



Rep. Kevin A. McCarthy

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LRB097 05207 ASK 52489 a

1 AMENDMENT TO HOUSE BILL 14

2 AMENDMENT NO. _____. Amend House Bill 14 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Public Utilities Act is amended by adding
5 Sections 16-108.5 and 19-150 as follows:

6 (220 ILCS 5/16-108.5 new)

7 Sec. 16-108.5. Infrastructure investment and
8 modernization; regulatory reform.

9 (a) The General Assembly recognizes that for well over a
10 century Illinois residents and businesses have been
11 well-served by and have benefitted from a comprehensive
12 electric utility system. The General Assembly finds that
13 electric utilities are now entering a new construction cycle
14 that is needed to refurbish, rebuild, modernize, and expand
15 systems to continue to provide safe, reliable, and affordable
16 service to the State's current and future utility customers in

1 this newly digitized age. In particular, the General Assembly
2 finds that it is the policy of this State that significant
3 investments must be made in the State's electric grid over the
4 next decade to modernize and upgrade transmission and
5 distribution facilities in the State. These investments will
6 ensure that the State's electric utility infrastructure will
7 promote future economic development in the State and that the
8 State's electric utilities will be able to continue to provide
9 quality electric service to their customers, including
10 innovative technological offerings that will enhance customer
11 experience and choice such as smart meters that are dependent
12 on a modernized or smart grid. These investments, including
13 programs to reinforce the safety and security of high voltage
14 transmission lines, will also ensure that the State's electric
15 utility infrastructure continues to be safe and reliable. The
16 introduction of performance metrics will further ensure that
17 safety and reliability and other indicators are not just
18 maintained but improved by more than 15% over the next decade.

19 The General Assembly further recognizes that, in addition
20 to attracting capital and businesses to the State, these
21 investments will create training opportunities for the
22 citizens of this State, all of which will create new employment
23 opportunities for Illinoisans at a time when they are most
24 needed, especially for minority-owned and female-owned
25 business enterprises. The General Assembly further finds that
26 regulatory reform measures that increase predictability,

1 stability, and transparency in the ratemaking process are
2 needed to promote prudent, long-term infrastructure investment
3 and to mutually benefit the State's electric utilities and
4 their customers, regulators, and investors.

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

21 During the infrastructure investment program's peak
22 program year, it shall create approximately 2,000 full-time
23 equivalent jobs for a participating utility other than a
24 combination utility, and 450 full-time equivalent jobs for a
25 participating utility that is a combination utility, including
26 direct jobs, contractor positions, positions that would

1 otherwise be eliminated, and induced jobs. For purposes of this
2 Section, "peak program year" means the consecutive 12-month
3 period with the highest number of full-time equivalent jobs
4 that occurs between the beginning of investment year 2 and the
5 end of investment year 4.

6 Beginning on the date that the initial rates take effect
7 pursuant to subsection (c) of this Section, a participating
8 utility other than a combination utility shall:

9 (1) over a 5-year period, invest at least
10 \$1,100,000,000 in electric system upgrades, modernization
11 projects, and training facilities, including, but not
12 limited to:

13 (A) distribution infrastructure improvements
14 totaling at least \$1,000,000,000, including
15 underground residential distribution cable injection
16 and replacement and mainline cable system
17 refurbishment and replacement projects;

18 (B) training facility construction or upgrade
19 projects totaling at least \$5,000,000; any such new
20 facility must be designed for the purpose of obtaining,
21 and the owner of the facility shall apply for,
22 certification under the United States Green Building
23 Council's Leadership in Energy Efficiency Design Green
24 Building Rating System; and

25 (C) wood pole inspection, treatment, and
26 replacement programs; and

1 (2) over a 10-year period, invest at least
2 \$1,500,000,000 to upgrade and modernize its transmission
3 and distribution infrastructure and in smart grid electric
4 system upgrades, including, but not limited to:

5 (A) additional smart meters;

6 (B) distribution automation;

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

9 (D) substation micro-processor relay upgrades. If
10 a participating utility other than a combination
11 utility serves less than 3 million electric
12 distribution customers in Illinois, then the
13 infrastructure investment program commitments and
14 obligations described in this subsection (b) shall be
15 reduced proportionately, based on the number of
16 customers, for the utility.

17 Beginning on the date that the initial rates take effect
18 pursuant to subsection (c) of this Section, a participating
19 utility that is a combination utility shall:

20 (1) over a 5-year period, invest at least \$240,000,000
21 in electric system upgrades, modernization projects, and
22 training facilities, including, but not limited to:

23 (A) distribution infrastructure improvements
24 totaling at least \$220,000,000, which may include bulk
25 supply substations, transformers, reconductoring, and
26 rebuilding overhead distribution and sub-transmission

1 lines, underground residential distribution cable
2 injection and replacement and mainline cable system
3 refurbishment and replacement projects;

4 (B) training facility construction or upgrade
5 projects totaling at least \$1,000,000; any such new
6 facility must be designed for the purpose of obtaining,
7 and the owner of the facility shall apply for,
8 certification under the United States Green Building
9 Council's Leadership in Energy Efficiency Design Green
10 Building Rating System; and

11 (C) wood pole inspection, treatment, and
12 replacement programs; and

13 (2) over a 10-year period, invest at least \$330,000,000
14 to upgrade and modernize its transmission and distribution
15 infrastructure and in smart grid electric system upgrades,
16 including, but not limited to:

17 (A) additional smart meters;

18 (B) distribution automation;

19 (C) associated cyber secure data communication
20 network; and

21 (D) substation micro-processor relay upgrades.

