AN ACT concerning regulation.

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

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

(20 ILCS 661/20)

Sec. 20. Duties of the enlisted nonprofit organization.

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

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

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

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

(C) collect from Facilities-based Providers of

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) (Blank).

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

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

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

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

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

Section 10. The Public Utilities Act is amended by changing Sections 2-105, 2-106, 4-204, 4-304, 5-102, 6-102, 7-204, 8-103B, 8-507, 8-508, 8-509, 9-102.1, 9-201, 9-214, 9-222.2, 9-223, 10-101, 10-101.1, 10-103, 10-104, 10-105, 10-106, 10-107, 10-110, 10-111, 10-201, 10-204, 13-401.1, 13-506.2, 13-515, and 16-108.5 as follows:

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

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

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

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

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

whose compensation shall be fixed by the commissioner.

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

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

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

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

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

administrative law judges ~~hearing examiners~~ to make valuations of public utility properties, or to estimate proper rates of service of public utilities, or to examine other questions coming before the Commission, by taking testimony or by independent investigation. The executive director shall designate one administrative law judge ~~hearing examiner~~ to serve as chief administrative law judge ~~hearing examiner~~ who shall be responsible for supervising and directing the activities of all administrative law judges ~~hearing examiners~~, subject to the approval of the executive director. Administrative law judges ~~Hearing examiners~~ shall, under the direction of the chief administrative law judge ~~hearing examiner~~, take testimony of witnesses, examine accounts, records, books, papers and physical properties, either by holding hearings or making independent investigations, in any matter referred to them by the chief administrative law judge ~~hearing examiner~~; and make report thereof to the chief administrative law judge ~~hearing examiner~~, and attend at hearings before the Commission when so directed by the chief administrative law judge ~~hearing examiner~~, for the purpose of explaining their investigations and the result thereof to the Commission and the parties interested; and perform such other duties as the chief administrative law judge ~~hearing examiner~~ may direct.

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

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

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

(ii) has a judicious and considerate temperament;

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

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

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

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

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

(220 ILCS 5/4-204) (from Ch. 111 2/3, par. 4-204)

Sec. 4-204. If ~~Whenever the Commission receives notice from~~ the Secretary of State has dissolved or revoked the authority of ~~that~~ any domestic or foreign company ~~corporation~~ regulated under this Act to do business in Illinois because that company

has not paid a franchise tax, license fee, filing fee, or penalty required under the ~~The~~ Business Corporation Act of 1983 or under any other Illinois statute governing the formation or organization of domestic or foreign corporations, limited liability companies, partnerships, associations, or other organizations~~, approved January 5, 1984, as amended~~, then ~~the Commission shall institute proceedings for the revocation of~~ the franchise, license, permit, or right to engage in any business required under this Act shall be suspended by operation of law ~~or the suspension thereof~~ until such time within a one-year period after the date of suspension as the delinquent franchise tax, license fee, filing fee, or penalty is paid and revoked by operation of law for failure to pay the delinquent franchise tax, license fee, filing fee, or penalty within the one-year suspension period.

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

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

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

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

(a) a review of significant decisions and other

regulatory actions for the preceding year, and pending cases, and an analysis of the impact of such decisions and actions, and potential impact of any significant pending cases;

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

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

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

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

(iii) a description of current employee levels, identifying any change occurring during the year in the number of employees, personnel policies and practices or compensation levels; and identifying the number and type of employees

assigned to each Commission regulatory function and to each department, bureau, section, division or office of the Commission;

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

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

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

(a) the extent to which conservation, cogeneration, renewable energy technologies and improvements in energy efficiency are being utilized by energy consumers, the extent to which additional potential exists for the economical utilization of

such supplies, and a description of existing and proposed programs and policies designed to promote and encourage such utilization;

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

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

(d) a summary of the adoption of solar photovoltaic systems by residential and small business consumers in Illinois and a description of any and all barriers to residential and small business consumers' financing, installation, and valuation of energy produced by solar photovoltaic systems; electric utilities, alternative retail electric suppliers, and installers of distributed generation shall provide all information requested by the Commission or its staff necessary to complete the analysis required by this paragraph (d).

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

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

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

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

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

(a) Commission reorganization resulting from the addition of an Executive Director and administrative law judge ~~hearing examiner~~ qualifications and review;

(b) Commission responsibilities for construction and rate supervision, including construction cost

audits, management audits, excess capacity adjustments, phase-ins of new plant and the means and capability for monitoring and reevaluating existing or future construction projects;

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

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

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

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

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

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

Commission prior to filing.

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

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

Sec. 5-102. The Commission shall have power to establish a uniform system of accounts to be kept by public utilities or to classify public utilities and to establish a uniform system of accounts for each class and to prescribe the manner in which such accounts shall be kept. It may also, in its discretion, prescribe the forms of accounts to be kept by public utilities, including records of service, as well as accounts of earnings and expenses, and any other forms, records and memoranda which in the judgment of the Commission may be necessary to carry out any of the provisions of this Act. ~~The system of accounts established by the Commission and the forms of accounts prescribed by it shall not be inconsistent, in the case of corporations subject to the provisions of the Act of Congress entitled, "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty seven, and the Acts amendatory thereof and supplementary thereto, with the systems and forms from time to time established for such corporations by the Interstate Commerce Commission, but nothing herein contained shall affect the power of the Commission to prescribe forms of accounts for such corporations, with the approval of the Interstate Commerce Commission, covering information in addition to that required by the Interstate Commerce~~

~~Commission.~~ Where the Commission has prescribed the forms of accounts to be kept by any public utility for any of its business, it shall thereafter be unlawful for such public utility to keep any accounts for such business other than those prescribed or approved by the Commission, or those prescribed by or under the authority of any other state or of the United States.

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

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

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

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

(a) Subject to the provisions of this Act and of the order of the Commission issued as provided in this Act, a public utility may issue stocks and stock certificates, and bonds, notes and other evidences of indebtedness payable at periods of more than 12 months after the date thereof for any lawful purpose. However, such public utility shall first have secured from the Commission an order authorizing such issue and stating the amount thereof and the purpose or purposes to which the issue or the proceeds thereof are to be applied, and that in the opinion of the Commission, the money, property or labor to be procured or paid for by such issue is reasonably required for the purpose or purposes specified in the order.

(b) The provisions of this subsection (b) shall apply only to (1) any issuances of stock in a cumulative amount, exclusive of any issuances referred to in item (3), that are 10% or more in a calendar year or 20% or more in a 24-month period of the total common stockholders' equity or of the total amount of preferred stock outstanding, as the case may be, of the public utility, and (2) to any issuances of bonds, notes or other evidences of indebtedness in a cumulative principal amount, exclusive of any issuances referred to in item (3), that are 10% or more in a calendar year or 20% or more in a 24-month period of the aggregate principal amount of bonds, notes and other evidences of indebtedness of the public utility outstanding, all as of the date of the issuance, but shall not apply to (3) any issuances of stock or of bonds, notes or other evidences of indebtedness 90% or more of the proceeds of which are to be used by the public utility for purposes of refunding, redeeming or refinancing outstanding issues of stock, bonds, notes or other evidences of indebtedness. To enable it to determine whether it will issue the order required by subsection (a) of this Section, the Commission may hold a hearing and may make such additional inquiry or investigation, and examine such witnesses, books, papers, accounts, documents and contracts and require the filing of such data as it may deem of assistance. The public utility may be required by the Commission to disclose every interest of the directors of such public utility in any transaction under investigation. The

Commission shall have power to investigate all such transactions and to inquire into the good faith thereof, to examine books, papers, accounts, documents and contracts of public utilities, construction or other companies or of firms or individuals with whom the public utility shall have had financial transactions, for the purpose of enabling it to verify any statements furnished, and to examine into the actual value of property acquired by or services rendered to such public utility. Before issuing its order, the Commission, when it is deemed necessary by the Commission, shall make an adequate physical valuation of all property of the public utility, but a valuation already made under proper public supervision may be adopted, either in whole or in part, at the discretion of the Commission; and shall also examine all previously authorized or outstanding securities of the public utility, and fixed charges attached thereto. A statement of the results of such physical valuation, and a statement of the character of all outstanding securities, together with the conditions under which they are held, shall be included in the order. The Commission may require that such information or such part thereof as it thinks proper, shall appear upon the stock, stock certificate, bond, note or other evidence of indebtedness authorized by its order. The Commission may by its order grant permission for the issue of such stock certificates, or bonds, notes or other evidences of indebtedness in the amount applied for, or in a lesser amount, or not at all, and may attach to the

exercise of its permission such condition or conditions as it may deem reasonable and necessary. Nothing in this Section shall prevent a public utility from seeking, nor the Commission from approving, a shelf registration plan for issuing securities over a reasonable period in accordance with regulations established by the United States Securities and Exchange Commission. Any securities issued pursuant to an approved shelf registration plan need not be further approved by the Commission so long as they are in compliance with the approved shelf registration plan. The Commission shall have the power to refuse its approval of applications to issue securities, in whole or in part, upon a finding that the issue of such securities would be contrary to public interest. The Commission may also require the public utility to compile for the information of its shareholders such facts in regard to its financial transactions, in such form as the Commission may direct.

No public utility shall, without the consent of the Commission, apply the issue of any stock or stock certificates, or bond, note or other evidence of indebtedness, which was issued pursuant to an order of the Commission entered pursuant to this subsection (b), or any part thereof, or any proceeds thereof, to any purpose not specified in the Commission's order or to any purpose specified in the Commission's order in excess of the amount authorized for such purpose; or issue or dispose of the same on any terms less favorable than those specified in

such order, or a modification thereof. The Commission shall have the power to require public utilities to account for the disposition of the proceeds of all sales of stocks and stock certificates, and bonds, notes and other evidences of indebtedness, which were issued pursuant to an order of the Commission entered pursuant to this subsection (b), in such form and detail as it may deem advisable, and to establish such rules and regulations as it may deem reasonable and necessary to insure the disposition of such proceeds for the purpose or purposes specified in its order.

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

(d) Any issuance of stock or of bonds, notes or other evidences of indebtedness, other than issuances of notes pursuant to subsection (c) of this Section, which is not subject to subsection (b) of this Section, shall be regulated by the Commission as follows: the public utility shall file

with the Commission, at least 15 days before the date of the issuance, an informational statement setting forth the type and amount of the issue and the purpose or purposes to which the issue or the proceeds thereof are to be applied. Prior to the date of the issuance specified in the public utility's filing, the Commission, if it finds that the issuance is not subject to subsection (b) of this Section, shall issue a written order in conformance with subsection (a) of this Section authorizing the issuance. Notwithstanding any other provisions of this Act, the Commission may delegate its authority to enter the order required by this subsection (d) to an administrative law judge ~~a hearing examiner~~.

(e) The Commission shall have no power to authorize the capitalization of the right to be a corporation, or to authorize the capitalization of any franchise, license, or permit whatsoever or the right to own, operate or enjoy any such franchise, license, or permit, in excess of the amount (exclusive of any tax or annual charge) actually paid to the State or to a political subdivision thereof as the consideration for the grant of such franchise, license, permit or right; nor shall any contract for consolidation or lease be capitalized, nor shall any public utility hereafter issue any bonds, notes or other evidences of indebtedness against or as a lien, upon any contract for consolidation or merger.

