary  
24          data and documentation for the applicable rate year that is  
25          consistent with the Commission's rules applicable to a  
26          filing for a general increase in rates or any rules adopted

1 by the Commission to implement this Section. Normalization  
2 adjustments shall not be required. Notwithstanding any  
3 other provision of this Section or Act or any rule or other  
4 requirement adopted by the Commission, a participating  
5 utility that is a combination utility with more than one  
6 rate zone shall not be required to file a separate set of  
7 such data and documentation for each rate zone and may  
8 combine such data and documentation into a single set of  
9 schedules.

10 Within 45 days after the utility files its annual update of  
11 cost inputs to the performance-based formula rate, the  
12 Commission shall have the authority, either upon complaint or  
13 its own initiative, but with reasonable notice, to enter upon a  
14 hearing concerning the prudence and reasonableness of the costs  
15 incurred by the utility to be recovered during the applicable  
16 rate year that are reflected in the inputs to the  
17 performance-based formula rate derived from the utility's FERC  
18 Form 1. During the course of the hearing, each objection shall  
19 be stated with particularity and evidence provided in support  
20 thereof, after which the utility shall have the opportunity to  
21 rebut the evidence. Discovery shall be allowed consistent with  
22 the Commission's Rules of Practice, which Rules shall be  
23 enforced by the Commission or the assigned administrative law  
24 judge ~~hearing examiner~~. The Commission shall apply the same  
25 evidentiary standards, including, but not limited to, those  
26 concerning the prudence and reasonableness of the costs



1 incurred by the utility, in the hearing as it would apply in a  
2 hearing to review a filing for a general increase in rates  
3 under Article IX of this Act. The Commission shall not,  
4 however, have the authority in a proceeding under this  
5 subsection (d) to consider or order any changes to the  
6 structure or protocols of the performance-based formula rate  
7 approved pursuant to subsection (c) of this Section. In a  
8 proceeding under this subsection (d), the Commission shall  
9 enter its order no later than the earlier of 240 days after the  
10 utility's filing of its annual update of cost inputs to the  
11 performance-based formula rate or December 31. The  
12 Commission's determinations of the prudence and reasonableness  
13 of the costs incurred for the applicable calendar year shall be  
14 final upon entry of the Commission's order and shall not be  
15 subject to reopening, reexamination, or collateral attack in  
16 any other Commission proceeding, case, docket, order, rule or  
17 regulation, provided, however, that nothing in this subsection  
18 (d) shall prohibit a party from petitioning the Commission to  
19 rehear or appeal to the courts the order pursuant to the  
20 provisions of this Act.

21 In the event the Commission does not, either upon complaint  
22 or its own initiative, enter upon a hearing within 45 days  
23 after the utility files the annual update of cost inputs to its  
24 performance-based formula rate, then the costs incurred for the  
25 applicable calendar year shall be deemed prudent and  
26 reasonable, and the filed charges shall not be subject to

1 reopening, reexamination, or collateral attack in any other  
2 proceeding, case, docket, order, rule, or regulation.

3 A participating utility's first filing of the updated cost  
4 inputs, and any Commission investigation of such inputs  
5 pursuant to this subsection (d) shall proceed notwithstanding  
6 the fact that the Commission's investigation under subsection  
7 (c) of this Section is still pending and notwithstanding any  
8 other law, order, rule, or Commission practice to the contrary.

9 (e) Nothing in subsections (c) or (d) of this Section shall  
10 prohibit the Commission from investigating, or a participating  
11 utility from filing, revenue-neutral tariff changes related to  
12 rate design of a performance-based formula rate that has been  
13 placed into effect for the utility. Following approval of a  
14 participating utility's performance-based formula rate tariff  
15 pursuant to subsection (c) of this Section, the utility shall  
16 make a filing with the Commission within one year after the  
17 effective date of the performance-based formula rate tariff  
18 that proposes changes to the tariff to incorporate the findings  
19 of any final rate design orders of the Commission applicable to  
20 the participating utility and entered subsequent to the  
21 Commission's approval of the tariff. The Commission shall,  
22 after notice and hearing, enter its order approving, or  
23 approving with modification, the proposed changes to the  
24 performance-based formula rate tariff within 240 days after the  
25 utility's filing. Following such approval, the utility shall  
26 make a filing with the Commission during each subsequent 3-year

1 period that either proposes revenue-neutral tariff changes or  
2 re-files the existing tariffs without change, which shall  
3 present the Commission with an opportunity to suspend the  
4 tariffs and consider revenue-neutral tariff changes related to  
5 rate design.

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

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

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

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

26 (3.5) For a participating utility other than a

1 combination utility, 20% improvement in the System Average  
2 Interruption Frequency Index for its Northeastern Region,  
3 using a baseline of the average of the data from 2001  
4 through 2010. For purposes of this paragraph (3.5),  
5 Northeastern Region shall have the meaning set forth in the  
6 participating utility's most recent report filed pursuant  
7 to Section 16-125 of this Act.