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

1 years 2008, 2009, and 2010 as reported in the applicable
2 Federal Energy Regulatory Commission (FERC) Form 1; provided
3 that where one or more utilities have merged, the average
4 capital spend shall be determined using the aggregate of the
5 merged utilities' capital spend reported on FERC Form 1 for the
6 years 2008, 2009, and 2010.

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

1 If, subsequent to completion of a corrective action plan,
2 the Commission enters an order finding, after notice and
3 hearing, that a participating utility did not satisfy its peak
4 job commitment described in this subsection (b) for reasons
5 that are reasonably within its control, then the Commission
6 shall also determine, after consideration of the evidence,
7 including, but not limited to, evidence submitted by the
8 Department of Commerce and Economic Opportunity and the
9 utility, the deficiency in the number of full-time equivalent
10 jobs during the peak program year due to such failure. The
11 Commission shall notify the Department of any proceeding that
12 is initiated pursuant to this paragraph. For each full-time
13 equivalent job deficiency during the peak program year that the
14 Commission finds as set forth in this paragraph, the
15 participating utility shall, within 30 days after the entry of
16 the Commission's order, pay \$1,500 to a fund for training
17 grants administered under Section 605-800 of The Department of
18 Commerce and Economic Opportunity Law.

19 If the Commission finds, after notice and hearing, that a
20 participating utility is not satisfying its investment amount
21 commitments described in this subsection (b), then the utility
22 shall no longer be eligible to annually update the formula rate
23 tariff pursuant to subsection (d) of this Section. In such
24 event, the then current rates shall remain in effect until such
25 time as new rates are set pursuant to Article IX of this Act,
26 subject to retroactive adjustment, with interest, to reconcile

1 rates charged with actual costs.

2 The fact that a participating utility invests more than the
3 minimum amounts specified in this subsection (b) shall not
4 imply imprudence or unreasonableness.

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

13 In meeting the obligations of this subsection (b), to the
14 extent feasible and consistent with State and federal law, the
15 investments under the infrastructure investment program should
16 provide employment opportunities for all segments of the
17 population and workforce, including minority-owned and
18 female-owned business enterprises.

19 (c) A participating utility may elect to recover its
20 delivery services costs through a formula rate approved by the
21 Commission, which shall specify the cost components that form
22 the basis of the rate charged to customers with sufficient
23 specificity to operate in a standardized manner and be updated
24 annually with transparent information that reflects the
25 utility's actual costs for the applicable calendar year. For
26 purposes of this Section, "actual costs" means the cost inputs

1 described in this subsection (c) and in subsection (d) of this
2 Section, including data based on the utility's most recent FERC
3 Form 1, projected plant additions and correspondingly updated
4 depreciation reserve and expense for the current calendar year,
5 and, as applicable, any charge or credit resulting from a
6 reconciliation of prior periods or an adjustment ordered by the
7 Commission. In the event the utility recovers a portion of its
8 costs through automatic adjustment clause tariffs on the
9 effective date of this amendatory Act of the 97th General
10 Assembly, the utility may elect to continue to recover these
11 costs through such tariffs, but then these costs shall not be
12 recovered through the formula rate.

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

26 (1) Provide for the recovery of the utility's actual

1 costs of service for the applicable calendar year that are
2 prudently incurred and reasonable in amount consistent
3 with Commission practice and law. The fact that a cost
4 differs from that incurred in a prior calendar year or that
5 an investment is different from that made in a prior
6 calendar year shall not imply the imprudence or
7 unreasonableness of that cost or investment.

8 (2) Reflect the utility's actual capital structure for
9 the applicable calendar year, excluding goodwill, subject
10 to a determination of prudence and reasonableness
11 consistent with Commission practice and law. (3) Include a
12 cost of equity, which shall be calculated as the sum of the
13 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) 625 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) as
2 deemed appropriate by the Commission.