(f) The provisions of this Section shall not apply to public utilities which are not corporations duly incorporated

under the laws of this State to the extent that any such public utility may issue stock, bonds, notes or other evidences of indebtedness not directly or indirectly constituting or creating a lien or charge on, or right to profits from, any property used or useful in rendering service within this State. ~~Nothing in this Section or in Section 6-104 of this Act shall be construed to require a common carrier by railroad subject to Part I of the Interstate Commerce Act, being part of an Act of the 49th Congress of the United States entitled "An Act to Regulate Commerce", as amended, to secure from the Commission authority to issue or execute or deliver any conditional sales contract or similar contract or instrument reserving or retaining title in the seller for all or part of the purchase price of equipment or property used or to be used for or in connection with the transportation of persons or property.~~

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

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

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

(a) For purposes of this Section, "reorganization" means any transaction which, regardless of the means by which it is accomplished, results in a change in the ownership of a majority of the voting capital stock of an Illinois public utility; or the ownership or control of any entity which owns or controls a majority of the voting capital stock of a public

utility; or by which 2 public utilities merge, or by which a public utility acquires substantially all of the assets of another public utility; provided, however, that "reorganization" as used in this Section shall not include a mortgage or pledge transaction entered into to secure a bona fide borrowing by the party granting the mortgage or making the pledge.

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

(b) No reorganization shall take place without prior

Commission approval. The Commission shall not approve any proposed reorganization if the Commission finds, after notice and hearing, that the reorganization will adversely affect the utility's ability to perform its duties under this Act. The Commission shall not approve any proposed reorganization unless the Commission finds, after notice and hearing, ~~In reviewing any proposed reorganization, the Commission must find~~ that:

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

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

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

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

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

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

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

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

(d) The Commission shall issue its Order approving or denying the proposed reorganization within 11 months after the application is filed. The Commission may extend the deadline for a period equivalent to the length of any delay which the Commission finds to have been caused by the Applicant's failure to provide data or information requested by the Commission or that the Commission ordered the Applicant to provide to the parties. The Commission may also extend the deadline by an additional period not to exceed 3 months to consider amendments to the Applicant's filing, or to consider reasonably unforeseeable changes in circumstances subsequent to the Applicant's initial filing.

(e) Subsections (c) and (d) and subparagraphs (6) and (7) of subsection (b) of this Section shall apply only to merger

applications submitted to the Commission subsequent to April 23, 1997. No other Commission approvals shall be required for mergers that are subject to this Section.

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

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

(220 ILCS 5/8-103B)

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

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

the total resource cost test. For purposes of this Section, the terms "energy-efficiency", "demand-response", "electric utility", and "total resource cost test" have the meanings set forth in the Illinois Power Agency Act.

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

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

value shall be applied to and count toward the utility's achievement of the cumulative persisting annual savings goals set forth in subsection (b-5):

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

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

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

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

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

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

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

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

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

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

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

(12) 1.7% deemed cumulative persisting annual savings

for the year ending December 31, 2029; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b-10) For purposes of this Section, electric utilities subject to this Section that serve less than 3,000,000 retail customers but more than 500,000 retail customers in the State shall be deemed to have achieved a cumulative persisting annual

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b-15) Beginning in 2018, electric utilities subject to this Section that serve less than 3,000,000 retail customers but more than 500,000 retail customers in the State shall achieve the following cumulative persisting annual savings goals, as modified by subsection (b-20) and subsection (f) of this Section and as compared to the deemed baseline as reduced by the number of MWhs equal to the sum of the annual consumption of customers that are exempt from subsections (a)

through (j) of this Section under subsection (l) of this Section as averaged across the calendar years 2014, 2015, and 2016, through the implementation of energy efficiency measures during the applicable year and in prior years, but no earlier than January 1, 2012:

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

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

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

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

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

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

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

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

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

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

(11) 14.8% cumulative persisting annual savings for

the year ending December 31, 2028;

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

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

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

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

Within 270 days after the effective date of this amendatory Act of the 99th General Assembly, an electric utility that serves less than 3,000,000 retail customers but more than 500,000 retail customers in the State shall file a plan with the Commission that identifies the cost-effective voltage

optimization investment the electric utility plans to undertake through December 31, 2024. The Commission, after notice and hearing, shall approve or approve with modification the plan within 120 days after the plan's filing and, in the order approving or approving with modification the plan, the Commission shall adjust the applicable cumulative persisting annual savings goals set forth in subsection (b-15) to reflect any amount of cost-effective energy savings approved by the Commission that is greater than or less than the following cumulative persisting annual savings values attributable to voltage optimization for the applicable year:

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

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

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

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

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

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

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

(8) 1.0% of cumulative persisting annual savings for

the year ending December 31, 2025.

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

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

In no event shall more than 10% of each year's applicable annual incremental goal as defined in paragraph (7) of

subsection (g) of this Section be met through savings of fuels other than electricity.

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

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

electric utilities that serve less than 3,000,000 retail customers but more than 500,000 retail customers in the State.

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

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

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

The electric utilities shall also convene a low-income energy efficiency advisory committee to assist in the design and evaluation of the low-income energy efficiency programs.

The committee shall be comprised of the electric utilities subject to the requirements of this Section, the gas utilities subject to the requirements of Section 8-104 of this Act, the utilities' low-income energy efficiency implementation contractors, and representatives of community-based organizations.

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

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

capital structure that includes a common equity ratio, excluding goodwill, of up to and including 50% of the total capital structure shall be deemed reasonable and used to set rates.

(2) A utility may recover its costs through an energy efficiency formula rate approved by the Commission under a filing under subsections (f) and (g) of this Section, which shall specify the cost components that form the basis of the rate charged to customers with sufficient specificity to operate in a standardized manner and be updated annually with transparent information that reflects the utility's actual costs to be recovered during the applicable rate year, which is the period beginning with the first billing day of January and extending through the last billing day of the following December. The energy efficiency formula rate shall be implemented through a tariff filed with the Commission under subsections (f) and (g) of this Section that is consistent with the provisions of this paragraph (2) and that shall be applicable to all delivery services customers. The Commission shall conduct an investigation of the tariff in a manner consistent with the provisions of this paragraph (2), subsections (f) and (g) of this Section, and the provisions of Article IX of this Act to the extent they do not conflict with this paragraph (2). The energy efficiency formula rate approved by the Commission shall remain in effect at the discretion of the

utility and shall do the following:

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

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

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

(i) the average for the applicable calendar year of the monthly average yields of 30-year U.S.

Treasury bonds published by the Board of Governors of the Federal Reserve System in its weekly H.15 Statistical Release or successor publication; and

(ii) 580 basis points.

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

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

(i) recovery of incentive compensation expense that is based on the achievement of operational metrics, including metrics related to budget controls, outage duration and frequency, safety, customer service, efficiency and productivity, and environmental compliance; however, this protocol shall not apply if such expense related to costs incurred under this Section is recovered under Article IX or Section 16-108.5 of this Act;

incentive compensation expense that is based on net income or an affiliate's earnings per share shall not be recoverable under the energy efficiency formula rate;

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

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

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

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

(E) Provide for an annual reconciliation, as described in paragraph (3) of this subsection (d), less any deferred taxes related to the reconciliation, with interest at an annual rate of return equal to the utility's weighted average cost of capital, including a revenue conversion factor calculated to recover or refund all additional income taxes that may be payable

or receivable as a result of that return, of the energy efficiency revenue requirement reflected in rates for each calendar year, beginning with the calendar year in which the utility files its energy efficiency formula rate tariff under this paragraph (2), with what the revenue requirement would have been had the actual cost information for the applicable calendar year been available at the filing date.

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

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

of this Act. The initial rates shall take effect beginning with the January monthly billing period following the Commission's approval.

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

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

(3) The provisions of this paragraph (3) shall only apply to an electric utility that has elected to file an energy efficiency formula rate under paragraph (2) of this subsection (d). Subsequent to the Commission's issuance of an order approving the utility's energy efficiency formula rate structure and protocols, and initial rates under paragraph (2) of this subsection (d), the utility shall file, on or before June 1 of each year, with the Chief Clerk of the Commission its updated cost inputs to the

energy efficiency formula rate for the applicable rate year and the corresponding new charges, as well as the information described in paragraph (9) of subsection (g) of this Section. Each such filing shall conform to the following requirements and include the following information:

(A) The inputs to the energy efficiency formula rate for the applicable rate year shall be based on the projected costs to be incurred by the utility during the rate year under the utility's multi-year plan approved under subsections (f) and (g) of this Section, including, but not limited to, projected capital investment costs and projected regulatory asset balances with correspondingly updated depreciation and amortization reserves and expense. The filing shall also include a reconciliation of the energy efficiency revenue requirement that was in effect for the prior rate year (as set by the cost inputs for the prior rate year) with the actual revenue requirement for the prior rate year (determined using a year-end rate base) that uses amounts reflected in the applicable FERC Form 1 that reports the actual costs for the prior rate year. Any over-collection or under-collection indicated by such reconciliation shall be reflected as a credit against, or recovered as an additional charge to, respectively, with interest calculated at a rate equal

to the utility's weighted average cost of capital approved by the Commission for the prior rate year, the charges for the applicable rate year. Such over-collection or under-collection shall be adjusted to remove any deferred taxes related to the reconciliation, for purposes of calculating interest at an annual rate of return equal to the utility's weighted average cost of capital approved by the Commission for the prior rate year, including a revenue conversion factor calculated to recover or refund all additional income taxes that may be payable or receivable as a result of that return. Each reconciliation shall be certified by the participating utility in the same manner that FERC Form 1 is certified. The filing shall also include the charge or credit, if any, resulting from the calculation required by subparagraph (E) of paragraph (2) of this subsection (d).

Notwithstanding any other provision of law to the contrary, the intent of the reconciliation is to ultimately reconcile both the revenue requirement reflected in rates for each calendar year, beginning with the calendar year in which the utility files its energy efficiency formula rate tariff under paragraph (2) of this subsection (d), with what the revenue requirement determined using a year-end rate base for

the applicable calendar year would have been had the actual cost information for the applicable calendar year been available at the filing date.

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

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

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

Within 45 days after the utility files its annual update of cost inputs to the energy efficiency formula rate, the Commission shall with reasonable notice,

initiate a proceeding concerning whether the projected costs to be incurred by the utility and recovered during the applicable rate year, and that are reflected in the inputs to the energy efficiency formula rate, are consistent with the utility's approved multi-year plan under subsections (f) and (g) of this Section and whether the costs incurred by the utility during the prior rate year were prudent and reasonable. The Commission shall also have the authority to investigate the information and data described in paragraph (9) of subsection (g) of this Section, including the proposed adjustment to the utility's return on equity component of its weighted average cost of capital. During the course of the proceeding, each objection shall be stated with particularity and evidence provided in support thereof, after which the utility shall have the opportunity to rebut the evidence. Discovery shall be allowed consistent with the Commission's Rules of Practice, which Rules of Practice shall be enforced by the Commission or the assigned administrative law judge ~~hearing examiner~~. The Commission shall apply the same evidentiary standards, including, but not limited to, those concerning the prudence and reasonableness of the costs incurred by the utility, during the proceeding as it would apply in a proceeding to review a filing for a general increase in rates under Article IX of this Act. The Commission shall not, however, have the

authority in a proceeding under this paragraph (3) to consider or order any changes to the structure or protocols of the energy efficiency formula rate approved under paragraph (2) of this subsection (d). In a proceeding under this paragraph (3), the Commission shall enter its order no later than the earlier of 195 days after the utility's filing of its annual update of cost inputs to the energy efficiency formula rate or December 15. The utility's proposed return on equity calculation, as described in paragraphs (7) through (9) of subsection (g) of this Section, shall be deemed the final, approved calculation on December 15 of the year in which it is filed unless the Commission enters an order on or before December 15, after notice and hearing, that modifies such calculation consistent with this Section. The Commission's determinations of the prudence and reasonableness of the costs incurred, and determination of such return on equity calculation, for the applicable calendar year shall be final upon entry of the Commission's order and shall not be subject to reopening, reexamination, or collateral attack in any other Commission proceeding, case, docket, order, rule, or regulation; however, nothing in this paragraph (3) shall prohibit a party from petitioning the Commission to rehear or appeal to the courts the order under the provisions of this Act.