8 (4) Seventy-five percent improvement in the total  
9 number of customers who exceed the service reliability  
10 targets as set forth in subparagraphs (A) through (C) of  
11 paragraph (4) of subsection (b) of 83 Ill. Admin. Code Part  
12 411.140 as of May 1, 2011, using 2010 as the baseline year.

13 (5) Reduction in issuance of estimated electric bills:  
14 90% improvement for a participating utility other than a  
15 combination utility, and 56% improvement for a  
16 participating utility that is a combination utility, using  
17 a baseline of the average number of estimated bills for the  
18 years 2008 through 2010.

19 (6) Consumption on inactive meters: 90% improvement  
20 for a participating utility other than a combination  
21 utility, and 56% improvement for a participating utility  
22 that is a combination utility, using a baseline of the  
23 average unbilled kilowatthours for the years 2009 and 2010.

24 (7) Unaccounted for energy: 50% improvement for a  
25 participating utility other than a combination utility  
26 using a baseline of the non-technical line loss unaccounted

1 for energy kilowatthours for the year 2009.

2 (8) Uncollectible expense: reduce uncollectible  
3 expense by at least \$30,000,000 for a participating utility  
4 other than a combination utility and by at least \$3,500,000  
5 for a participating utility that is a combination utility,  
6 using a baseline of the average uncollectible expense for  
7 the years 2008 through 2010.

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

16 The definitions set forth in 83 Ill. Admin. Code Part  
17 411.20 as of May 1, 2011 shall be used for purposes of  
18 calculating performance under paragraphs (1) through (3.5) of  
19 this subsection (f), provided, however, that the participating  
20 utility may exclude up to 9 extreme weather event days from  
21 such calculation for each year, and provided further that the  
22 participating utility shall exclude 9 extreme weather event  
23 days when calculating each year of the baseline period to the  
24 extent that there are 9 such days in a given year of the  
25 baseline period. For purposes of this Section, an extreme  
26 weather event day is a 24-hour calendar day (beginning at 12:00

1 a.m. and ending at 11:59 p.m.) during which any weather event  
2 (e.g., storm, tornado) caused interruptions for 10,000 or more  
3 of the participating utility's customers for 3 hours or more.  
4 If there are more than 9 extreme weather event days in a year,  
5 then the utility may choose no more than 9 extreme weather  
6 event days to exclude, provided that the same extreme weather  
7 event days are excluded from each of the calculations performed  
8 under paragraphs (1) through (3.5) of this subsection (f).

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

24 The metrics and performance goals set forth in  
25 subparagraphs (5) through (8) of this subsection (f) are based  
26 on the assumptions that the participating utility may fully

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

11 (f-5) The financial penalties applicable to the metrics  
12 described in subparagraphs (1) through (8) of subsection (f) of  
13 this Section, as applicable, shall be applied through an  
14 adjustment to the participating utility's return on equity of  
15 no more than a total of 30 basis points in each of the first 3  
16 years, of no more than a total of 34 basis points in each of the  
17 3 years thereafter, and of no more than a total of 38 basis  
18 points in each of the 4 years thereafter, as follows:

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

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

1 by 6 basis points; and during years 7 through 10, by 7  
2 basis points; and

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

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

18 (3) With respect to each of the incremental annual  
19 performance goals established pursuant to paragraphs (3)  
20 and (3.5) of subsection (f) of this Section, for each year  
21 that a participating utility other than a combination  
22 utility does not achieve both such goals, the participating  
23 utility's return on equity shall be reduced as follows:  
24 during years 1 through 3, by 5 basis points; during years 4  
25 through 6, by 6 basis points; and during years 7 through  
26 10, by 7 basis points.



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

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

16           (6) With respect to each of the incremental annual  
17 performance goals established pursuant to paragraphs (6),  
18 (7), and (8) of subsection (f) of this Section, as  
19 applicable, which together measure non-operational  
20 customer savings and benefits relating to the  
21 implementation of the Advanced Metering Infrastructure  
22 Deployment Plan, as defined in Section 16-108.6 of this  
23 Act, the performance under each such goal shall be  
24 calculated in terms of the percentage of the goal achieved.  
25 The percentage of goal achieved for each of the goals shall  
26 be aggregated, and an average percentage value calculated,

1 for each year of the 10-year period. If the utility does  
2 not achieve an average percentage value in a given year of  
3 at least 95%, the participating utility's return on equity  
4 shall be reduced by 5 basis points.