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

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

15 (B) recovery of pension and other post-employment
16 benefits expense based on actual costs incurred for the
17 applicable calendar year, provided that such costs are
18 supported by an actuarial study;

19 (C) recovery of severance costs amortized over a
20 period that is consistent with savings resulting from
21 the severance;

22 (D) investment return on pension assets net of
23 deferred tax benefits equal to the utility's long-term
24 debt cost of capital as of the end of the applicable
25 calendar year;

26 (E) recovery of the expenses incurred related to

1 the Commission proceeding under this subsection (c) to
2 approve this formula rate and initial rates or to
3 subsequent proceedings related to the formula,
4 provided that the recovery shall be amortized over a
5 3-year period; recovery of expenses incurred related
6 to the annual Commission proceedings under subsection
7 (d) of this Section to review the inputs to the formula
8 rate shall be expensed and recovered through the
9 formula rate;

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

12 (G) historical weather normalized billing
13 determinants; and

14 (H) allocation methods for common costs.

15 The Commission's review and order with respect to these
16 protocols shall otherwise be consistent with Commission
17 practice and law.

18 The utility shall file, together with its tariff, data
19 based on its most recent FERC Form 1, plus projected plant
20 additions and correspondingly updated depreciation reserve and
21 expense for the current calendar year, that shall populate the
22 formula rate and set the initial delivery services rates under
23 the formula. These initial rates shall take effect 30 days
24 after the filing, provided, however, that the initial rates
25 shall be subject to retroactive rate adjustments by the
26 Commission, including, but not limited to, refunds or

1 surcharges, that are designed to incorporate the provisions of
2 the Commission's final order approving the formula rate
3 structure and protocols and to give effect to the initial rates
4 as therein approved such that the refunds or surcharges that
5 are applied for the remainder of the period until the first
6 rate update will take effect under subsection (d) shall enable
7 the utility to recover the same amount of revenues the utility
8 otherwise would have recovered had the Commission-approved
9 initial rates been in effect as of the date the tariff was
10 filed.

11 After the utility files its proposed formula rate structure
12 and protocols and initial rates, the Commission shall initiate
13 a docket to review and by order approve, or approve as
14 modified, the formula rate, including the initial rates, as
15 just and reasonable within 180 days after the date on which the
16 tariff was filed, or, if the tariff is filed within 30 days
17 after the effective date of this amendatory Act of the 97th
18 General Assembly, then by December 31, 2011. Such review shall
19 be based on the same evidentiary standards, including, but not
20 limited to, those concerning the prudence and reasonableness of
21 the costs incurred by the utility, the Commission applies in a
22 hearing to review a filing for a general increase in rates
23 under Article IX of this Act.

24 Subsequent changes to the formula rate structure or
25 protocols shall be made as tariff amendments and filed with the
26 Commission as set forth in Section 9-201 of this Act, provided

1 that any such changes shall be consistent with paragraphs (1)
2 through (4) of this subsection (c).

3 After 11 years following the effective date of this
4 amendatory Act of the 97th General Assembly, the Commission may
5 upon petition or its own initiative, but with reasonable
6 notice, enter upon a hearing concerning proposed changes to the
7 formula rate, including those protocols established under
8 paragraph (4) of this subsection (c), provided that there shall
9 be a rebuttable presumption that the protocols are just and
10 reasonable. These proposed changes shall be stated with
11 particularity and accompanied by clear and convincing evidence
12 that the changes are just and reasonable. No such change
13 adopted by the Commission shall be applied to the calculation
14 of the utility's rates until the next calendar year, with the
15 rates to become effective on June 1 of the year following that
16 calendar year, provided that the next calendar year begins no
17 less than 90 days following the date on which the Commission
18 issues an order adopting the change.

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

23 (d) Subsequent to the Commission's issuance of an order
24 approving the utility's formula rate structure and protocols,
25 and initial rates under subsection (c) of this Section, the
26 utility shall make an annual informational filing with the

1 Chief Clerk of the Commission setting forth its updated cost
2 inputs to the formula rate for the applicable calendar year and
3 the corresponding new charges. Consistent with this subsection
4 (d), the utility shall include, together with the filing of the
5 update of cost inputs to the formula rate, relevant and
6 necessary data and documentation for the applicable calendar
7 year that is consistent with the Commission's rules applicable
8 to a filing for a general increase in rates or any rules
9 adopted by the Commission to implement this Section.
10 Specifically, for each such filing, the utility shall comply
11 with the following requirements and include the following
12 information:

13 (1) File on or before May 1, with the new charges to
14 take effect beginning with the June billing period of the
15 current year. These charges shall take effect on the first
16 billing day of the June billing period and remain in effect
17 through the last billing day of the following May billing
18 period regardless of whether the Commission enters upon a
19 hearing pursuant to this subsection (d).

20 (2) The inputs to the formula rate for the applicable
21 calendar year shall be based on historical data from the
22 utility's most recent annual FERC Form 1 plus projected
23 plant additions and correspondingly updated depreciation
24 reserve and expense for the current calendar year. In
25 addition, the utility shall also present, for the prior
26 applicable calendar year, a reconciliation of the inputs

1 for the prior applicable calendar year (FERC Form 1
2 historical data and projected plant additions) with the
3 actual costs incurred in the prior applicable calendar
4 year, and set forth the applicable charge or credit, if
5 any, resulting from the reconciliation that is
6 incorporated in the current formula rate.