(e) Beginning on the effective date of this amendatory Act

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

result of that return. Capital investment costs shall be depreciated and recovered over their useful lives consistent with generally accepted accounting principles. The weighted average cost of capital shall be applied to the capital investment cost balance, less any accumulated depreciation and accumulated deferred income taxes, as of December 31 for a given year.

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

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

before the applicable filing deadline for the plan, it shall face a penalty of $100,000 per day until the plan is filed.

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

applicable 4-year plan period shall not be reduced to amounts that are less than the maximum amount of cumulative persisting annual savings that is forecast to be cost-effectively achievable during the 4-year plan period. The Commission shall review any proposed goal reduction as part of its review and approval of the utility's proposed plan.

(2) No later than March 1, 2021, each electric utility shall file a 4-year energy efficiency plan commencing on January 1, 2022 that is designed to achieve the cumulative persisting annual savings goals specified in paragraphs (5) through (8) of subsection (b-5) of this Section or in paragraphs (5) through (8) of subsection (b-15) of this Section, as applicable, through implementation of energy efficiency measures; however, the goals may be reduced if the utility's expenditures are limited pursuant to subsection (m) of this Section or, each of the following conditions are met: (A) the plan's analysis and forecasts of the utility's ability to acquire energy savings demonstrate that achievement of such goals is not cost effective; and (B) the amount of energy savings achieved by the utility as determined by the independent evaluator for the most recent year for which savings have been evaluated preceding the plan filing was less than the average annual amount of savings required to achieve the goals for the applicable 4-year plan period. Except as provided in

subsection (m) of this Section, annual increases in cumulative persisting annual savings goals during the applicable 4-year plan period shall not be reduced to amounts that are less than the maximum amount of cumulative persisting annual savings that is forecast to be cost-effectively achievable during the 4-year plan period. The Commission shall review any proposed goal reduction as part of its review and approval of the utility's proposed plan.

(3) No later than March 1, 2025, each electric utility shall file a 5-year energy efficiency plan commencing on January 1, 2026 that is designed to achieve the cumulative persisting annual savings goals specified in paragraphs (9) through (13) of subsection (b-5) of this Section or in paragraphs (9) through (13) of subsection (b-15) of this Section, as applicable, through implementation of energy efficiency measures; however, the goals may be reduced if the utility's expenditures are limited pursuant to subsection (m) of this Section or, each of the following conditions are met: (A) the plan's analysis and forecasts of the utility's ability to acquire energy savings demonstrate that achievement of such goals is not cost effective; and (B) the amount of energy savings achieved by the utility as determined by the independent evaluator for the most recent year for which savings have been evaluated preceding the plan filing was less than the average annual

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

Each utility's plan shall set forth the utility's proposals to meet the energy efficiency standards identified in subsection (b-5) or (b-15), as applicable and as such standards may have been modified under this subsection (f), taking into account the unique circumstances of the utility's service territory. For those plans commencing on January 1, 2018, the Commission shall seek public comment on the utility's plan and shall issue an order approving or disapproving each plan no later than August 31, 2017, or 105 days after the effective date of this amendatory Act of the 99th General Assembly, whichever is later. For those plans commencing after December 31, 2021, the Commission shall seek public comment on the utility's plan and shall issue an order approving or disapproving each plan within 6 months after its submission. If the Commission disapproves a plan, the Commission shall, within

30 days, describe in detail the reasons for the disapproval and describe a path by which the utility may file a revised draft of the plan to address the Commission's concerns satisfactorily. If the utility does not refile with the Commission within 60 days, the utility shall be subject to penalties at a rate of $100,000 per day until the plan is filed. This process shall continue, and penalties shall accrue, until the utility has successfully filed a portfolio of energy efficiency and demand-response measures. Penalties shall be deposited into the Energy Efficiency Trust Fund.

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

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

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

(3) Demonstrate that its overall portfolio of measures, not including low-income programs described in subsection (c) of this Section, is cost-effective using the total resource cost test or complies with paragraphs (1) through (3) of subsection (f) of this Section and

represents a diverse cross-section of opportunities for customers of all rate classes, other than those customers described in subsection (l) of this Section, to participate in the programs. Individual measures need not be cost effective.

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

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

(B) during 2018, the utility shall conduct a solicitation process for purposes of requesting proposals from third-party vendors for those third-party energy efficiency programs to be offered during one or more of the years commencing January 1, 2019, January 1, 2020, and January 1, 2021; for those multi-year plans commencing on January 1, 2022 and January 1, 2026, the utility shall conduct a

solicitation process during 2021 and 2025, respectively, for purposes of requesting proposals from third-party vendors for those third-party energy efficiency programs to be offered during one or more years of the respective multi-year plan period; for each solicitation process, the utility shall identify the sector, technology, or geographical area for which it is seeking requests for proposals;

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

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

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

(4.5) Implement cost-effective demand-response measures to reduce peak demand by 0.1% over the prior year for

eligible retail customers, as defined in Section 16-111.5 of this Act, and for customers that elect hourly service from the utility pursuant to Section 16-107 of this Act, provided those customers have not been declared competitive. This requirement continues until December 31, 2026.

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

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

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

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

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

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

this Section, then the following adjustments shall be made to the calculations described in this item (ii):

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

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

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

(i) If the independent evaluator determines

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

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

made to the calculations described in this item (ii):

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

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

(7.5) For purposes of this Section, the term "applicable annual incremental goal" means the difference between the cumulative persisting annual savings goal for the calendar year that is the subject of the independent evaluator's determination and the cumulative persisting annual savings goal for the immediately preceding calendar year, as such goals are defined in subsections (b-5) and

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

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

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

(i) The return on equity component shall be reduced by 8 basis points for each percent by which

the utility did not achieve 84.4% of the applicable annual incremental goal.

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

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

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

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

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

(ii) The return on equity component shall be increased by 6 basis points for each percent by

which the utility exceeded 100% of the applicable annual incremental goal.

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

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

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

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

percentage point value between 100% and 125% achievement.

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

(9) The utility shall submit the energy savings data to the independent evaluator no later than 30 days after the close of the plan year. The independent evaluator shall determine the cumulative persisting annual savings for a given plan year no later than 120 days after the close of the plan year. The utility shall submit an informational filing to the Commission no later than 160 days after the close of the plan year that attaches the independent evaluator's final report identifying the cumulative persisting annual savings for the year and calculates, under paragraph (7) or (8) of this subsection (g), as applicable, any resulting change to the utility's return on

equity component of the weighted average cost of capital applicable to the next plan year beginning with the January monthly billing period and extending through the December monthly billing period. However, if the utility recovers the costs incurred under this Section under paragraphs (2) and (3) of subsection (d) of this Section, then the utility shall not be required to submit such informational filing, and shall instead submit the information that would otherwise be included in the informational filing as part of its filing under paragraph (3) of such subsection (d) that is due on or before June 1 of each year.

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

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

(h) No more than 6% of energy efficiency and

demand-response program revenue may be allocated for research, development, or pilot deployment of new equipment or measures.

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

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

(k) Notwithstanding any provision of law to the contrary, an electric utility subject to the requirements of this Section may file a tariff cancelling an automatic adjustment clause tariff in effect under this Section or Section 8-103, which shall take effect no later than one business day after the date such tariff is filed. Thereafter, the utility shall be authorized to defer and recover its expenditures incurred under this Section through a new tariff authorized under subsection (d) of this Section or in the utility's next rate case under

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

No later than 60 days after the effective date of the

tariff cancelling the utility's automatic adjustment clause tariff, the utility shall file a reconciliation that reconciles the moneys collected under its automatic adjustment clause tariff with the costs incurred during the period beginning June 1, 2016 and ending on the date that the electric utility's automatic adjustment clause tariff was cancelled. In the event the reconciliation reflects an under-collection, the utility shall recover the costs as specified in this subsection (k). If the reconciliation reflects an over-collection, the utility shall apply the amount of such over-collection as a one-time credit to retail customers' bills.

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

based on the 12 consecutive billing periods prior to the start of the first year of each such multi-year plan.

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

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

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

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

of the average amount paid per kilowatthour by residential eligible retail customers during calendar year 2015. To determine the total amount that may be spent by an electric utility in any single year, the applicable percentage of the average amount paid per kilowatthour shall be multiplied by the total amount of energy delivered by such electric utility in the calendar year 2015, adjusted to reflect the proportion of the utility's load attributable to customers who are exempt from subsections (a) through (j) of this Section under subsection (l) of this Section. For purposes of this subsection

(m), the amount paid per kilowatthour includes, without limitation, estimated amounts paid for supply, transmission, distribution, surcharges, and add-on taxes. For purposes of this Section, "eligible retail customers" shall have the meaning set forth in Section 16-111.5 of this Act. Once the Commission has approved a plan under subsections (f) and (g) of this Section, no subsequent rate impact determinations shall be made.

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

(220 ILCS 5/8-507) (from Ch. 111 2/3, par. 8-507)

Sec. 8-507. Every public utility shall file with the Commission, under such rules and regulations as the Commission may prescribe, a report of every accident occurring to or on its plant, equipment, or other property of such a nature to endanger the safety, health or property of any person. Whenever any accident occasions the loss of life or limb to any person, such public utility shall immediately give notice to the Commission of the fact by the speediest means of communication, whether telephone, electronic notification, ~~telegraph~~ or post.

The Commission shall investigate all accidents occurring within this State upon the property of any public utility or directly or indirectly arising from or connected with its maintenance or operation, resulting in loss of life or injury to person or property and requiring, in the judgment of the Commission, investigation by it, and shall have the power to

make such order or recommendation with respect thereto as in its judgment may seem just and reasonable. Neither the order or recommendation of the Commission nor any accident report filed with the Commission shall be admitted in evidence in any action for damages based on or arising out of the loss of life, or injury to person or property, in this Section referred to.
(Source: P.A. 84-617; 84-1025.)

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

Sec. 8-508. No ~~Except as provided in Section 12-306, no~~ public utility shall abandon or discontinue any service or, in the case of an electric utility, make any modification as herein defined, without first having secured the approval of the Commission, except in case of assignment, transfer, lease or sale of the whole or any part of its franchises, licenses, permits, plant, equipment, business, or other property to any political subdivision or municipal corporation of this State. In the case of the assignment, transfer, lease or sale, in whole or in part, of any franchise, license, permit, plant, equipment, business or other property to any political subdivision or municipal corporation of this State, the public utility shall notify the Commission of such transaction. "Modification" as used in this Section means any change of fuel type which would result in an annual net systemwide decreased use of 10% or more of coal mined in Illinois. The Commission shall conduct public hearings on any request by a public

utility to make such modification and shall accept testimony from interested parties qualified to provide evidence regarding the cost or cost savings of the proposed modification as compared with the cost or cost savings of alternative actions by the utility and shall consider the impact on employment related to the production of coal in Illinois. Such hearings shall be commenced no later than 30 days after the filing of the request by the public utility and shall be concluded within 120 days from the date of filing. The Commission must issue its final determination within 60 days of the conclusion of the hearing. In making its determination the Commission shall attach primary weight to the cost or cost savings to the customers of the utility. In granting its approval, the Commission may impose such terms, conditions or requirements as in its judgment are necessary to protect the public interest. Provided, however, that any public utility abandoning or discontinuing service in pursuance of authority granted by the Commission shall be deemed to have waived any and all objections to the terms, conditions or requirements imposed by the Commission in that regard. Provided, further, that nothing in this Section shall be construed to limit the right of a public utility to discontinue service to individual patrons in accordance with the effective rules, regulations, and practices of such public utility.

