



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB3055

Introduced 2/23/2011, by Rep. Elaine Nekritz

SYNOPSIS AS INTRODUCED:

220 ILCS 5/8-103

Amends the Public Utilities Act. Makes certain changes to the incremental annual energy savings goals that electric utilities must meet by implementing cost-effective energy efficiency measures. Provides that the amount of energy efficiency and demand-response measures implemented for any single year shall be reduced by an amount necessary to limit the estimated average net increase due to the cost of these measures included in the amounts paid by eligible retail customers in connection with electric service to no more than the greater of 2.015% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007 or the incremental amount per kilowatthour paid for these measures in 2011, unless the Commission concludes during a plan filing proceeding that the limitation would result in the utility foregoing cost-effective opportunities for savings that would otherwise create net aggregate bill reductions for its customers. Makes other changes. Effective immediately.

LRB097 10889 ASK 51418 b

1 AN ACT concerning regulation.

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

4 Section 5. The Public Utilities Act is amended by changing
5 Section 8-103 as follows:

6 (220 ILCS 5/8-103)

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

9 (a) It is the policy of the State that electric utilities
10 are required to use cost-effective energy efficiency and
11 demand-response measures to reduce delivery load. Requiring
12 investment in cost-effective energy efficiency and
13 demand-response measures will reduce direct and indirect costs
14 to consumers by decreasing environmental impacts and by
15 avoiding or delaying the need for new generation, transmission,
16 and distribution infrastructure. It serves the public interest
17 to allow electric utilities to recover costs for reasonably and
18 prudently incurred expenses for energy efficiency and
19 demand-response measures. As used in this Section,
20 "cost-effective" means that the measures satisfy the total
21 resource cost test. The low-income measures described in
22 subsection (f) (4) of this Section shall not be required to meet
23 the total resource cost test. For purposes of this Section, the

1 terms "energy-efficiency", "demand-response", "electric
2 utility", and "total resource cost test" shall have the
3 meanings set forth in the Illinois Power Agency Act. For
4 purposes of this Section, the amount per kilowatthour means the
5 total amount paid for electric service expressed on a per
6 kilowatthour basis. For purposes of this Section, the total
7 amount paid for electric service includes without limitation
8 estimated amounts paid for supply, transmission, distribution,
9 surcharges, and add-on-taxes.

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

13 (1) 0.2% of energy delivered in the year commencing
14 June 1, 2008;

15 (2) 0.4% of energy delivered in the year commencing
16 June 1, 2009;

17 (3) 0.6% of energy delivered in the year commencing
18 June 1, 2010;

19 (4) 0.8% of energy delivered in the year commencing
20 June 1, 2011;

21 (5) The higher of 1% of energy delivered in the year
22 commencing June 1, 2012, or the amount necessary to produce
23 net lifetime customer savings equal to the cost of any
24 incremental capital investments made during the calendar
25 year 2011 ~~1% of energy delivered in the year commencing~~
26 ~~June 1, 2012;~~

1 (6) The higher of 1.4% of energy delivered in the year
2 commencing June 1, 2013, or the amount necessary to produce
3 net lifetime customer savings equal to the cost of any
4 incremental capital investments made during calendar year
5 2012 ~~1.4% of energy delivered in the year commencing June~~
6 ~~1, 2013;~~

7 (7) The higher of 1.8% of energy delivered in the year
8 commencing June 1, 2014, or the amount necessary to produce
9 net lifetime customer savings equal to the cost of any
10 incremental capital investment made during calendar year
11 2013 ~~1.8% of energy delivered in the year commencing June~~
12 ~~1, 2014; and~~

13 (8) In each year hereafter, the higher of 2% of energy
14 delivered in the year commencing June 1, 2015, or the
15 amount necessary to produce net lifetime customer savings
16 equal to the cost of any incremental capital investment
17 made during the preceding calendar year ~~2% of energy~~
18 ~~delivered in the year commencing June 1, 2015 and each year~~
19 ~~thereafter.~~

20 For purposes of this subsection (b), "incremental capital
21 investments" means those investments that exceed the utility's
22 capital spend in calendar years 2008, 2009, and 2010 as
23 reported in the applicable Federal Energy Regulatory
24 Commission Form 2, or if the FERC Form 2 was not filed, in the
25 applicable Form 21 ILCC.