7 (3) The utility shall include, together with the filing
8 of the update of cost inputs to the formula rate, relevant
9 and necessary data and documentation for the applicable
10 calendar year that is consistent with the Commission's
11 rules applicable to a filing for a general increase in
12 rates or any rules adopted by the Commission to implement
13 this Section. Normalization adjustments shall not be
14 required. Provided, however, that the utility shall
15 amortize extraordinary charges or credits that are beyond
16 its control and non-recurring in nature, including those
17 related to storms, if the charges or credits exceed
18 \$10,000,000 in the applicable calendar year.

19 Within 45 days after the utility files its annual update of
20 cost inputs to the formula rate, the Commission shall have the
21 authority, either upon complaint or its own initiative, but
22 with reasonable notice, to enter upon a hearing concerning the
23 prudence and reasonableness of the costs incurred by the
24 utility during the applicable calendar year that are reflected
25 in the inputs to the formula rate derived from the utility's
26 FERC Form 1. During the course of the hearing, each objection

1 shall be stated with particularity and substantial evidence
2 provided in support thereof, after which the utility shall have
3 the opportunity to rebut the evidence. Discovery shall be
4 allowed consistent with the Commission's Rules of Practice,
5 which Rules shall be enforced by the Commission or the assigned
6 hearing examiner. The Commission shall apply the same
7 evidentiary standards, including, but not limited to, those
8 concerning the prudence and reasonableness of the costs
9 incurred by the utility, in the hearing as it would apply in a
10 hearing to review a filing for a general increase in rates
11 under Article IX of this Act. The Commission shall not,
12 however, have the authority in a proceeding under this
13 subsection (d) to consider or order any changes to the
14 structure or protocols of the formula rate approved pursuant to
15 subsection (c) of this Section. In a proceeding under this
16 subsection (d), the Commission shall enter its order no later
17 than 180 days after the utility's filing of its annual update
18 of cost inputs to the formula rate, provided that the
19 Commission may, in its discretion, extend the period for a
20 further period not to exceed 75 days. If, in the order, the
21 Commission approves an adjustment to the inputs of the formula
22 rate, then the adjustment, whether in the form of a charge or
23 credit, with interest, shall be applied prospectively through
24 the formula rate. The Commission's determinations of the
25 prudence and reasonableness of the costs incurred for the
26 applicable calendar year shall be final upon entry of the

1 Commission's order and shall not be subject to reopening,
2 reexamination, or collateral attack in any other proceeding,
3 case, docket, order, rule or regulation, provided, however,
4 that nothing in this subsection (d) shall prohibit a party from
5 petitioning the Commission to rehear or appeal to the courts
6 the order pursuant to the provisions of this Act.

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

15 (e) Nothing in subsections (c) or (d) of this Section shall
16 prohibit the Commission from investigating, or an electric
17 utility from filing, revenue-neutral tariff changes related to
18 rate design of a formula rate that has been placed into effect
19 for the utility. Following approval of an electric utility's
20 formula rate pursuant to subsection (c) of this Section, the
21 utility shall make a filing with the Commission during each
22 subsequent 3-year period that either proposes revenue-neutral
23 tariff changes or re-files the existing tariffs without change,
24 which shall present the Commission with an opportunity to
25 suspend the tariffs and consider revenue-neutral tariff
26 changes related to rate design.

1 (f) Within 30 days after the filing of a tariff pursuant to
2 subsection (c) of this Section, each participating utility
3 shall develop and file with the Commission a multi-year plan
4 that has the goal of cumulatively improving performance in each
5 of the following categories by 15% over a 10-year period: (1)
6 reliability, (2) safety, (3) providing opportunities for
7 minority-owned and female-owned business enterprises
8 consistent with State and federal law, and (4) customer
9 service. The plan may include financial incentives.

10 If the plan does include financial incentives, then it must
11 also include symmetrical financial penalties and is subject to
12 Commission review and modification following notice and
13 hearing. The Commission shall enter an order in the proceeding
14 within 120 days after the plan is filed. If the Commission
15 modifies the plan, then the participating utility may elect to
16 proceed with the plan as modified or to proceed with the plan
17 without financial incentives. On October 1 of each subsequent
18 year, each participating utility shall file a report with the
19 Commission that includes performance under each metric, a
20 discussion of performance under the plan, and any updates to
21 the plan. If the Commission finds in any annual period that the
22 achieved metrics do not show material movement such that the
23 goal is likely to be achieved and then maintained in any or all
24 categories, then the Commission may require the participating
25 utility to devise a corrective action plan, subject to
26 Commission approval and oversight, to bring performance back on

1 track toward reaching and maintaining the 15% goal.

2 (g) 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) or impact any subsequent review by
7 the Illinois Supreme Court of that opinion.