The Commission, after a hearing upon its own motion or upon petition of any public utility, shall have power by order to

authorize or require any public utility to curtail or discontinue service to individual customers or classes thereof, or for specific purposes or uses, and otherwise to regulate the furnishing of service, provided that preference for service shall be given to those customers serving essential human needs and governmental agencies performing law enforcement functions, whenever and to the extent such action is required by the convenience and necessity of the public during time of war, invasion, insurrection or martial law, or by reason of a catastrophe, emergency, or shortage of fuel, supplies or equipment employed or service furnished by such public utility; provided, however, that an interim order, effective for a period not exceeding 15 days, may be made without a hearing if the circumstances do not reasonably permit the holding of a hearing. Orders for the curtailment or discontinuance of service pursuant to this paragraph shall not be continued in effect for any period beyond that which is reasonably necessary, shall be vacated by the Commission as soon as public convenience and necessity permit, and shall include such arrangements for substitute service in the interim as the Commission in its judgment may impose. Every such order, during the period it is in effect and for such further period, if any, as the Commission may provide, shall have the effect of suspending the operation of all prior orders or parts of orders of the Commission inconsistent therewith. No public utility shall be held liable for any damage resulting from any action

taken, or any omission to act, pursuant to or in compliance with any order under this paragraph for the curtailment or discontinuance of service unless such order was procured by the fraud of the public utility.

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

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

Sec. 8-509. When necessary for the construction of any alterations, additions, extensions or improvements ordered or authorized under Section 8-406.1 or~~,~~ 8-503~~, or 12-218~~ of this Act, any public utility may enter upon, take or damage private property in the manner provided for by the law of eminent domain. If a public utility seeks relief under this Section in the same proceeding in which it seeks a certificate of public convenience and necessity under Section 8-406.1 of this Act, the Commission shall enter its order under this Section either as part of the Section 8-406.1 order or at the same time it enters the Section 8-406.1 order. If a public utility seeks relief under this Section after the Commission enters its order in the Section 8-406.1 proceeding, the Commission shall issue its order under this Section within 45 days after the utility files its petition under this Section.

This Section applies to the exercise of eminent domain powers by telephone companies or telecommunications carriers only when the facilities to be constructed are intended to be used in whole or in part for providing one or more intrastate

telecommunications services classified as "noncompetitive" under Section 13-502 in a tariff filed by the condemnor. The exercise of eminent domain powers by telephone companies or telecommunications carriers in all other cases shall be governed solely by "An Act relating to the powers, duties and property of telephone companies", approved May 16, 1903, as now or hereafter amended.

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

(220 ILCS 5/9-102.1)

Sec. 9-102.1. Negotiated rates.

(a) Notwithstanding anything to the contrary in any other Section of Article IX of this Act, the Commission may approve one or more rate schedules filed by a public utility that enable the public utility to provide service to customers under contracts that are treated as proprietary and confidential by the Commission notwithstanding the filing thereof. Service under the contracts shall be provided on such terms and for such rates or charges as the public utility and the customer agree upon, without regard to any rate schedules the public utility may have filed with the Commission under any other Section of Article IX of this Act. The contracts shall be filed with the Commission, notwithstanding anything to the contrary in any schedule referred to in subsection (b) of this Section. For purposes of Section 3-121 of this Act, the amounts collected under the contracts shall be treated as having been

collected under rates that the public utility is required to file under Section 9-102 of this Act.

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

(c) In any determination of the rates to be charged by an electric public utility having contracts in effect pursuant to schedules filed under this Section or schedules referred to in subsection (b) of this Section, the revenues received, or to be received, by the electric public utility under each such contract shall be deemed to be equal to the revenues, based on the actual usage of the customer, that would have been, or would be, received under the lowest rates available under schedules on file pursuant to Section 9-201, applicable to a class of consumers that includes the customer, including any applicable riders or surcharges, plus any revenues that would have been, or would be required to pay for investment or expenses incurred by the electric public utility that would not be incurred if service were provided under such lowest rates. The cost of capital used to determine rates to be charged by the electric public utility shall be that which would have obtained if service were provided under such lowest rates. The provisions of this subsection (c) shall not apply: (1) in any determination of the rates to be charged by a gas public

utility, and (2) in any determination of the rates to be charged by an electric public utility, to contracts in effect prior to the effective date of this amendatory Act of 1996 pursuant to economic development schedules referred to in Section 9-241 of this Act, under which the electric public utility is authorized to provide discounts for new electrical sales that result from the location of new or expanded industrial facilities in the electric public utility's service territory. The preceding sentence shall not be construed to diminish the Commission's existing authority as of the effective date of this amendatory Act of 1996 to allocate the costs of all public utilities equitably, in any determination of rates, so as to set rates which are just and reasonable.

(d) Any contract filed pursuant to the provisions of subsection (a) of this Section shall be accorded proprietary and confidential treatment by the Commission and otherwise deemed to be exempt from the requirements of Sections 9-102, 9-103, 9-104, 9-201, 9-240, 9-241, and 9-243, except to the extent the Commission may, in its discretion, order otherwise. The Commission shall permit any statutory consumer protection agency to have access to any such contract, provided that: (i) the agency, and each individual that will have access on behalf of the agency, agree in writing to keep such contract confidential, such agreement to be in a form established by the Commission; and (ii) access is limited to full-time employees of the agency and such other persons as are acceptable to the

public utility or, if the agency and the public utility are unable to agree, are determined to be acceptable by the Commission. "Statutory consumer protection agency" means any office, corporation, or other agency created by ~~Article XI of this Act or~~ any ~~other~~ Illinois statute as of the effective date of this amendatory Act of 1996 that has an express statutory duty to represent the interest of public utility customers, any such agency subsequently created by act of the General Assembly that expressly authorizes the agency to access the information described in this subsection, or the Attorney General of the State of Illinois.

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

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

(g) After January 1, 2001, no contract for electric service may be entered into under any schedule filed pursuant to the provisions of subsection (a) of this Section or under any schedule referred to in subsection (b) of this Section. The

foregoing provision shall not affect any contract entered into prior to January 1, 2001.

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

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

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

Sec. 9-201. (a) Unless the Commission otherwise orders, and except as otherwise provided in this Section, no change shall be made by any public utility in any rate or other charge or classification, or in any rule, regulation, practice or contract relating to or affecting any rate or other charge, classification or service, or in any privilege or facility, except after 45 days' notice to the Commission and to the

public as herein provided. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules or supplements stating plainly the change or changes to be made in the schedule or schedules then in force, and the time when the change or changes will go into effect, and by publication in a newspaper of general circulation or such other notice to persons affected by such change as may be prescribed by rule of the Commission. The Commission, for good cause shown, may allow changes without requiring the 45 days' notice herein provided for, by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

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

When any public utility providing water or sewer service proposes any change in any rate or other charge, or classification, or in any rule, regulation, practice, or contract relating to or affecting any rate or other charge, classification or service, or in any privilege or facility, such utility shall, in addition to the other notice

requirements of this Act, provide notice of such change to all customers potentially affected by including a notice and description of such change, and of Commission procedures for intervention, in the first bill sent to each such customer after the filing of the proposed change.

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

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

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

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

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

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

rate;

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

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

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

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

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

(B) the water or sewer utility's customer service number or other number as may be appropriate where an authorized agent of the water or sewer utility can explain how the proposed increase might impact an

individual customer's bill;

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

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

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

(b) Whenever there shall be filed with the Commission any schedule stating an individual or joint rate or other charge, classification, contract, practice, rule or regulation, the Commission shall have power, and it is hereby given authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleadings by the interested public utility or utilities, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate or other charge, classification, contract, practice, rule or regulation, and pending the hearing and decision thereon, such rate or other charge, classification, contract, practice, rule or regulation

shall not go into effect. The period of suspension of such rate or other charge, classification, contract, practice, rule or regulation shall not extend more than 105 days beyond the time when such rate or other charge, classification, contract, practice, rule or regulation would otherwise go into effect unless the Commission, in its discretion, extends the period of suspension for a further period not exceeding 6 months.

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

Within 30 days after such changes have been authorized by the Commission, copies of the new or revised schedules shall be posted or filed in accordance with the terms of Section 9-103 of this Act, in such a manner that all changes shall be plainly indicated. The Commission shall incorporate into the period of suspension a review period of 4 business days during which the Commission may review and determine whether the new or revised schedules comply with the Commission's decision approving a change to the public utility's rates. Such review period shall not extend the suspension period by more than 2 days. Absent

notification to the contrary within the 4 business day period, the new or revised schedules shall be deemed approved.

(c) If the Commission enters upon a hearing concerning the propriety of any proposed rate or other charge, classification, contract, practice, rule or regulation, the Commission shall establish the rates or other charges, classifications, contracts, practices, rules or regulations proposed, in whole or in part, or others in lieu thereof, which it shall find to be just and reasonable. In such hearing, the burden of proof to establish the justness and reasonableness of the proposed rates or other charges, classifications, contracts, practices, rules or regulations, in whole and in part, shall be upon the utility. The utility, the staff of the Commission, the Attorney General, or any party to a proceeding initiated under this Section who has been granted intervenor status and submitted a post-hearing brief must be given the opportunity to present oral argument, if requested no later than the date for filing exceptions, on the propriety of any proposed rate or other charge, classification, contract, practice, rule, or regulation. No rate or other charge, classification, contract, practice, rule or regulation shall be found just and reasonable unless it is consistent with Sections of this Article.

(d) Except where compliance with Section 8-401 of this Act is of urgent and immediate concern, no representative of a public utility may discuss with a commissioner, commissioner's assistant, or <u>administrative law judge</u> ~~hearing examiner~~ in a

non-public setting a planned filing for a general rate increase. If a public utility makes a filing under this Section, then no substantive communication by any such person with a commissioner, commissioner's assistant, or administrative law judge ~~hearing examiner~~ concerning the filing is permitted until a notice of hearing has been issued. After the notice of hearing has been issued, the only communications by any such person with a commissioner, commissioner's assistant, or administrative law judge ~~hearing examiner~~ concerning the filing permitted are communications permitted under Section 10-103 of this Act. If any such communication does occur, then within 5 days of the docket being initiated all details relating to the communication shall be placed on the public record of the proceeding. The record shall include any materials, whether written, recorded, filmed, or graphic in nature, produced or reproduced on any media, used in connection with the communication. The record shall reflect the names of all persons who transmitted, received, or were otherwise involved in the communication, the duration of the communication, and whether the communication occurred in person or by other means. In the case of an oral communication, the record shall also reflect the location or locations of all persons involved in the communication and, if the communication occurred by telephone, the telephone numbers for the callers and recipients of the communication. A commissioner, commissioner's assistant, or administrative law

judge ~~hearing examiner~~ who is involved in any such communication shall be recused from the affected proceeding. The Commission, or any commissioner or administrative law judge ~~hearing examiner~~ presiding over the proceeding shall, in the event of a violation of this Section, take action necessary to ensure that such violation does not prejudice any party or adversely affect the fairness of the proceedings including dismissing the affected proceeding. Nothing in this subsection (d) is intended to preclude otherwise allowable updates on issues that may be indirectly related to a general rate case filing because cost recovery for the underlying activity may be requested. Such updates may include, without limitation, issues related to outages and restoration, credit ratings, security issuances, reliability, Federal Energy Regulatory Commission matters, Federal Communications Commission matters, regional reliability organizations, consumer education, or labor matters, provided that such updates may not include cost recovery in a planned rate case.