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

17 The Commission shall, after notice and hearing, enter an  
18 order within 120 days after the metrics are filed approving, or  
19 approving with modification, a participating utility's tariff  
20 or mechanism to satisfy the metrics set forth in subsection (f)  
21 of this Section. On June 1 of each subsequent year, each  
22 participating utility shall file a report with the Commission  
23 that includes, among other things, a description of how the  
24 participating utility performed under each metric and an  
25 identification of any extraordinary events that adversely  
26 impacted the utility's performance. Whenever a participating

1 utility does not satisfy the metrics required pursuant to  
2 subsection (f) of this Section, the Commission shall, after  
3 notice and hearing, enter an order approving financial  
4 penalties in accordance with this subsection (f-5). The  
5 Commission-approved financial penalties shall be applied  
6 beginning with the next rate year. Nothing in this Section  
7 shall authorize the Commission to reduce or otherwise obviate  
8 the imposition of financial penalties for failing to achieve  
9 one or more of the metrics established pursuant to subparagraph  
10 (1) through (4) of subsection (f) of this Section.

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

1 using any hypothetical rate or adjustments to actual charges  
2 (other than as specified for energy efficiency) as an input.

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

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

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

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

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

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

23 Sections 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of  
24 this Act, other than this subsection (h), are inoperative after  
25 December 31, 2022 for every participating utility, after which  
26 time a participating utility shall no longer be eligible to

1 annually update the performance-based formula rate tariff  
2 pursuant to subsection (d) of this Section. At such time, the  
3 then current rates shall remain in effect until such time as  
4 new rates are set pursuant to Article IX of this Act, subject  
5 to retroactive adjustment, with interest, to reconcile rates  
6 charged with actual costs.

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

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

1 the costs of such offerings from retail customers.

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

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

22 (1) No earlier than 5 business days after May 22, 2013  
23 (the effective date of Public Act 98-15), each  
24 participating utility shall file any tariff changes  
25 necessary to implement the amendatory language set forth in  
26 subsections (c) and (d) of this Section by Public Act 98-15

1 and a revised revenue requirement under the participating  
2 utility's performance-based formula rate. The Commission  
3 shall enter a final order approving such tariff changes and  
4 revised revenue requirement within 21 days after the  
5 participating utility's filing.

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

26 (3) The tariff changes described in paragraphs (1) and



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

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

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

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

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

16 (B) if the Commission has entered an order pursuant to  
17 subsection (e) of Section 16-108.6 of this Act prior to May  
18 22, 2013 (the effective date of Public Act 98-15) that does  
19 not accelerate the commencement of the meter deployment  
20 schedule approved in the final Commission order on  
21 rehearing entered in Docket No. 12-0298, then the utility  
22 shall file with the Commission, within 45 days after such  
23 effective date, a plan for accelerating the commencement of  
24 the utility's meter deployment schedule approved in the  
25 final Commission order on rehearing entered in Docket No.  
26 12-0298; the Commission shall reopen the proceeding in

1           which it entered its order pursuant to subsection (e) of  
2           Section 16-108.6 of this Act and shall, after notice and  
3           hearing, enter an amendatory order that approves or  
4           approves as modified such accelerated plan within 90 days  
5           after the utility's filing; or

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

17          Any schedule for meter deployment approved by the  
18          Commission pursuant to this subsection (l) shall take into  
19          consideration procurement times for meters and other equipment  
20          and operational issues. Nothing in Public Act 98-15 shall  
21          shorten or extend the end dates for the 5-year or 10-year  
22          periods set forth in subsection (b) of this Section or Section  
23          16-108.6 of this Act. Nothing in this subsection is intended to  
24          address whether a participating utility has, or has not,  
25          satisfied any or all of the metrics and performance goals  
26          established pursuant to subsection (f) of this Section.

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

3 (Source: P.A. 98-15, eff. 5-22-13; 98-1175, eff. 6-1-15;  
4 99-143, eff. 7-27-15; 99-642, eff. 7-28-16; 99-906, eff.  
5 6-1-17.)

6 (220 ILCS 5/16-111)

7 Sec. 16-111. Rates and restructuring transactions during  
8 mandatory transition period; restructuring and other  
9 transactions.

10 (a) During the mandatory transition period,  
11 notwithstanding any provision of Article IX of this Act, and  
12 except as provided in subsections (b) and (f) of this Section,  
13 the Commission shall not (i) initiate, authorize or order any  
14 change by way of increase (other than in connection with a  
15 request for rate increase which was filed after September 1,  
16 1997 but prior to October 15, 1997, by an electric utility  
17 serving less than 12,500 customers in this State), (ii)  
18 initiate or, unless requested by the electric utility,  
19 authorize or order any change by way of decrease, restructuring  
20 or unbundling (except as provided in Section 16-109A), in the  
21 rates of any electric utility that were in effect on October 1,  
22 1996, or (iii) in any order approving any application for a  
23 merger pursuant to Section 7-204 that was pending as of May 16,  
24 1997, impose any condition requiring any filing for an  
25 increase, decrease, or change in, or other review of, an