8 (220 ILCS 5/19-150 new)

9 Sec. 19-150. Infrastructure investment and modernization;
10 regulatory reform.

11 (a) The General Assembly recognizes that for well over a
12 century, Illinois residents and businesses have been
13 well-served by and have benefitted from a comprehensive gas
14 utility system. The General Assembly finds that gas utilities
15 are now entering a new construction cycle that is needed to
16 refurbish, modernize, and expand systems to continue to provide
17 safe, reliable, and affordable service to the State's current
18 and future gas customers in this newly digitized age. In
19 particular, the General Assembly finds that it is the policy of
20 this State that significant investments need to be made over
21 the next decade to modernize and upgrade gas distribution
22 systems in the State. These investments will ensure that the
23 State's gas infrastructure will promote future economic
24 development in the State and that the State's utilities will be
25 able to continue to provide quality gas service to their

1 customers, including innovative technological offerings that
2 will enhance customer experience and choice. These investments
3 will also ensure that the State's gas utility infrastructure
4 continues to be safe and reliable. The introduction of
5 performance metrics will further ensure that safety and
6 reliability and other indicators are not just maintained but
7 improved by more than 15% over the next decade.

8 The General Assembly further recognizes that, in addition
9 to attracting capital and businesses to the State, these
10 investments will create training opportunities for the
11 citizens of this State, all of which will create new employment
12 opportunities for Illinoisans at a time when they are most
13 needed, especially for female-owned and minority-owned
14 business enterprises. The General Assembly further finds that
15 regulatory reform measures that increase predictability,
16 stability, and transparency in the ratemaking process are
17 needed to promote prudent, long-term infrastructure investment
18 and to mutually benefit the State's gas utilities and their
19 customers, regulators and investors.

20 (b) For purposes of this Section, "participating utility"
21 means a gas utility or a combination utility that voluntarily
22 elects and commits to undertake the infrastructure investment
23 program consisting of the commitments and obligations
24 described in this subsection (b), notwithstanding any other
25 provisions of this Act and without obtaining any approvals from
26 the Commission or any other agency other than as set forth in

1 this Section, regardless of whether any such approval would
2 otherwise be required, provided further that Illinois gas
3 utilities that are affiliated by virtue of a common parent
4 company may, at such utilities' election, be considered a
5 single gas utility. A "combination utility" is a utility that,
6 as of January 1, 2011, provided electric service to at least 1
7 million retail customers in Illinois and gas service to at
8 least 500,000 retail customers in Illinois. A participating
9 utility shall recover the expenditures made under the
10 infrastructure investment program through the ratemaking
11 process, including, but not limited to, the formula rate and
12 process set forth in this Section.

13 During the infrastructure investment program's peak
14 program year, it shall create approximately 400 full-time
15 equivalent jobs for a participating utility other than a
16 combination utility, and 300 full-time equivalent jobs for a
17 participating utility that is a combination utility, including
18 direct jobs, contractor positions, positions that would
19 otherwise be eliminated, and induced jobs. For purposes of this
20 Section, "peak program year" means the consecutive 12-month
21 period with the highest number of full-time equivalent jobs
22 that occurs between the beginning of investment year 2 and the
23 end of investment year 4. Beginning on the date the initial
24 rates take effect pursuant to subsection (c) of this Section, a
25 participating utility other than a combination utility shall
26 invest over a 10-year period at least \$500,000,000, and a

1 participating utility that is a combination utility will invest
2 at least \$380,000,000 in distribution and transmission
3 upgrades, modernization and compliance projects, and training
4 facilities.

5 If a participating utility other than a combination utility
6 serves less than 2 million customers in Illinois, then the
7 infrastructure investment program commitments and obligations
8 described in this subsection (b) shall be reduced
9 proportionately, based on the number of customers, for the
10 utility.

11 The investments in the infrastructure investment program
12 described in this subsection (b) shall be incremental to the
13 participating utility's annual capital investment program, as
14 defined by, for purposes of this subsection (b), the
15 participating utility's average capital spend for calendar
16 years 2008, 2009, and 2010 as reported in the applicable
17 Federal Energy Regulatory Commission (FERC) Form 2 or, if the
18 FERC Form 2 was not filed, in the applicable Form 21 ILCC;
19 provided that where one or more utilities have merged, the
20 average capital spend shall be determined using the aggregate
21 of the merged utilities' capital spend reported on FERC Form 2
22 or Form 21 ILCC, as applicable, for the years 2008, 2009, and
23 2010.

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

1 for satisfying its infrastructure investment program
2 commitments pursuant to this subsection (b). The submitted plan
3 shall include a schedule and staffing plan for the current
4 year. The plan need not allocate the work equally over the
5 respective periods, but should allocate material increments
6 throughout these periods commensurate with the work to be
7 undertaken. No later than September 1 of each subsequent year,
8 the utility shall submit to the Commission a report that
9 includes any update to the plan, a schedule for the current
10 year, the expenditures made for the prior year and
11 cumulatively, and the number of full-time equivalent jobs for
12 the prior year and cumulatively. If the utility is materially
13 deficient in satisfying a schedule or staffing plan, then the
14 report must also include a corrective action plan to address
15 the deficiency. The fact that the plan or a schedule changes
16 shall not imply the imprudence or unreasonableness of the
17 infrastructure investment program, plan, or schedule.