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

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

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

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

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

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

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

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

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

(2) For any public utility with a CWIP ratio on December 1, 1983 which is greater than or equal to 15%, the Commission shall not include in the rate base for such public utility an amount for CWIP in excess of the amount of CWIP included in the rate base on December 1, 1983, plus

50% of the allowed construction expenses incurred by the public utility from the date of the most recent rate determination by the Commission prior to December 1, 1983.

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

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

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

(f) Notwithstanding the provisions of paragraph (b) and (d), the Commission may include in the rate base of a public utility an amount of CWIP for a public utility's investment in pollution control devices for the control of sulfur dioxide emissions and the purification of water and sewage; provided, however, that upon application by a public utility which is constructing one or more pollution control devices for the control of sulfur dioxide emissions as part of a Clean Air Act

compliance plan approved by the Commission pursuant to subsection (e) of Section 8-402.1, the Commission shall include in such public utility's rate base an amount of CWIP equal to its investment in such pollution control device or devices, but not to exceed the estimated cost of such facilities specified in the Commission's order or supplemental order pursuant to subsection (e) of Section 8-402.1. For purposes of this subsection (f), the public utility's investment shall not include the amount of any state, federal or other grants provided to the public utility to fund the design, acquisition, construction, installation and testing of pollution control devices for the control of sulfur dioxide emissions.

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

~~The Commission shall conduct an investigation and study of the costs and benefits to ratepayers of the inclusion of construction work in progress in rate base. Such study shall include a full opportunity for participation by the public through notice and hearings. If the Commission determines that in certain circumstances the inclusion of CWIP in rate base would be demonstrably beneficial to ratepayers, the Commission~~

~~shall report its findings with recommendations to the General Assembly by December 31, 1988.~~

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

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

Sec. 9-222.2. Additional Charge - Recovery. The additional charge authorized by Section 9-221 or Section 9-222 shall be made (i) in the case of a tax measured by gross receipts or gross revenue, by adding to the customer's bill a uniform percentage to those amounts payable by the customer for intrastate utility service which are includible in the measure of such tax, except, however, such method is not required where practical considerations justify a utility's or telecommunications carrier's use of another just and reasonable method of recovering its entire liability for such tax, and (ii) in the case of a tax measured by the number of therms or kilowatt-hours distributed, supplied, furnished, sold, transported or transmitted, by adding to the customer's bill an amount equal to the number of therms or kilowatt-hours which are includible in the measure of such tax, multiplied by the applicable tax rate. ~~Without limiting the generality of the foregoing, it shall not be deemed unjust and unreasonable or a violation of Section 9-241 for telecommunications carriers to recover the expense of taxes imposed by any municipality pursuant to Section 8-11-2 of the Illinois Municipal Code on coin revenues generated by coin operated telecommunications~~

~~devices by including the expense of the tax within the coin rates for intra-state coin paid telecommunications services.~~

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

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

Sec. 9-223. Fire protection charge.

(a) The Commission may authorize any public utility engaged in the production, storage, transmission, sale, delivery or furnishing of water to impose a fire protection charge, in addition to any rate authorized by this Act, sufficient to cover a reasonable portion of the cost of providing the capacity, facilities and the water necessary to meet the fire protection needs of any municipality or public fire protection district. Such fire protection charge shall be in the form of a fixed amount per bill and shall be shown separately on the utility bill of each customer of the municipality or fire protection district. Any filing by a public utility to impose such a fire protection charge or to modify a charge shall be made pursuant to Section 9-201 of this Act. Any fire protection charge imposed shall reflect the costs associated with providing fire protection service for each municipality or fire protection district. No such charge shall be imposed directly on any municipality or fire protection district for a reasonable level of fire protection services unless provided for in a separate agreement between the municipality or the fire protection district and the utility.

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

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

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

Sec. 10-101. The Commission, or any commissioner or administrative law judge ~~hearing examiner~~ designated by the Commission, shall have power to hold investigations, inquiries and hearings concerning any matters covered by the provisions of this Act, or by any other Acts relating to public utilities subject to such rules and regulations as the Commission may establish. In the conduct of any investigation, inquiry or hearing the provisions of the Illinois Administrative Procedure Act, including but not limited to Sections 10-25 and 10-35 of that Act, shall be applicable and the Commission's

rules shall be consistent therewith. Complaint cases initiated pursuant to any Section of this Act, investigative proceedings and ratemaking cases shall be considered "contested cases" as defined in Section 1-30 of the Illinois Administrative Procedure Act, any contrary provision therein notwithstanding. Any proceeding intended to lead to the establishment of policies, practices, rules or programs applicable to more than one utility may, in the Commission's discretion, be conducted pursuant to either rulemaking or contested case provisions, provided such choice is clearly indicated at the beginning of such proceeding and subsequently adhered to. No violation of this Section or the Illinois Administrative Procedure Act and no informality in any proceeding or in the manner of taking testimony before the Commission, any commissioner or administrative law judge ~~hearing examiner~~ of the Commission shall invalidate any order, decision, rule or regulation made, approved, or confirmed by the Commission in the absence of prejudice. All hearings conducted by the Commission shall be open to the public.

Each commissioner and every administrative law judge ~~hearing examiner~~ of the Commission designated by it to hold any inquiry, investigation or hearing, shall have the power to administer oaths and affirmations, certify to all official acts, issue subpoenas, compel the attendance and testimony of witnesses, and the production of papers, books, accounts and documents.

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

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

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

To the extent consistent with this Section and the Illinois Administrative Procedure Act, the Commission may adopt reasonable and proper rules and regulations relative to the exercise of its powers, and proper rules to govern its proceedings, and regulate the mode and manner of all investigations and hearings, and alter and amend the same.

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

(220 ILCS 5/10-101.1)

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

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

(b) Nothing in this Act shall prevent parties to contested cases brought before the Commission from resolving those cases, or other disputes arising under this Act, in part or in their entirety, by agreement of all parties, by compromise and settlement, or by voluntary mediation; provided, however, that nothing in this Section shall limit the Commission's authority to conduct such investigations and enter such orders as it shall deem necessary to enforce the provisions of this Act or otherwise protect the public interest. Evidence of conduct or statements made by a party in furtherance of voluntary mediation or in compromise negotiations is not admissible as evidence should the matter subsequently be heard by the Commission; provided, however that evidence otherwise discoverable is not excluded or deemed inadmissible merely because it is presented in the course of voluntary mediation or compromise negotiations. No civil penalty shall be imposed upon parties that reach an agreement pursuant to the mediation

procedures in this Section.

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

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

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

(2) amendments to the pleadings;

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

(4) limitations on discovery including:

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

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

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

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

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

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

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

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

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

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

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

The provisions of Section 10-60 of the Illinois Administrative Procedure Act shall apply in full to Commission proceedings, including ratemaking cases, any provision of the Illinois Administrative Procedure Act to the contrary notwithstanding.

The provisions of Section 10-60 shall not apply, however, to communications between Commission employees who are engaged in investigatory, prosecutorial or advocacy functions and

other parties to the proceeding, provided that such Commission employees are still prohibited from communicating on an ex parte basis, as designated in Section 10-60, directly or indirectly, with members of the Commission, any administrative law judge ~~hearing examiner~~ in the proceeding, or any Commission employee who is or may reasonably be expected to be involved in the decisional process of the proceeding. Any commissioner, administrative law judge ~~hearing examiner~~, or other person who is or may reasonably be expected to be involved in the decisional process of a proceeding, who receives, or who makes or knowingly causes to be made, a communication prohibited by this Section or Section 10-60 of the Illinois Administrative Procedure Act as modified by this Section, shall place on the public record of the proceeding (1) any and all such written communications; (2) memoranda stating the substance of any and all such oral communications; and (3) any and all written responses and memoranda stating the substance of any and all oral responses to the materials described in clauses (1) and (2).

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

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

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

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

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

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

Sec. 10-105. No person shall be excused from testifying or from producing any papers, books, accounts or documents in any investigation or inquiry or upon any hearing ordered by the Commission, when ordered to do so by the Commission or any commissioner or administrative law judge ~~hearing examiner~~, upon the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, before the Commission or a commissioner or administrative law judge

~~hearing examiner~~: Provided, that such immunity shall extend only to a natural person, who in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise under oath. No person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying. The Commission or a commissioner or administrative law judge ~~hearing examiner~~ may, on the motion of a party or on its own motion, strike, in whole or in part, the testimony of a person who is not reasonably prepared to respond to questions under cross-examination intending to elicit information directly related to matters raised by that person in his testimony.

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

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

Sec. 10-106. All subpoenas issued under the terms of this Act may be served by any person of full age. The fees of witnesses for attendance and travel shall be the same as fees of witnesses before the circuit courts of this State, such fees to be paid when the witness is excused from further attendance, when the witness is subpoenaed at the instance of the Commission, or any commissioner or administrative law judge ~~hearing examiner~~; and the disbursements made in the payment of such fees shall be audited and paid in the same manner as are other expenses of the Commission. Whenever a subpoena is issued at the instance of a complainant, respondent, or other party to

any proceeding before the Commission, the Commission may require that the cost of service thereof and the fee of the witness shall be borne by the party at whose instance the witness is summoned, and the Commission shall have power, in its discretion, to require a deposit to cover the cost of such service and witness fees and the payment of the legal witness fee and mileage to the witness when served with subpoena. A subpoena issued as aforesaid shall be served in the same manner as a subpoena issued out of a court.

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

Any circuit court of this State, upon application of the Commission, or a commissioner or administrative law judge ~~hearing examiner~~, may, in its discretion, compel the attendance of witnesses, the production of books, papers, accounts and documents, and the giving of testimony before the Commission, or before any such commissioner or administrative law judge ~~hearing examiner~~, by an attachment for contempt or otherwise, in the same manner as production of evidence may be compelled

before the court.

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

The Commission may require, by order served on any public utility in the manner provided herein for the service of orders, the production within this State at such time and place as it may designate, of any books, accounts, papers or documents kept by any public utility operating within this State in any office or place without this State, or, at its option, verified copies in lieu thereof, so that an examination thereof may be made by the Commission or under its direction.
(Source: P.A. 84-617.)

(220 ILCS 5/10-107) (from Ch. 111 2/3, par. 10-107)

Sec. 10-107. The Commission, each commissioner and each employee of the Commission properly authorized thereby shall have the right, at any and all times to inspect the papers, books, accounts and documents, plant, equipment or other property of any public utility, and the Commission, each commissioner and any administrative law judge ~~hearing examiner~~

of the Commission authorized to administer oaths shall have the power to examine under oath any officer, agent or employee of such public utility in relation to any matter within the jurisdiction of the Commission. A person other than a commissioner or administrative law judge ~~hearing examiner~~ demanding such inspection shall produce under the seal of the Commission his authority to make such inspection. A written record of the testimony or statement so given under oath shall be made and filed with the Commission. Information so obtained shall not be admitted in evidence or used in any proceeding except in proceedings provided for in this Act.