26 (c) Electric utilities shall implement cost-effective

1 demand-response measures to reduce peak demand by 0.1% over the
2 prior year for eligible retail customers, as defined in Section
3 16-111.5 of this Act, and for customers that elect hourly
4 service from the utility pursuant to Section 16-107 of this
5 Act, provided those customers have not been declared
6 competitive. This requirement commences June 1, 2008 and
7 continues for 10 years.

8 (d) Notwithstanding the requirements of subsections (b)
9 and (c) of this Section, an electric utility shall reduce the
10 amount of energy efficiency and demand-response measures
11 implemented in any single year by an amount necessary to limit
12 the estimated average increase in the amounts paid by retail
13 customers in connection with electric service due to the cost
14 of those measures to:

15 (1) in 2008, no more than 0.5% of the amount paid per
16 kilowatthour by those customers during the year ending May
17 31, 2007;

18 (2) in 2009, the greater of an additional 0.5% of the
19 amount paid per kilowatthour by those customers during the
20 year ending May 31, 2008 or 1% of the amount paid per
21 kilowatthour by those customers during the year ending May
22 31, 2007;

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

1 31, 2007;

2 (4) in 2011, the greater of an additional 0.5% of the
3 amount paid per kilowatthour by those customers during the
4 year ending May 31, 2010 or 2% of the amount paid per
5 kilowatthour by those customers during the year ending May
6 31, 2007; and

7 (5) thereafter, the amount of energy efficiency and
8 demand-response measures implemented for any single year
9 shall be reduced by an amount necessary to limit the
10 estimated average net increase due to the cost of these
11 measures included in the amounts paid by eligible retail
12 customers in connection with electric service to no more
13 than the greater of 2.015% of the amount paid per
14 kilowatthour by those customers during the year ending May
15 31, 2007 or the incremental amount per kilowatthour paid
16 for these measures in 2011, unless the Commission concludes
17 during a plan filing proceeding under subsection (f) of
18 this Section that the limitation would result in the
19 utility foregoing cost-effective opportunities for savings
20 that would otherwise create net aggregate bill reductions
21 for its customers.

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

1 efficiency and demand-response measures.

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

20 The apportionment of the dollars to cover the costs to
21 implement the Department's share of the portfolio of energy
22 efficiency measures shall be made to the Department once the
23 Department has executed grants or contracts for energy
24 efficiency measures and provided supporting documentation for
25 those grants and the contracts to the utility.

26 The details of the measures implemented by the Department

1 shall be submitted by the Department to the Commission in
2 connection with the utility's filing regarding the energy
3 efficiency and demand-response measures that the utility
4 implements.

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

14 Each utility shall include, in its recovery of costs, the
15 costs estimated for both the utility's and the Department's
16 implementation of energy efficiency and demand-response
17 measures. Costs collected by the utility for measures
18 implemented by the Department shall be submitted to the
19 Department pursuant to Section 605-323 of the Civil
20 Administrative Code of Illinois and shall be used by the
21 Department solely for the purpose of implementing these
22 measures. A utility shall not be required to advance any moneys
23 to the Department but only to forward such funds as it has
24 collected. The Department shall report to the Commission on an
25 annual basis regarding the costs actually incurred by the
26 Department in the implementation of the measures. Any changes

1 to the costs of energy efficiency measures as a result of plan
2 modifications shall be appropriately reflected in amounts
3 recovered by the utility and turned over to the Department.

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

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

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

22 If the Department is unable to meet incremental annual
23 performance goals for the portion of the portfolio implemented
24 by the Department, then the utility and the Department shall
25 jointly submit a modified filing to the Commission explaining
26 the performance shortfall and recommending an appropriate

1 course going forward, including any program modifications that
2 may be appropriate in light of the evaluations conducted under
3 item (7) of subsection (f) of this Section. In this case, the
4 utility obligation to collect the Department's costs and turn
5 over those funds to the Department under this subsection (e)
6 shall continue only if the Commission approves the
7 modifications to the plan proposed by the Department.