18 If, subsequent to completion of a corrective action plan,
19 the Commission enters an order finding, after notice and
20 hearing, that a participating utility did not satisfy its peak
21 job commitment described in this subsection (b) for reasons
22 that are reasonably within its control, then the Commission
23 shall also determine, after consideration of the evidence,
24 including, but not limited to, evidence submitted by the
25 Department of Commerce and Economic Opportunity and the
26 utility, the deficiency in the number of full-time equivalent

1 jobs during the peak program year due to the failure. The
2 Commission shall notify the Department of any proceeding that
3 is initiated pursuant to this paragraph. For each full-time
4 equivalent job deficiency during the peak program year that the
5 Commission finds as set forth in this paragraph, the
6 participating utility shall, within 30 days after the entry of
7 the Commission's order, pay \$1,500 to a fund for training
8 grants administered under Section 605-800 of The Department of
9 Commerce and Economic Opportunity Law.

10 If the Commission finds, after notice and hearing, that a
11 participating utility is not satisfying its investment amount
12 commitments described in this subsection (b), then the utility
13 shall no longer be eligible to annually update the formula rate
14 tariff pursuant to subsection (d) of this Section. In such
15 event, the then current rates shall remain in effect until such
16 time as new rates are set pursuant to Article IX of this Act,
17 subject to retroactive adjustment, with interest, to reconcile
18 rates charged with actual costs.

19 The fact that a participating utility invests more than the
20 minimum amounts specified in this subsection (b) shall not
21 imply imprudence or unreasonableness.

22 If the Commission finds that a participating utility is no
23 longer eligible to update the formula rate tariff pursuant to
24 subsection (d) of this Section, then the participating
25 utility's voluntary commitments and obligations under this
26 subsection (b) shall immediately terminate upon the

1 Commission's ruling, except for the utility's obligation to pay
2 an amount already owed to the fund for training grants pursuant
3 to a Commission order.

4 In meeting the obligations of this subsection (b), to the
5 extent feasible and consistent with State and federal law, the
6 investments under the infrastructure investment program should
7 provide employment opportunities for all segments of the
8 population and workforce, including minority-owned and
9 female-owned business enterprises.

10 (c) A participating utility may elect to recover its costs
11 of service through a formula rate approved by the Commission,
12 which shall specify the cost components that form the basis of
13 the rate charged to customers with sufficient specificity to
14 operate in a standardized manner and be updated annually with
15 transparent information that reflects the utility's actual
16 costs for the applicable calendar year. For purposes of this
17 section, "actual costs" means the cost inputs described in this
18 subsection (c) and in subsection (d) of this Section, including
19 data based on the utility's most recent FERC Form 2 or, if the
20 FERC Form 2 was not filed, Form 21 ILCC, projected plant
21 additions and correspondingly updated depreciation reserve and
22 expense for the current calendar year, and, as applicable, any
23 charge or credit resulting from a reconciliation of prior
24 periods or an adjustment ordered by the Commission. In the
25 event the utility recovers a portion of its costs through
26 automatic adjustment clause tariffs on the effective date of

1 this amendatory Act of the 97th General Assembly, the utility
2 may elect to continue to recover these costs through the
3 tariffs, but then these costs shall not be recovered through
4 the formula rate.

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

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

1 (2) Reflect the utility's actual capital structure for
2 the applicable calendar year, excluding goodwill, subject
3 to a determination of prudence and reasonableness
4 consistent with Commission practice and law.

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

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

12 (B) 625 basis points.

13 At such time as the Board of Governors of the Federal
14 Reserve System ceases to include the monthly average yields
15 of 30-year U.S. Treasury bonds in its weekly H.15
16 Statistical Release or successor publication, the monthly
17 average yields of the U.S. Treasury bonds then having the
18 longest duration published by the Board of Governors in its
19 weekly H.15 Statistical Release or successor publication
20 shall instead be used for purposes of this paragraph (3) as
21 deemed appropriate by the Commission.

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

25 (A) recovery of incentive compensation expense
26 that is based on the achievement of operational

1 metrics, including, but not limited to, metrics
2 related to budget controls, safety, customer service,
3 efficiency and productivity, and environmental
4 compliance. Incentive compensation expense that is
5 based on net income or an affiliate's earnings per
6 share shall not be recoverable under the formula rate;

7 (B) recovery of pension and other post-employment
8 benefits expense based on actual costs incurred for the
9 applicable calendar year, provided that these costs
10 are supported by an actuarial study;

11 (C) recovery of severance costs amortized over a
12 period that is consistent with savings resulting from
13 the severance;

14 (D) investment return on pension assets net of
15 deferred tax benefits equal to the utility's long-term
16 debt cost of capital as of the end of the applicable
17 calendar year;

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

1 formula rate;

2 (F) recovery of existing regulatory assets over
3 the periods previously authorized by the Commission;

4 (G) historical weather normalized billing
5 determinants; and

6 (H) allocation methods for common costs.