Any party to a proceeding before the Commission shall have the right to inspect the records of all hearings, investigations or inquiries conducted by or under the authority of the Commission, which may relate to the issues involved in such proceeding; and to submit suggestions as to other matters to be investigated or as to questions to be propounded. If the Commission is satisfied that such suggested investigation should be made or such suggested questions answered, and that the information desired is within the power of either party to furnish, it shall enter an order requiring the investigation to be made or the questions to be answered, and upon failure or refusal to comply with such order, the Commission shall either refuse to grant the relief prayed for by the party refusing to comply, or may grant the relief prayed for by the opposing party against the party refusing to comply.

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

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

Sec. 10-110. At the time fixed for any hearing upon a complaint, the complainant and the person or corporation complained of, and such persons or corporations as the Commission may allow to intervene, shall be entitled to be heard and to introduce evidence. The Commission shall issue process to enforce the attendance of all necessary witnesses. At the conclusion of such hearing the Commission shall make and render findings concerning the subject matter and facts inquired into and enter its order based thereon. A copy of such order, certified under the seal of the Commission, shall be served upon the person or corporation complained of, or his or its attorney, which order shall, of its own force, take effect and become operative twenty days after the service thereof, except as otherwise provided, and shall continue in force either for a period which may be designated therein or until changed or abrogated by the Commission. Where an order cannot, in the judgment of the Commission, be complied with within twenty days, the Commission may prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may, on application and for good cause shown, extend the time for compliance fixed in its order. A full and complete record shall be preserved of all proceedings had before the Commission, or any member thereof, or any <u>administrative law</u>

judge ~~hearing examiner~~, on any formal hearing had, and all testimony shall be taken down by a stenographer appointed by the Commission, and the parties shall be entitled to be heard in person or by attorney.

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

In case of an appeal from any order or decision of the Commission, under the terms of Sections 10-201 and 10-202 of this Act, a transcript of such testimony, together with all exhibits or copies thereof introduced and all information secured by the Commission on its own initiative and considered by it in rendering its order or decision (and required by this

Act to be made a part of its records) and of the pleadings, records and proceedings in the case, including transcripts of Commission meetings prepared in accordance with Section 10-102 of this Act, shall constitute the record of the Commission: Provided, that on appeal from an order or decision of the Commission, the person or corporation taking the appeal and the Commission may stipulate that a certain question or certain questions alone and a specified portion only of the evidence shall be certified to the court for its judgment, whereupon such stipulation and the question or questions and the evidence therein specified shall constitute the record on appeal.

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

In any matter concerning which the Commission is authorized to hold a hearing, upon complaint or application or upon its own motion, notice shall be given to the public utility and to such other interested persons as the Commission shall deem necessary in the manner provided in Section 10-108, and the hearing shall be conducted in like manner as if complaint had been made to or by the Commission. But nothing in this Act shall be taken to limit or restrict the power of the Commission, summarily, of its own motion, with or without

notice, to conduct any investigations or inquiries authorized by this Act, in such manner and by such means as it may deem proper, and to take such action as it may deem necessary in connection therewith. With respect to any rules, regulations, decisions or orders which the Commission is authorized to issue without a hearing, and so issues, any public utility or other person or corporation affected thereby and deeming such rules, regulations, decisions or orders, or any of them, improper, unreasonable or contrary to law, may apply for a hearing thereon, setting forth specifically in such application every ground of objection which the applicant desires to urge against such rule, regulation, decision or order. The Commission may, in its discretion, grant or deny the application, and a hearing, if had, shall be subject to the provisions of this and the preceding Sections.

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

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

Sec. 10-111. In any hearing, proceeding, investigation, or rulemaking conducted by the Commission, the Commission, commissioner, or administrative law judge ~~hearing examiner~~ presiding, shall, after the close of evidentiary hearings, prepare a recommended or tentative decision, finding, or order, including a statement of findings and conclusions and the reasons or basis therefore, on all the material issues of fact, law, or discretion presented on the record. Such recommended or

tentative decision, finding, or order shall be served on all parties who shall be entitled to a reasonable opportunity to respond thereto, either in briefs or comments otherwise to be filed or separately. The recommended or tentative decision, finding, or order and any responses thereto shall be included in the record for decision. This Section shall not apply to any hearing, proceeding, or investigation conducted under Section 13-515.

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

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

Sec. 10-201. (a) Jurisdiction. Within 35 days from the date that a copy of the order or decision sought to be reviewed was served upon the party affected by any order or decision of the Commission refusing an application for a rehearing of any rule, regulation, order or decision of the Commission, including any order granting or denying interim rate relief, or within 35 days from the date that a copy of the order or decision sought to be reviewed was served upon the party affected by any final order or decision of the Commission upon and after a rehearing of any rule, regulation, order or decision of the Commission, including any order granting or denying interim rate relief, any person or corporation affected by such rule, regulation, order or decision, may appeal to the appellate court of the judicial district in which the subject matter of the hearing is situated, or if the subject matter of the hearing is situated

in more than one district, then of any one of such districts, for the purpose of having the reasonableness or lawfulness of the rule, regulation, order or decision inquired into and determined.

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

(b) Pleadings and Record. No proceeding to contest any rule, regulation, decision or order which the Commission is authorized to issue without a hearing and has so issued shall be brought in any court unless application shall have been first made to the Commission for a hearing thereon and until after such application has been acted upon by the Commission, nor shall any person or corporation in any court urge or rely upon any grounds not set forth in such application for a hearing before the Commission, but the Commission shall decide the questions presented by the application with all possible expedition consistent with the duties of the Commission. The party taking such an appeal shall file with the Commission written notice of the appeal. The Commission, upon the filing of such notice of appeal, shall, within 5 days thereafter, file with the clerk of the appellate court to which such appeal is taken a certified copy of the order appealed. The Commission shall prepare a copy of the transcript of the evidence,

including exhibits and transcripts of Commission meetings prepared in accordance with Section 10-102 of this Act, or any portion of the record designated in a stipulation that only certain questions are involved on appeal, which stipulation is to be included in the record provided for in Section 10-110. The Commission shall certify the record and file the same with the clerk of the appellate court to which such appeal is taken within 35 days of the filing of the notice of appeal. The party serving such notice of appeal shall, within 5 days after the service of such notice upon the Commission, file a copy of the notice, with proof of service, with the clerk of the court to which such appeal is taken, and thereupon the appellate court shall have jurisdiction over the appeal. The appeal shall be heard according to the rules governing other civil cases, so far as the same are applicable.

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

(d) No new or additional evidence may be introduced in any proceeding upon appeal from a rule, regulation, order or decision of the Commission, issued or confirmed after a hearing, but the appeal shall be heard on the record of the Commission as certified by it. The findings and conclusions of the Commission on questions of fact shall be held prima facie

to be true and as found by the Commission; rules, regulations, orders or decisions of the Commission shall be held to be prima facie reasonable, and the burden of proof upon all issues raised by the appeal shall be upon the person or corporation appealing from such rules, regulations, orders or decisions.

(e) Powers and duties of Reviewing Court:

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

(ii) If it appears that the Commission failed to receive evidence properly proffered, on a hearing or a rehearing, or an application therefor, the court shall remand the case, in whole or in part, to the Commission with instructions to receive the testimony so proffered and rejected, and to enter a new order based upon the evidence theretofore taken, and such new evidence as it is directed to receive, unless it shall appear that such new evidence would not be controlling, in which case the court shall so find in its order. If the court remands only part of the Commission's rule, regulation, order or decision, it shall

determine without delay the lawfulness and reasonableness of any independent portions of the rule, regulation, order or decision subject to appeal.

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

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

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

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

C. The rule, regulation, order or decision is in violation of the State or federal constitution or laws; or

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

of the appellant.

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

(vi) When the court remands a rule, regulation, order or decision of the Commission, in whole or in part, the Commission shall enter its final order with respect to the remanded rule, regulation, order or decision no later than 6 months after the date of issuance of the court's mandate. The Commission shall enter its final order, with respect to any remanded matter pending before it on the effective date of this amendatory Act of 1988, no later than 6 months after the effective date of this amendatory Act of 1988. However, when the court mandates, or grants an extension of time which the court determines to be necessary for, the taking of additional evidence, the Commission shall enter an interim order within 6 months after the issuance of the mandate (or within 6 months after the effective date of this amendatory Act of 1988 in the case of a remanded matter pending before it on the effective date of this amendatory Act of 1988), and the Commission shall enter its final order within 5 months after the date the interim

order was entered.

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

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

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

Sec. 10-204. (a) The pendency of an appeal shall not of itself stay or suspend the operation of the rule, regulation, order or decision of the Commission, but during the pendency of the appeal the reviewing court may in its discretion stay or suspend, in whole or in part, the operation of the Commission's rule, regulation, order or decision. Any stocks or stock certificates, bonds, notes, or other evidence of indebtedness issued pursuant to and in accordance with an order of the Commission shall be valid and binding in accordance with their terms notwithstanding such order of the Commission is later vacated, modified, or otherwise held to be wholly or partly invalid unless operation of such order of the Commission has been stayed or suspended by the reviewing court prior to such

issuance.

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

(c) In case the rule, regulation, order or decision of the Commission is stayed or suspended, the order of the court shall not become effective until a suspending bond shall first have been executed and filed with, and approved by the Commission (or approved, on review, by the court) payable to the people of the State of Illinois, and sufficient in amount and security to insure the prompt payment, by the party petitioning for the review, of all damages caused by the delay in the enforcement of the rule, regulation, order or decision of the Commission, and of all moneys which any person or corporation may be compelled to pay, pending the review proceedings, for transportation, transmission, product, commodity or service in excess of the charges fixed by the rule, regulation, order or decision of the Commission, in case said rule, regulation, order or decision is sustained. However, no bond shall be required in the case of any stay or suspension granted on

application of the State or people of the State, represented by the Attorney General or Public Counsel, or of any city or other governmental body. The court in case it stays or suspends the rule, regulation, order or decision of the Commission in any manner affecting rates or other charges or classifications, may in its discretion, also by order direct the public utility affected to pay into court, from time to time thereto to be impounded until the final decision of the case or into some bank or trust company paying interest on deposits, under such conditions as the court may prescribe, all sums of money which it may collect from any corporation or person in excess of the sum such corporation or person would have been compelled to pay if the rule, regulation, order or decision of the Commission had not been stayed or suspended.

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

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

(220 ILCS 5/13-401.1)

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

Sec. 13-401.1. Interconnected voice over Internet protocol (VoIP) service surcharge ~~provider registration~~.