8 (f) No later than November 15, 2007, each electric utility
9 shall file an energy efficiency and demand-response plan with
10 the Commission to meet the energy efficiency and
11 demand-response standards for 2008 through 2010. Every 3 years
12 thereafter, each electric utility shall file, no later than
13 October 1, an energy efficiency and demand-response plan with
14 the Commission. If a utility does not file such a plan by
15 October 1 of an applicable year, it shall face a penalty of
16 \$100,000 per day until the plan is filed. Each utility's plan
17 shall set forth the utility's proposals to meet the utility's
18 portion of the energy efficiency standards identified in
19 subsection (b) and the demand-response standards identified in
20 subsection (c) of this Section as modified by subsections (d)
21 and (e), taking into account the unique circumstances of the
22 utility's service territory. The Commission shall seek public
23 comment on the utility's plan and shall issue an order
24 approving or disapproving each plan within 3 months after its
25 submission. If the Commission disapproves a plan, the
26 Commission shall, within 30 days, describe in detail the

1 reasons for the disapproval and describe a path by which the
2 utility may file a revised draft of the plan to address the
3 Commission's concerns satisfactorily. If the utility does not
4 refile with the Commission within 60 days, the utility shall be
5 subject to penalties at a rate of \$100,000 per day until the
6 plan is filed. This process shall continue, and penalties shall
7 accrue, until the utility has successfully filed a portfolio of
8 energy efficiency and demand-response measures. Penalties
9 shall be deposited into the Energy Efficiency Trust Fund. In
10 submitting proposed energy efficiency and demand-response
11 plans and funding levels to meet the savings goals adopted by
12 this Act the utility shall:

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

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

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

26 (4) Coordinate with the Department to present a

1 portfolio of energy efficiency measures proportionate to
2 the share of total annual utility revenues in Illinois from
3 households at or below 150% of the poverty level. The
4 energy efficiency programs shall be targeted to households
5 with incomes at or below 80% of area median income.

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

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

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

26 (g) No more than 3% of energy efficiency and

1 demand-response program revenue may be allocated for
2 demonstration of breakthrough equipment and devices.

3 (h) This Section does not apply to an electric utility that
4 on December 31, 2005 provided electric service to fewer than
5 100,000 customers in Illinois.

6 (i) If, after 2 years, an electric utility fails to meet
7 the efficiency standard specified in subsection (b) of this
8 Section, as modified by subsections (d) and (e), it shall make
9 a contribution to the Low-Income Home Energy Assistance
10 Program. The combined total liability for failure to meet the
11 goal shall be \$1,000,000, which shall be assessed as follows: a
12 large electric utility shall pay \$665,000, and a medium
13 electric utility shall pay \$335,000. If, after 3 years, an
14 electric utility fails to meet the efficiency standard
15 specified in subsection (b) of this Section, as modified by
16 subsections (d) and (e), it shall make a contribution to the
17 Low-Income Home Energy Assistance Program. The combined total
18 liability for failure to meet the goal shall be \$1,000,000,
19 which shall be assessed as follows: a large electric utility
20 shall pay \$665,000, and a medium electric utility shall pay
21 \$335,000. In addition, the responsibility for implementing the
22 energy efficiency measures of the utility making the payment
23 shall be transferred to the Illinois Power Agency if, after 3
24 years, or in any subsequent 3-year period, the utility fails to
25 meet the efficiency standard specified in subsection (b) of
26 this Section, as modified by subsections (d) and (e). The

1 Agency shall implement a competitive procurement program to
2 procure resources necessary to meet the standards specified in
3 this Section as modified by subsections (d) and (e), with costs
4 for those resources to be recovered in the same manner as
5 products purchased through the procurement plan as provided in
6 Section 16-111.5. The Director shall implement this
7 requirement in connection with the procurement plan as provided
8 in Section 16-111.5.

9 For purposes of this Section, (i) a "large electric
10 utility" is an electric utility that, on December 31, 2005,
11 served more than 2,000,000 electric customers in Illinois; (ii)
12 a "medium electric utility" is an electric utility that, on
13 December 31, 2005, served 2,000,000 or fewer but more than
14 100,000 electric customers in Illinois; and (iii) Illinois
15 electric utilities that are affiliated by virtue of a common
16 parent company are considered a single electric utility.

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

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

4 (Source: P.A. 95-481, eff. 8-28-07; 95-876, eff. 8-21-08;
5 96-33, eff. 7-10-09; 96-159, eff. 8-10-09; 96-1000, eff.
6 7-2-10.)

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