1 electric utility's rates or enforce any such condition of any  
2 such order; provided, however, that this subsection shall not  
3 prohibit the Commission from:

4 (1) approving the application of an electric utility to  
5 implement an alternative to rate of return regulation or a  
6 regulatory mechanism that rewards or penalizes the  
7 electric utility through adjustment of rates based on  
8 utility performance, ~~pursuant to Section 9-244;~~

9 (2) authorizing an electric utility to eliminate its  
10 fuel adjustment clause and adjust its base rate tariffs in  
11 accordance with subsection (b), (d), or (f) of Section  
12 9-220 of this Act, to fix its fuel adjustment factor in  
13 accordance with subsection (c) of Section 9-220 of this  
14 Act, or to eliminate its fuel adjustment clause in  
15 accordance with subsection (e) of Section 9-220 of this  
16 Act;

17 (3) ordering into effect tariffs for delivery services  
18 and transition charges in accordance with Sections 16-104  
19 and 16-108, for real-time pricing in accordance with  
20 Section 16-107, or the options required by Section 16-110  
21 and subsection (n) of 16-112, allowing a billing experiment  
22 in accordance with Section 16-106, or modifying delivery  
23 services tariffs in accordance with Section 16-109; or

24 (4) ordering or allowing into effect any tariff to  
25 recover charges pursuant to Sections 9-201.5, 9-220.1,  
26 9-221, 9-222 (except as provided in Section 9-222.1),

1           16-108, and 16-114 of this Act, Section 5-5 of the  
2           Electricity Infrastructure Maintenance Fee Law, Section  
3           6-5 of the Renewable Energy, Energy Efficiency, and Coal  
4           Resources Development Law of 1997, and Section 13 of the  
5           Energy Assistance Act.

6           After December 31, 2004, the provisions of this subsection  
7           (a) shall not apply to an electric utility whose average  
8           residential retail rate was less than or equal to 90% of the  
9           average residential retail rate for the "Midwest Utilities", as  
10          that term is defined in subsection (b) of this Section, based  
11          on data reported on Form 1 to the Federal Energy Regulatory  
12          Commission for calendar year 1995, and which served between  
13          150,000 and 250,000 retail customers in this State on January  
14          1, 1995 unless the electric utility or its holding company has  
15          been acquired by or merged with an affiliate of another  
16          electric utility subsequent to January 1, 2002. This exemption  
17          shall be limited to this subsection (a) and shall not extend to  
18          any other provisions of this Act.

19          (b) Notwithstanding the provisions of subsection (a), each  
20          Illinois electric utility serving more than 12,500 customers in  
21          Illinois shall file tariffs (i) reducing, effective August 1,  
22          1998, each component of its base rates to residential retail  
23          customers by 15% from the base rates in effect immediately  
24          prior to January 1, 1998 and (ii) if the public utility  
25          provides electric service to (A) more than 500,000 customers  
26          but less than 1,000,000 customers in this State on January 1,

1 1999, reducing, effective May 1, 2002, each component of its  
2 base rates to residential retail customers by an additional 5%  
3 from the base rates in effect immediately prior to January 1,  
4 1998, or (B) at least 1,000,000 customers in this State on  
5 January 1, 1999, reducing, effective October 1, 2001, each  
6 component of its base rates to residential retail customers by  
7 an additional 5% from the base rates in effect immediately  
8 prior to January 1, 1998. Provided, however, that (A) if an  
9 electric utility's average residential retail rate is less than  
10 or equal to the average residential retail rate for a group of  
11 Midwest Utilities (consisting of all investor-owned electric  
12 utilities with annual system peaks in excess of 1000 megawatts  
13 in the States of Illinois, Indiana, Iowa, Kentucky, Michigan,  
14 Missouri, Ohio, and Wisconsin), based on data reported on Form  
15 1 to the Federal Energy Regulatory Commission for calendar year  
16 1995, then it shall only be required to file tariffs (i)  
17 reducing, effective August 1, 1998, each component of its base  
18 rates to residential retail customers by 5% from the base rates  
19 in effect immediately prior to January 1, 1998, (ii) reducing,  
20 effective October 1, 2000, each component of its base rates to  
21 residential retail customers by the lesser of 5% of the base  
22 rates in effect immediately prior to January 1, 1998 or the  
23 percentage by which the electric utility's average residential  
24 retail rate exceeds the average residential retail rate of the  
25 Midwest Utilities, based on data reported on Form 1 to the  
26 Federal Energy Regulatory Commission for calendar year 1999,