~~(a) An Interconnected VoIP provider providing fixed or non-nomadic service in Illinois on December 1, 2010 shall register with the Commission no later than January 1, 2011. All other Interconnected VoIP providers providing fixed or non nomadic service in Illinois shall register with the Commission at least 30 days before providing service in Illinois. The Commission shall prescribe a registration form no later than October 1, 2010. The registration form prescribed by the Commission shall only require the following information:~~

~~(1) the provider's legal name and any name under which the provider does or will do business in Illinois, as authorized by the Secretary of State;~~

~~(2) the provider's address and telephone number, along with contact information for the person responsible for ongoing communications with the Commission;~~

~~(3) a description of the provider's dispute resolution process and, if any, the telephone number to initiate the dispute resolution process; and~~

~~(4) a description of each exchange of a local exchange company, in whole or in part, or the cities, towns, or geographic areas, in whole or in part, in which the provider is offering or proposes to offer Interconnected VoIP service.~~

~~A provider must notify the Commission of any change in the~~

~~information identified in paragraphs (1), (2), (3), or (4) of this subsection (a) within 5 business days after any such change.~~

An interconnected voice over Internet protocol ~~(b) A~~ provider shall charge and collect from its end-user customers, and remit to the appropriate authority, fees and surcharges in the same manner as are charged and collected upon end-user customers of local exchange telecommunications service and remitted by local exchange telecommunications companies for local enhanced 9-1-1 surcharges.

~~(c) A provider may designate information that it submits in its registration form or subsequent reports as confidential or proprietary, provided that the provider states the reasons the confidential designation is necessary. The Commission shall provide adequate protection for such information pursuant to Section 4-404 of this Act. If the Commission or any other party seeks public disclosure of information designated as confidential, the Commission shall consider the confidential designation in a proceeding under the Illinois Administrative Procedure Act, and the burden of proof to demonstrate that the designated information is confidential shall be upon the provider. Designated information shall remain confidential pending the Commission's determination of whether the information is entitled to confidential treatment. Information designated as confidential shall be provided to local units of government for purposes of assessing compliance with this~~

~~Article as permitted under a protective order issued by the Commission pursuant to the Commission's rules and to the Attorney General pursuant to Section 6.5 of the Attorney General Act. Information designated as confidential under this Section or determined to be confidential upon Commission review shall only be disclosed pursuant to a valid and enforceable subpoena or court order or as required by the Freedom of Information Act.~~

~~(d) Notwithstanding any other provision of law to the contrary, the Commission shall have the authority, after notice and hearing, to revoke or suspend the registration of any provider that fails to comply with the requirements of this Section.~~

~~(e) The provisions of this Section are severable under Section 1.31 of the Statute on Statutes.~~

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

(220 ILCS 5/13-506.2)

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

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

(a) Definitions. As used in this Section:

(1) "Electing Provider" means a telecommunications carrier that is subject to either rate regulation pursuant to Section 13-504 or Section 13-505 or alternative regulation pursuant to Section 13-506.1 and that elects to

have the rates, terms, and conditions of its competitive retail telecommunications services solely determined and regulated pursuant to the terms of this Article.

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

(3) "Existing customer" means a residential customer who was subscribing to one of the optional packages described in subsection (d) of this Section as of the effective date of this amendatory Act of the 99th General Assembly. A customer who was subscribing to one of the optional packages on that date but stops subscribing thereafter shall not be considered an "existing customer" as of the date the customer stopped subscribing to the optional package, unless the stoppage is temporary and caused by the customer changing service address locations, or unless the customer resumes subscribing and is eligible to receive discounts on monthly telephone service under the federal Lifeline program, 47 C.F.R. Part 54, Subpart E.

(4) "New customer" means a residential customer who was not subscribing to one of the optional packages described in subsection (d) of this Section as of the effective date

of this amendatory Act of the 99th General Assembly and who is eligible to receive discounts on monthly telephone service under the federal Lifeline program, 47 C.F.R. Part 54, Subpart E.

(b) Election for market regulation. Notwithstanding any other provision of this Act, an Electing Provider may elect to have the rates, terms, and conditions of its competitive retail telecommunications services solely determined and regulated pursuant to the terms of this Section by filing written notice of its election for market regulation with the Commission. The notice of election shall designate the geographic area of the Electing Provider's service territory where the market regulation shall apply, either on a state-wide basis or in one or more specified Market Service Areas ("MSA") or Exchange areas. An Electing Provider shall not make an election for market regulation under this Section unless it commits in its written notice of election for market regulation to fulfill the conditions and requirements in this Section in each geographic area in which market regulation is elected. Immediately upon filing the notice of election for market regulation, the Electing Provider shall be subject to the jurisdiction of the Commission to the extent expressly provided in this Section.

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

(1) For geographic areas in which telecommunications

services provided by the Electing Provider were classified as competitive either through legislative action or a tariff filing pursuant to Section 13-502 prior to January 1, 2010, and that are included in the Electing Provider's notice of election pursuant to subsection (b) of this Section, such services, and all recurring and nonrecurring charges associated with, related to or used in connection with such services, shall be classified as competitive without further Commission review. For services classified as competitive pursuant to this subsection, the requirements or conditions in any order or decision rendered by the Commission pursuant to Section 13-502 prior to the effective date of this amendatory Act of the 96th General Assembly, except for the commitments made by the Electing Provider in such order or decision concerning the optional packages required in subsection (d) of this Section and basic local exchange service as defined in this Section, shall no longer be in effect and no Commission investigation, review, or proceeding under Section 13-502 shall be continued, conducted, or maintained with respect to such services, charges, requirements, or conditions. If an Electing Provider has ceased providing optional packages to customers pursuant to subdivision (d)(8) of this Section, the commitments made by the Electing Provider in such order or decision concerning the optional packages under subsection (d) of this Section shall no longer be in

effect and no Commission investigation, review, or proceeding under Section 13-502 shall be continued, conducted, or maintained with respect to such packages.

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

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

(4) The service packages described in Section 13-518 shall be classified as competitive for purposes of this Section if offered by an Electing Provider in a geographic

area in which local exchange telecommunications service has been classified as competitive pursuant to either subdivision (c)(1) or (c)(2) of this Section.

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

(6) Notwithstanding any other provision of this Act, retail telecommunications services classified as competitive pursuant to Section 13-502 or subdivision (c)(5) of this Section shall have their rates, terms, and conditions solely determined and regulated pursuant to the terms of this Section in the same manner and to the same extent as the competitive retail telecommunications services of an Electing Provider, except that subsections (d), (g), and (j) of this Section shall not apply to a carrier that is not an Electing Provider or to the competitive telecommunications services of a carrier that is not an Electing Provider. The access services of a carrier that is not an Electing Provider shall remain

subject to Section 13-900.2. The requirements in subdivision (e)(3) of this Section shall not apply to retail telecommunications services classified as competitive pursuant to Section 13-502 or subdivision (c)(5) of this Section, except that, upon request from the Commission, the telecommunications carrier providing competitive retail telecommunications services shall provide a report showing the number of credits and exemptions for the requested time period.

(d) Consumer choice safe harbor options.

(1) Subject to subdivision (d)(8) of this Section, an Electing Provider in each of the MSA or Exchange areas classified as competitive pursuant to subdivision (c)(1) or (c)(2) of this Section shall offer to all residential customers who choose to subscribe the following optional packages of services priced at the same rate levels in effect on January 1, 2010:

(A) A basic package, which shall consist of a stand-alone residential network access line and 30 local calls. If the Electing Provider offers a stand-alone residential access line and local usage on a per call basis, the price for the basic package shall be the Electing Provider's applicable price in effect on January 1, 2010 for the sum of a residential access line and 30 local calls, additional calls over 30 calls shall be provided at the current per call rate.

However, this basic package is not required if stand-alone residential network access lines or per-call local usage are not offered by the Electing Provider in the geographic area on January 1, 2010 or if the Electing Provider has not increased its stand-alone network access line and local usage rates, including Extended Area Service rates, since January 1, 2010.

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

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

price for the vertical features included in the package.

(2) Subject to subdivision (d)(8) of this Section, for those geographic areas in which local exchange telecommunications services were classified as competitive on the effective date of this amendatory Act of the 96th General Assembly, an Electing Provider in each such MSA or Exchange area shall be subject to the same terms and conditions as provided in commitments made by the Electing Provider in connection with such previous competitive classifications, which shall apply with equal force under this Section, except as follows: (i) the limits on price increases on the optional packages required by this Section shall be extended consistent with subsection (d)(1) of this Section and (ii) the price for the extra package required by subsection (d)(1)(B) shall be reduced by one dollar from the price in effect on January 1, 2010. In addition, if an Electing Provider obtains a competitive classification pursuant to subsection (c)(1) and (c)(2), the price for the optional packages shall be determined in such area in compliance with subsection (d)(1), except the price for the plus package required by subsection (d)(1) (C) shall be the lower of the price for such area or the price of the plus package in effect on January 1, 2010 for areas classified as competitive pursuant to subsection (c)(1).

(3) To the extent that the requirements in Section

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

(4) Subject to subdivision (d)(8) of this Section, an Electing Provider shall make the optional packages required by this subsection and stand-alone residential network access lines and local usage, where offered, readily available to the public by providing information, in a clear manner, to residential customers. Information shall be made available on a website, and an Electing Provider shall provide notification to its customers every 6 months, provided that notification may consist of a bill page message that provides an objective description of the safe harbor options that includes a telephone number and website address where the customer may obtain additional information about the packages from the Electing Provider. The optional packages shall be offered on a monthly basis with no term of service requirement. An Electing Provider shall allow online electronic ordering of the optional packages and stand-alone residential network access lines and local usage, where offered, on its website in a manner

similar to the online electronic ordering of its other residential services.

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

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

(7) The Commission shall have the power, after notice and hearing as provided in this Article, upon complaint or

upon its own motion, to take corrective action if the requirements of this Section are not complied with by an Electing Provider.

(8) On and after the effective date of this amendatory Act of the 99th General Assembly, an Electing Provider shall continue to offer and provide the optional packages described in this subsection (d) to existing customers and new customers. On and after July 1, 2017, an Electing Provider may immediately stop offering the optional packages described in this subsection (d) and, upon providing two notices to affected customers and to the Commission, may stop providing the optional packages described in this subsection (d) to all customers who subscribe to one of the optional packages. The first notice shall be provided at least 90 days before the date upon which the Electing Provider intends to stop providing the optional packages, and the second notice must be provided at least 30 days before that date. The first notice shall not be provided prior to July 1, 2017. Each notice must identify the date on which the Electing Provider intends to stop providing the optional packages, at least one alternative service available to the customer, and a telephone number by which the customer may contact a service representative of the Electing Provider. After July 1, 2017 with respect to new customers, and upon the expiration of the second notice period with respect to

customers who were subscribing to one of the optional packages, subdivisions (d)(1), (d)(2), (d)(4), (d)(5), (d)(6), and (d)(7) of this Section shall not apply to the Electing Provider. Notwithstanding any other provision of this Article, an Electing Provider that has ceased providing the optional packages under this subdivision (d)(8) is not subject to Section 13-301(1)(c) of this Act. Notwithstanding any other provision of this Act, and subject to subdivision (d)(7) of this Section, the Commission's authority over the discontinuance of the optional packages described in this subsection (d) by an Electing Provider shall be governed solely by this subsection (d)(8).

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

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

(A) Install basic local exchange service within 5 business days after receipt of an order from the customer unless the customer requests an installation date that is beyond 5 business days after placing the order for basic service and to inform the customer of

the Electing Provider's duty to install service within this timeframe. If installation of service is requested on or by a date more than 5 business days in the future, the Electing Provider shall install service by the date requested.