7 The Commission's review and order with respect to these
8 protocols shall otherwise be consistent with Commission
9 practice and law.

10 The utility shall file, together with its tariff, data
11 based on its most recent FERC Form 2 or, if the FERC Form 2 was
12 not filed, Form 21 ILCC, plus projected plant additions and
13 correspondingly updated depreciation reserve and expense for
14 the current calendar year, that shall populate the formula rate
15 and set the initial rates under the formula. These initial
16 rates shall take effect 30 days after the filing, provided,
17 however, that the initial rates shall be subject to retroactive
18 rate adjustments by the Commission, including, but not limited
19 to, refunds or surcharges, that are designed to incorporate the
20 provisions of the Commission's final order approving the
21 formula rate structure and protocols and to give effect to the
22 initial rates as therein approved such that the refunds or
23 surcharges that are applied for the remainder of the period
24 until the first rate update will take effect under subsection
25 (d), shall enable the utility to recover the same amount of
26 revenues the utility otherwise would have recovered had the

1 Commission-approved initial rates been in effect as of the date
2 the tariff was filed.

3 After the utility files its proposed formula rate structure
4 and protocols and initial rates, the Commission shall initiate
5 a docket to review and by order approve, or approve as
6 modified, the formula rate, including the initial rates, as
7 just and reasonable within 180 days after the date on which the
8 tariff was filed, or, if the tariff is filed within 30 days
9 after the effective date of this amendatory Act of the 97th
10 General Assembly, then by December 31, 2011. This review shall
11 be based on the same evidentiary standards, including, but not
12 limited to, those concerning the prudence and reasonableness of
13 the costs incurred by the utility, the Commission applies in a
14 hearing to review a filing for a general increase in rates
15 under Article IX of this Act.

16 Subsequent changes to the formula rate structure or
17 protocols shall be made as tariff amendments and filed with the
18 Commission as set forth in Section 9-201 of this Act, provided
19 that any such changes shall be consistent with paragraphs (1)
20 through (4) of this subsection (c).

21 After 11 years following the effective date of this
22 amendatory Act of the 97th General Assembly, the Commission may
23 upon petition or its own initiative, but with reasonable
24 notice, enter upon a hearing concerning proposed changes to the
25 formula rate, including those protocols established under
26 paragraph (4) of this subsection (c), provided that there shall

1 be a rebuttable presumption that the protocols are just and
2 reasonable. The proposed changes shall be stated with
3 particularity and accompanied by clear and convincing evidence
4 that the changes are just and reasonable. No such change
5 adopted by the Commission shall be applied to the calculation
6 of the utility's rates until the next calendar year, with the
7 rates to become effective on June 1 of the year following that
8 calendar year, provided that the next calendar year begins no
9 less than 90 days following the date on which the Commission
10 issues an order adopting the change.

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

15 (d) Subsequent to the Commission's issuance of an order
16 approving the utility's formula rate structure and protocols,
17 and initial rates under subsection (c) of this Section, the
18 utility shall make an annual informational filing with the
19 Chief Clerk of the Commission setting forth its updated cost
20 inputs to the formula rate for the applicable calendar year and
21 the corresponding new charges. Consistent with this subsection
22 (d), the utility shall include, together with the filing of the
23 update of cost inputs to the formula rate, relevant and
24 necessary data and documentation for the applicable calendar
25 year that is consistent with the Commission's rules applicable
26 to a filing for a general increase in rates or any rules

1 adopted by the Commission to implement this Section.
2 Specifically, for each such filing, the utility shall comply
3 with the following requirements and include the following
4 information:

5 (1) File on or before May 1, with the new charges to
6 take effect beginning with the June billing period of the
7 current year. These charges shall take effect on the first
8 billing day of the June billing period and remain in effect
9 through the last billing day of the following May billing
10 period regardless of whether the Commission enters upon a
11 hearing pursuant to this subsection (d).

12 (2) The inputs to the formula rate for the applicable
13 calendar year shall be based on historical data from the
14 utility's most recent annual FERC Form 2 or, if the FERC
15 Form 2 was not filed, Form 21 ILCC, plus projected plant
16 additions and correspondingly updated depreciation reserve
17 and expense for the current calendar year. In addition, the
18 utility shall also present, for the prior applicable
19 calendar year, a reconciliation of the inputs for the prior
20 applicable calendar year (FERC Form 2 or Form 21 ILCC, as
21 applicable, historical data and projected plant additions)
22 with the actual costs incurred in the prior applicable
23 calendar year, and set forth the applicable charge or
24 credit, if any, resulting from the reconciliation that is
25 incorporated in the current formula rate.

26 (3) The utility shall include, together with the filing

1 of the update of cost inputs to the formula rate, relevant
2 and necessary data and documentation for the applicable
3 12-month calendar year that is consistent with the
4 Commission's rules applicable to a filing for a general
5 increase in rates or any rules adopted by the Commission to
6 implement this Section.