1 and (iii) reducing, effective October 1, 2002, each component  
2 of its base rates to residential retail customers by an  
3 additional amount equal to the lesser of 5% of the base rates  
4 in effect immediately prior to January 1, 1998 or the  
5 percentage by which the electric utility's average residential  
6 retail rate exceeds the average residential retail rate of the  
7 Midwest Utilities, based on data reported on Form 1 to the  
8 Federal Energy Regulatory Commission for calendar year 2001;  
9 and (B) if the average residential retail rate of an electric  
10 utility serving between 150,000 and 250,000 retail customers in  
11 this State on January 1, 1995 is less than or equal to 90% of  
12 the average residential retail rate for the Midwest Utilities,  
13 based on data reported on Form 1 to the Federal Energy  
14 Regulatory Commission for calendar year 1995, then it shall  
15 only be required to file tariffs (i) reducing, effective August  
16 1, 1998, each component of its base rates to residential retail  
17 customers by 2% from the base rates in effect immediately prior  
18 to January 1, 1998; (ii) reducing, effective October 1, 2000,  
19 each component of its base rates to residential retail  
20 customers by 2% from the base rate in effect immediately prior  
21 to January 1, 1998; and (iii) reducing, effective October 1,  
22 2002, each component of its base rates to residential retail  
23 customers by 1% from the base rates in effect immediately prior  
24 to January 1, 1998. Provided, further, that any electric  
25 utility for which a decrease in base rates has been or is  
26 placed into effect between October 1, 1996 and the dates



1 specified in the preceding sentences of this subsection, other  
2 than pursuant to the requirements of this subsection, shall be  
3 entitled to reduce the amount of any reduction or reductions in  
4 its base rates required by this subsection by the amount of  
5 such other decrease. The tariffs required under this subsection  
6 shall be filed 45 days in advance of the effective date.  
7 Notwithstanding anything to the contrary in Section 9-220 of  
8 this Act, no restatement of base rates in conjunction with the  
9 elimination of a fuel adjustment clause under that Section  
10 shall result in a lesser decrease in base rates than customers  
11 would otherwise receive under this subsection had the electric  
12 utility's fuel adjustment clause not been eliminated.

13 (c) Any utility reducing its base rates by 15% on August 1,  
14 1998 pursuant to subsection (b) shall include the following  
15 statement on its bills for residential customers from August 1  
16 through December 31, 1998: "Effective August 1, 1998, your  
17 rates have been reduced by 15% by the Electric Service Customer  
18 Choice and Rate Relief Law of 1997 passed by the Illinois  
19 General Assembly.". Any utility reducing its base rates by 5%  
20 on August 1, 1998, pursuant to subsection (b) shall include the  
21 following statement on its bills for residential customers from  
22 August 1 through December 31, 1998: "Effective August 1, 1998,  
23 your rates have been reduced by 5% by the Electric Service  
24 Customer Choice and Rate Relief Law of 1997 passed by the  
25 Illinois General Assembly.".

26 Any utility reducing its base rates by 2% on August 1, 1998

1 pursuant to subsection (b) shall include the following  
2 statement on its bills for residential customers from August 1  
3 through December 31, 1998: "Effective August 1, 1998, your  
4 rates have been reduced by 2% by the Electric Service Customer  
5 Choice and Rate Relief Law of 1997 passed by the Illinois  
6 General Assembly."

7 (d) (Blank.)

8 (e) (Blank.)

9 (f) During the mandatory transition period, an electric  
10 utility may file revised tariffs reducing the price of any  
11 tariffed service offered by the electric utility for all  
12 customers taking that tariffed service, which shall be  
13 effective 7 days after filing.

14 (g) Until all classes of tariffed services are declared  
15 competitive, an electric utility may, without obtaining any  
16 approval of the Commission other than that provided for in this  
17 subsection and notwithstanding any other provision of this Act  
18 or any rule or regulation of the Commission that would require  
19 such approval:

20 (1) implement a reorganization, other than a merger of  
21 2 or more public utilities as defined in Section 3-105 or  
22 their holding companies;

23 (2) retire generating plants from service;

24 (3) sell, assign, lease or otherwise transfer assets to  
25 an affiliated or unaffiliated entity and as part of such  
26 transaction enter into service agreements, power purchase

1 agreements, or other agreements with the transferee;  
2 provided, however, that the prices, terms and conditions of  
3 any power purchase agreement must be approved or allowed  
4 into effect by the Federal Energy Regulatory Commission; or

5 (4) use any accelerated cost recovery method including  
6 accelerated depreciation, accelerated amortization or  
7 other capital recovery methods, or record reductions to the  
8 original cost of its assets.

9 In order to implement a reorganization, retire generating  
10 plants from service, or sell, assign, lease or otherwise  
11 transfer assets pursuant to this Section, the electric utility  
12 shall comply with subsections (c) and (d) of Section 16-128, if  
13 applicable, and subsection (k) of this Section, if applicable,  
14 and provide the Commission with at least 30 days notice of the  
15 proposed reorganization or transaction, which notice shall  
16 include the following information:

17 (i) a complete statement of the entries that the  
18 electric utility will make on its books and records of  
19 account to implement the proposed reorganization or  
20 transaction together with a certification from an  
21 independent certified public accountant that such entries  
22 are in accord with generally accepted accounting  
23 principles and, if the Commission has previously approved  
24 guidelines for cost allocations between the utility and its  
25 affiliates, a certification from the chief accounting  
26 officer of the utility that such entries are in accord with

1 those cost allocation guidelines;

2 (ii) a description of how the electric utility will  
3 use proceeds of any sale, assignment, lease or transfer to  
4 retire debt or otherwise reduce or recover the costs of  
5 services provided by such electric utility;

6 (iii) a list of all federal approvals or approvals  
7 required from departments and agencies of this State, other  
8 than the Commission, that the electric utility has or will  
9 obtain before implementing the reorganization or  
10 transaction;

11 (iv) an irrevocable commitment by the electric utility  
12 that it will not, as a result of the transaction, impose  
13 any stranded cost charges that it might otherwise be  
14 allowed to charge retail customers under federal law or  
15 increase the transition charges that it is otherwise  
16 entitled to collect under this Article XVI;

17 (v) if the electric utility proposes to sell, assign,  
18 lease or otherwise transfer a generating plant that brings  
19 the amount of net dependable generating capacity  
20 transferred pursuant to this subsection to an amount equal  
21 to or greater than 15% of the electric utility's net  
22 dependable capacity as of the effective date of this  
23 amendatory Act of 1997, and enters into a power purchase  
24 agreement with the entity to which such generating plant is  
25 sold, assigned, leased, or otherwise transferred, the  
26 electric utility also agrees, if its fuel adjustment clause

1 has not already been eliminated, to eliminate its fuel  
2 adjustment clause in accordance with subsection (b) of  
3 Section 9-220 for a period of time equal to the length of  
4 any such power purchase agreement or successor agreement,  
5 or until January 1, 2005, whichever is longer; if the  
6 capacity of the generating plant so transferred and related  
7 power purchase agreement does not result in the elimination  
8 of the fuel adjustment clause under this subsection, and  
9 the fuel adjustment clause has not already been eliminated,  
10 the electric utility shall agree that the costs associated  
11 with the transferred plant that are included in the  
12 calculation of the rate per kilowatt-hour to be applied  
13 pursuant to the electric utility's fuel adjustment clause  
14 during such period shall not exceed the per kilowatt-hour  
15 cost associated with such generating plant included in the  
16 electric utility's fuel adjustment clause during the full  
17 calendar year preceding the transfer, with such limit to be  
18 adjusted each year thereafter by the Gross Domestic Product  
19 Implicit Price Deflator; and

20 (vi) in addition, if the electric utility proposes to  
21 sell, assign, or lease, (A) either (1) an amount of  
22 generating plant that brings the amount of net dependable  
23 generating capacity transferred pursuant to this  
24 subsection to an amount equal to or greater than 15% of its  
25 net dependable capacity on the effective date of this  
26 amendatory Act of 1997, or (2) one or more generating

1 plants with a total net dependable capacity of 1100  
2 megawatts, or (B) transmission and distribution facilities  
3 that either (1) bring the amount of transmission and  
4 distribution facilities transferred pursuant to this  
5 subsection to an amount equal to or greater than 15% of the  
6 electric utility's total depreciated original cost  
7 investment in such facilities, or (2) represent an  
8 investment of \$25,000,000 in terms of total depreciated  
9 original cost, the electric utility shall provide, in  
10 addition to the information listed in subparagraphs (i)  
11 through (v), the following information: (A) a description  
12 of how the electric utility will meet its service  
13 obligations under this Act in a safe and reliable manner  
14 and (B) the electric utility's projected earned rate of  
15 return on common equity for each year from the date of the  
16 notice through December 31, 2006 both with and without the  
17 proposed transaction. If the Commission has not issued an  
18 order initiating a hearing on the proposed transaction  
19 within 30 days after the date the electric utility's notice  
20 is filed, the transaction shall be deemed approved. The  
21 Commission may, after notice and hearing, prohibit the  
22 proposed transaction if it makes either or both of the  
23 following findings: (1) that the proposed transaction will  
24 render the electric utility unable to provide its tariffed  
25 services in a safe and reliable manner, or (2) that there  
26 is a strong likelihood that consummation of the proposed

1 transaction will result in the electric utility being  
2 entitled to request an increase in its base rates. Any  
3 hearing initiated by the Commission into the proposed  
4 transaction shall be completed, and the Commission's final  
5 order approving or prohibiting the proposed transaction  
6 shall be entered, within 90 days after the date the  
7 electric utility's notice was filed. Provided, however,  
8 that a sale, assignment, or lease of transmission  
9 facilities to an independent system operator that meets the  
10 requirements of Section 16-126 shall not be subject to  
11 Commission approval under this Section.