7 Within 45 days after the utility files its annual update of
8 cost inputs to the formula rate, the Commission shall have the
9 authority, either upon complaint or its own initiative, but
10 with reasonable notice, to enter upon a hearing concerning the
11 prudence and reasonableness of the costs incurred by the
12 utility during the applicable calendar year that are reflected
13 in the inputs to the formula rate derived from the utility's
14 FERC Form 2 or Form 21 ILCC, as applicable. During the course
15 of the hearing, each objection shall be stated with
16 particularity and substantial evidence provided in support
17 thereof, after which the utility shall have the opportunity to
18 rebut the evidence. Discovery shall be allowed consistent with
19 the Commission's Rules of Practice, which Rules shall be
20 enforced by the Commission or the assigned hearing examiner.
21 The Commission shall apply the same evidentiary standards,
22 including, but not limited to, those concerning the prudence
23 and reasonableness of the costs incurred by the utility, in the
24 hearing as it would apply in a hearing to review a filing for a
25 general increase in rates under Article IX of this Act. The
26 Commission shall not, however, have the authority in a

1 proceeding under this subsection (d) to consider or order any
2 changes to the structure or protocols of the formula rate
3 approved pursuant to subsection (c) of this Section. In a
4 proceeding under this subsection (d), the Commission shall
5 enter its order no later than 180 days after the utility's
6 filing of its annual update of cost inputs to the formula rate,
7 provided that the Commission may, in its discretion, extend the
8 period for a further period not to exceed 75 days. If, in the
9 order, the Commission approves an adjustment to the inputs of
10 the formula rate, then the adjustment, whether in the form of a
11 charge or credit, with interest, shall be applied prospectively
12 through the formula rate. The Commission's determinations of
13 the prudence and reasonableness of the costs incurred for the
14 applicable calendar year shall be final upon entry of the
15 Commission's order and shall not be subject to reopening,
16 reexamination, or collateral attack in any other proceeding,
17 case, docket, order, rule, or regulation, provided, however,
18 that nothing in this subsection (d) shall prohibit a party from
19 petitioning the Commission to rehear or appeal to the courts
20 the order pursuant to the 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 formula rate, then the costs incurred for the applicable
25 calendar year shall be deemed prudent and reasonable, and the
26 filed charges shall not be subject to reopening, reexamination,

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

3 (e) Nothing in subsections (c) or (d) of this Section shall
4 prohibit the Commission from investigating, or a gas utility
5 from filing, revenue-neutral tariff changes related to rate
6 design of a formula rate that has been placed into effect for
7 the utility. Following approval of a gas utility's formula rate
8 pursuant to subsection (c) of this Section, the utility shall
9 make a filing with the Commission during each subsequent 3-year
10 period that either proposes revenue-neutral tariff changes or
11 re-files the existing tariffs without change, which shall
12 present the Commission with an opportunity to suspend these
13 tariffs and consider revenue-neutral tariff changes related to
14 rate design.

15 (f) Within 30 days after the filing of a tariff pursuant to
16 subsection (c) of this Section, each participating utility
17 shall develop and file with the Commission a multi-year plan
18 that has the goal of cumulatively improving performance in each
19 of the following categories by 15% over a 10-year period: (1)
20 reliability, (2) safety, (3) providing opportunities for
21 minority-owned and female-owned business enterprises
22 consistent with State and federal law, and (4) customer
23 service. The plan may include financial incentives. If the plan
24 does include financial incentives, then it must also include
25 symmetrical financial penalties and is subject to Commission
26 review and modification following notice and hearing. The

1 Commission shall enter an order in the proceeding within 120
2 days after the plan is filed. If the Commission modifies the
3 plan, then the participating utility may elect to proceed with
4 the plan as modified or to proceed with the plan without
5 financial incentives.

6 On October 1 of each subsequent year, each participating
7 utility shall file a report with the Commission that includes
8 performance under each metric, a discussion of performance
9 under the plan, and any updates to the plan. If the Commission
10 finds in any annual period that the achieved metrics do not
11 show material movement such that the goal is likely to be
12 achieved and then maintained in any or all categories, then the
13 Commission may require the participating utility to devise a
14 corrective action plan, subject to Commission approval and
15 oversight, to bring performance back on track toward reaching
16 and maintaining the 15% goal.

17 (g) Nothing in this Section is intended to legislatively
18 overturn the opinion issued in Commonwealth Edison Co. v. Ill.
19 Commerce Comm'n, Nos. 2-08-0959, 2-08-1037, 2-08-1137,
20 1-08-3008, 1-08-3030, 1-08-3054, 1-08-3313 cons. (Ill. App.
21 Ct. 2d Dist. Sept. 30, 2010) or impact any subsequent review by
22 the Illinois Supreme Court of that opinion.

23 Section 99. Effective date. This Act takes effect upon
24 becoming law."