12 In any proceeding conducted by the Commission pursuant  
13 to this subparagraph (vi), intervention shall be limited to  
14 parties with a direct interest in the transaction which is  
15 the subject of the hearing and any statutory consumer  
16 protection agency as defined in subsection (d) of Section  
17 9-102.1. Notwithstanding the provisions of Section 10-113  
18 of this Act, any application seeking rehearing of an order  
19 issued under this subparagraph (vi), whether filed by the  
20 electric utility or by an intervening party, shall be filed  
21 within 10 days after service of the order.

22 The Commission shall not in any subsequent proceeding or  
23 otherwise, review such a reorganization or other transaction  
24 authorized by this Section, but shall retain the authority to  
25 allocate costs as stated in Section 16-111(i). An entity to  
26 which an electric utility sells, assigns, leases or transfers

1 assets pursuant to this subsection (g) shall not, as a result  
2 of the transactions specified in this subsection (g), be deemed  
3 a public utility as defined in Section 3-105. Nothing in this  
4 subsection (g) shall change any requirement under the  
5 jurisdiction of the Illinois Department of Nuclear Safety  
6 including, but not limited to, the payment of fees. Nothing in  
7 this subsection (g) shall exempt a utility from obtaining a  
8 certificate pursuant to Section 8-406 of this Act for the  
9 construction of a new electric generating facility. Nothing in  
10 this subsection (g) is intended to exempt the transactions  
11 hereunder from the operation of the federal or State antitrust  
12 laws. Nothing in this subsection (g) shall require an electric  
13 utility to use the procedures specified in this subsection for  
14 any of the transactions specified herein. Any other procedure  
15 available under this Act may, at the electric utility's  
16 election, be used for any such transaction.

17 (h) During the mandatory transition period, the Commission  
18 shall not establish or use any rates of depreciation, which for  
19 purposes of this subsection shall include amortization, for any  
20 electric utility other than those established pursuant to  
21 subsection (c) of Section 5-104 of this Act or utilized  
22 pursuant to subsection (g) of this Section. Provided, however,  
23 that in any proceeding to review an electric utility's rates  
24 for tariffed services pursuant to Section 9-201, 9-202, 9-250  
25 or 16-111(d) of this Act, the Commission may establish new  
26 rates of depreciation for the electric utility in the same



1 manner provided in subsection (d) of Section 5-104 of this Act.  
2 An electric utility implementing an accelerated cost recovery  
3 method including accelerated depreciation, accelerated  
4 amortization or other capital recovery methods, or recording  
5 reductions to the original cost of its assets, pursuant to  
6 subsection (g) of this Section, shall file a statement with the  
7 Commission describing the accelerated cost recovery method to  
8 be implemented or the reduction in the original cost of its  
9 assets to be recorded. Upon the filing of such statement, the  
10 accelerated cost recovery method or the reduction in the  
11 original cost of assets shall be deemed to be approved by the  
12 Commission as though an order had been entered by the  
13 Commission.

14 (i) Subsequent to the mandatory transition period, the  
15 Commission, in any proceeding to establish rates and charges  
16 for tariffed services offered by an electric utility, shall  
17 consider only (1) the then current or projected revenues,  
18 costs, investments and cost of capital directly or indirectly  
19 associated with the provision of such tariffed services; (2)  
20 collection of transition charges in accordance with Sections  
21 16-102 and 16-108 of this Act; (3) recovery of any employee  
22 transition costs as described in Section 16-128 which the  
23 electric utility is continuing to incur, including recovery of  
24 any unamortized portion of such costs previously incurred or  
25 committed, with such costs to be equitably allocated among  
26 bundled services, delivery services, and contracts with

1 alternative retail electric suppliers; and (4) recovery of the  
2 costs associated with the electric utility's compliance with  
3 decommissioning funding requirements; and shall not consider  
4 any other revenues, costs, investments or cost of capital of  
5 either the electric utility or of any affiliate of the electric  
6 utility that are not associated with the provision of tariffed  
7 services. In setting rates for tariffed services, the  
8 Commission shall equitably allocate joint and common costs and  
9 investments between the electric utility's competitive and  
10 tariffed services. In determining the justness and  
11 reasonableness of the electric power and energy component of an  
12 electric utility's rates for tariffed services subsequent to  
13 the mandatory transition period and prior to the time that the  
14 provision of such electric power and energy is declared  
15 competitive, the Commission shall consider the extent to which  
16 the electric utility's tariffed rates for such component for  
17 each customer class exceed the market value determined pursuant  
18 to Section 16-112, and, if the electric power and energy  
19 component of such tariffed rate exceeds the market value by  
20 more than 10% for any customer class, may establish such  
21 electric power and energy component at a rate equal to the  
22 market value plus 10%.

23 (j) During the mandatory transition period, an electric  
24 utility may elect to transfer to a non-operating income account  
25 under the Commission's Uniform System of Accounts either or  
26 both of (i) an amount of unamortized investment tax credit that

1 is in addition to the ratable amount which is credited to the  
2 electric utility's operating income account for the year in  
3 accordance with Section 46(f)(2) of the federal Internal  
4 Revenue Code of 1986, as in effect prior to P.L. 101-508, or  
5 (ii) "excess tax reserves", as that term is defined in Section  
6 203(e)(2)(A) of the federal Tax Reform Act of 1986, provided  
7 that (A) the amount transferred may not exceed the amount of  
8 the electric utility's assets that were created pursuant to  
9 Statement of Financial Accounting Standards No. 71 which the  
10 electric utility has written off during the mandatory  
11 transition period, and (B) the transfer shall not be effective  
12 until approved by the Internal Revenue Service. An electric  
13 utility electing to make such a transfer shall file a statement  
14 with the Commission stating the amount and timing of the  
15 transfer for which it intends to request approval of the  
16 Internal Revenue Service, along with a copy of its proposed  
17 request to the Internal Revenue Service for a ruling. The  
18 Commission shall issue an order within 14 days after the  
19 electric utility's filing approving, subject to receipt of  
20 approval from the Internal Revenue Service, the proposed  
21 transfer.

22 (k) If an electric utility is selling or transferring to a  
23 single buyer 5 or more generating plants located in this State  
24 with a total net dependable capacity of 5000 megawatts or more  
25 pursuant to subsection (g) of this Section and has obtained a  
26 sale price or consideration that exceeds 200% of the book value

1 of such plants, the electric utility must provide to the  
2 Governor, the President of the Illinois Senate, the Minority  
3 Leader of the Illinois Senate, the Speaker of the Illinois  
4 House of Representatives, and the Minority Leader of the  
5 Illinois House of Representatives no later than 15 days after  
6 filing its notice under subsection (g) of this Section or 5  
7 days after the date on which this subsection (k) becomes law,  
8 whichever is later, a written commitment in which such electric  
9 utility agrees to expend \$2 billion outside the corporate  
10 limits of any municipality with 1,000,000 or more inhabitants  
11 within such electric utility's service area, over a 6-year  
12 period beginning with the calendar year in which the notice is  
13 filed, on projects, programs, and improvements within its  
14 service area relating to transmission and distribution  
15 including, without limitation, infrastructure expansion,  
16 repair and replacement, capital investments, operations and  
17 maintenance, and vegetation management.

18 (1) Notwithstanding any other provision of this Act or any  
19 rule, regulation, or prior order of the Commission, a public  
20 utility providing electric and gas service may do any one or  
21 more of the following: transfer assets to, reorganize with, or  
22 merge with one or more public utilities under common holding  
23 company ownership or control in the manner prescribed in  
24 subsection (g) of this Section. No merger transaction costs,  
25 such as fees paid to attorneys, investment bankers, and other  
26 consultants, incurred in connection with a merger pursuant to

1 this subsection (l) shall be recoverable in any subsequent rate  
2 proceeding. Approval of a merger pursuant to this subsection  
3 (l) shall not constitute approval of, or otherwise require,  
4 rate recovery of other costs incurred in connection with, or to  
5 implement the merger, such as the cost of restructuring,  
6 combining, or integrating debt, assets, or systems. Such other  
7 costs may be recovered only to the extent that the surviving  
8 utility can demonstrate that the cost savings produced by such  
9 restructuring, combination, or integration exceed the  
10 associated costs. Nothing in this subsection (l) shall impair  
11 the terms or conditions of employment or the collective  
12 bargaining rights of any employees of the utilities that are  
13 transferring assets, reorganizing, or merging.

14 (m) If an electric utility that on December 31, 2005  
15 provided electric service to at least 100,000 customers in  
16 Illinois transfers assets, reorganizes, or merges under this  
17 Section, then the same provisions apply that applied during the  
18 mandatory transition period under Section 16-128.

19 (Source: P.A. 95-331, eff. 8-21-07; 95-481, eff. 8-28-07;  
20 95-876, eff. 8-21-08.)

21 (220 ILCS 5/4-305 rep.)

22 (220 ILCS 5/8-304 rep.)

23 (220 ILCS 5/8-405 rep.)

24 (220 ILCS 5/8-405.1 rep.)

25 (220 ILCS 5/9-216 rep.)

1 (220 ILCS 5/9-222.3 rep.)

2 (220 ILCS 5/9-242 rep.)

3 (220 ILCS 5/9-244 rep.)

4 (220 ILCS 5/13-407 rep.)

5 Section 15. The Public Utilities Act is amended by  
6 repealing Sections 4-305, 8-304, 8-405, 8-405.1, 9-216,  
7 9-222.3, 9-242, 9-244, and 13-407.

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

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220 ILCS 5/4-304

from Ch. 111 2/3, par. 4-304

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220 ILCS 5/5-102

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