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

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

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

(2) Customers shall be credited by the Electing Provider for violations of basic local exchange service quality standards described in subdivision (e)(1) of this Section. The credits shall be applied automatically on the statement issued to the customer for the next monthly billing cycle following the violation or following the discovery of the violation. The next monthly billing cycle following the violation or the discovery of the violation means the billing cycle immediately following the billing cycle in process at the time of the violation or discovery

of the violation, provided the total time between the violation or discovery of the violation and the issuance of the credit shall not exceed 60 calendar days. The Electing Provider is responsible for providing the credits and the customer is under no obligation to request such credits. The following credits shall apply:

(A) If an Electing Provider fails to repair an out-of-service condition for basic local exchange service within 30 hours, the Electing Provider shall provide a credit to the customer. If the service disruption is for more than 30 hours, but not more than 48 hours, the credit must be equal to a pro-rata portion of the monthly recurring charges for all basic local exchange services disrupted. If the service disruption is for more than 48 hours, but not more than 72 hours, the credit must be equal to at least 33% of one month's recurring charges for all local services disrupted. If the service disruption is for more than 72 hours, but not more than 96 hours, the credit must be equal to at least 67% of one month's recurring charges for all basic local exchange services disrupted. If the service disruption is for more than 96 hours, but not more than 120 hours, the credit must be equal to one month's recurring charges for all basic local exchange services disrupted. For each day or portion thereof that the service disruption continues

beyond the initial 120-hour period, the Electing Provider shall also provide an additional credit of $20 per calendar day.

(B) If an Electing Provider fails to install basic local exchange service as required under subdivision (e)(1) of this Section, the Electing Provider shall waive 50% of any installation charges, or in the absence of an installation charge or where installation is pursuant to the Link Up program, the Electing Provider shall provide a credit of $25. If an Electing Provider fails to install service within 10 business days after the service application is placed, or fails to install service within 5 business days after the customer's requested installation date, if the requested date was more than 5 business days after the date of the order, the Electing Provider shall waive 100% of the installation charge, or in the absence of an installation charge or where installation is provided pursuant to the Link Up program, the Electing Provider shall provide a credit of $50. For each day that the failure to install service continues beyond the initial 10 business days, or beyond 5 business days after the customer's requested installation date, if the requested date was more than 5 business days after the date of the order, the Electing Provider shall also provide an additional

credit of $20 per calendar day until the basic local exchange service is installed.

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

(D) Credits required by this subsection do not apply if the violation of a service quality standard:

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

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

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

(iv) is extended by the Electing Provider's inability to gain access to the customer's premises due to the customer missing an appointment, provided that the violation is not

further extended by the Electing Provider;

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

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

(vii) occurs as a result of a lack of facilities where a customer requests service at a geographically remote location, where a customer requests service in a geographic area where the Electing Provider is not currently offering service, or where there are insufficient facilities to meet the customer's request for service, subject to an Electing Provider's obligation for reasonable facilities planning.

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

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

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

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

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

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

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

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

(vii) the number of exemptions claimed for each of the categories identified in subdivision (e)(2)(D).

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

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

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

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

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

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

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

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

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

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

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

(4) It is the intent of the General Assembly that the service quality rules and customer credits in this subsection (e) of this Section and other enforcement mechanisms, including fines and penalties authorized by

Section 13-305, shall apply on a nondiscriminatory basis to all Electing Providers. Accordingly, notwithstanding any provision of any service quality rules promulgated by the Commission, any alternative regulation plan adopted by the Commission, or any other order of the Commission, any Electing Provider that is subject to any other order of the Commission and that violates or fails to comply with the service quality standards promulgated pursuant to this subsection (e) or any other order of the Commission shall not be subject to any fines, penalties, customer credits, or enforcement mechanisms other than such fines or penalties or customer credits as may be imposed by the Commission in accordance with the provisions of this subsection (e) and Section 13-305, which are to be generally applicable to all Electing Providers. The amount of any fines or penalties imposed by the Commission for failure to comply with the requirements of this subsection (e) shall be an appropriate amount, taking into account, at a minimum, the Electing Provider's gross annual intrastate revenue; the frequency, duration, and recurrence of the violation; and the relative harm caused to the affected customers or other users of the network. In imposing fines and penalties, the Commission shall take into account compensation or credits paid by the Electing Provider to its customers pursuant to this subsection (e) in compensation for any violation found pursuant to this

subsection (e), and in any event the fine or penalty shall not exceed an amount equal to the maximum amount of a civil penalty that may be imposed under Section 13-305.

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

(f) Commission jurisdiction over competitive retail telecommunications services. Except as otherwise expressly stated in this Section, the Commission shall thereafter have no jurisdiction or authority over any aspect of competitive retail telecommunications service of an Electing Provider in those geographic areas included in the Electing Provider's notice of election pursuant to subsection (b) of this Section or of a retail telecommunications service classified as competitive pursuant to Section 13-502 or subdivision (c)(5) of this Section, heretofore subject to the jurisdiction of the Commission, including but not limited to, any requirements of this Article related to the terms, conditions, rates, quality of service, availability, classification or any other aspect of

any competitive retail telecommunications services. No telecommunications carrier shall commit any unfair or deceptive act or practice in connection with any aspect of the offering or provision of any competitive retail telecommunications service. Nothing in this Article shall limit or affect any provisions in the Consumer Fraud and Deceptive Business Practices Act with respect to any unfair or deceptive act or practice by a telecommunications carrier.

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

(1) As part of its Notice of Election for Market Regulation, the Electing Provider shall reduce its intrastate switched access rates to rates no higher than its interstate switched access rates in 4 installments. The first reduction must be made 30 days after submission of its complete application for Notice of Election for Market Regulation, and the Electing Provider must reduce its intrastate switched access rates by an amount equal to 33% of the difference between its current intrastate switched access rates and its current interstate switched access rates. The second reduction must be made no later than one year after the first reduction, and the Electing Provider must reduce its then current intrastate switched access rates by an amount equal to 41% of the difference between its then current intrastate switched access rates and its then current interstate switched access rates. The third

reduction must be made no later than one year after the second reduction, and the Electing Provider must reduce its then current intrastate switched access rates by an amount equal to 50% of the difference between its then current intrastate switched access rate and its then current interstate switched access rates. The fourth reduction must be made on or before June 30, 2013, and the Electing Provider must reduce its intrastate switched access rate to mirror its then current interstate switched access rates and rate structure. Following the fourth reduction, each Electing Provider must continue to set its intrastate switched access rates to mirror its interstate switched access rates and rate structure. For purposes of this subsection, the rate for intrastate switched access service means the composite, per-minute rate for that service, including all applicable fixed and traffic-sensitive charges, including, but not limited to, carrier common line charges.

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

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

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

(h) Safety of service equipment and facilities.

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

(2) The Commission is authorized to conduct an investigation of any Electing Provider or part thereof. The investigation may examine the reasonableness, prudence, or efficiency of any aspect of the Electing Provider's operations or functions that may affect the adequacy, safety, efficiency, or reliability of telecommunications service. The Commission may conduct or order an investigation only when it has reasonable grounds to believe that the investigation is necessary to assure that the Electing Provider is providing adequate, efficient, reliable, and safe service. The Commission shall, before initiating any such investigation, issue an order

describing the grounds for the investigation and the appropriate scope and nature of the investigation, which shall be reasonably related to the grounds relied upon by the Commission in its order.

(i) (Blank).

(j) Application of Article VII. The provisions of Sections 7-101, 7-102, 7-104, 7-204, 7-205, and 7-206 of this Act are applicable to an Electing Provider offering or providing retail telecommunications service, and the Commission's regulation thereof, except that (1) the approval of contracts and arrangements with affiliated interests required by paragraph (3) of Section 7-101 shall not apply to such telecommunications carriers provided that, except as provided in item (2), those contracts and arrangements shall be filed with the Commission; (2) affiliated interest contracts or arrangements entered into by such telecommunications carriers where the increased obligation thereunder does not exceed the lesser of $5,000,000 or 5% of such carrier's prior annual revenue from noncompetitive services are not required to be filed with the Commission; and (3) any consent and approval of the Commission required by Section 7-102 is not required for the sale, lease, assignment, or transfer by any Electing Provider of any property that is not necessary or useful in the performance of its duties to the public.

(k) Notwithstanding other provisions of this Section, the Commission retains its existing authority to enforce the

provisions, conditions, and requirements of the following Sections of this Article: 13-101, 13-103, 13-201, 13-301, 13-301.1, 13-301.2, 13-301.3, 13-303, 13-303.5, 13-304, 13-305, 13-401, 13-401.1, 13-402, 13-403, 13-404, 13-404.1, 13-404.2, 13-405, 13-406, ~~13-407,~~ 13-501, 13-501.5, 13-503, 13-505, 13-509, 13-510, 13-512, 13-513, 13-514, 13-515, 13-516, 13-519, 13-702, 13-703, 13-704, 13-705, 13-706, 13-707, 13-709, 13-713, 13-801, 13-802.1, 13-804, 13-900, 13-900.1, 13-900.2, 13-901, 13-902, and 13-903, which are fully and equally applicable to Electing Providers and to telecommunications carriers providing retail telecommunications service classified as competitive pursuant to Section 13-502 or subdivision (c)(5) of this Section subject to the provisions of this Section. On the effective date of this amendatory Act of the 98th General Assembly, the following Sections of this Article shall cease to apply to Electing Providers and to telecommunications carriers providing retail telecommunications service classified as competitive pursuant to Section 13-502 or subdivision (c)(5) of this Section: 13-302, 13-405.1, 13-502, 13-502.5, 13-504, 13-505.2, 13-505.3, 13-505.4, 13-505.5, 13-505.6, 13-506.1, 13-507, 13-507.1, 13-508, 13-508.1, 13-517, 13-518, 13-601, 13-701, and 13-712.

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

(220 ILCS 5/13-515)

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

Sec. 13-515. Enforcement.

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

(b) (Blank).

(c) No complaint may be filed under this Section until the complainant has first notified the respondent of the alleged violation and offered the respondent 48 hours to correct the situation. Provision of notice and the opportunity to correct the situation creates a rebuttable presumption of knowledge under Section 13-514. After the filing of a complaint under this Section, the parties may agree to follow the mediation process under Section 10-101.1 of this Act. The time periods specified in subdivision (d)(7) of this Section shall be tolled during the time spent in mediation under Section 10-101.1.

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

(1) The complaint shall be filed with the Chief Clerk

of the Commission and shall be served in hand upon the respondent, the executive director, and the general counsel of the Commission at the time of the filing.

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

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

(4) An answer and any other responsive pleading to the complaint shall be filed with the Commission and served in hand at the same time upon the complainant, the executive director, and the general counsel of the Commission within 7 days after the date on which the complaint is filed.

(5) If the answer or responsive pleading raises the issue that the complaint violates subsection (i) of this Section, the complainant may file a reply to such allegation within 3 days after actual service of such answer or responsive pleading. Within 4 days after the time for filing a reply has expired, the hearing officer or arbitrator shall either issue a written decision dismissing the complaint as frivolous in violation of subsection (i) of this Section including the reasons for

such disposition or shall issue an order directing that the complaint shall proceed.

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

(7) The hearing shall commence within 30 days of the date on which the complaint is filed. The hearing may be conducted by an administrative law judge ~~a hearing examiner~~ or by an arbitrator. Parties and the Commission staff shall be entitled to present evidence and legal argument in oral or written form as deemed appropriate by the administrative law judge ~~hearing examiner~~ or arbitrator. The administrative law judge ~~hearing examiner~~ or arbitrator shall issue a written decision within 60 days after the date on which the complaint is filed. The decision shall include reasons for the disposition of the complaint and, if a violation of Section 13-514 is found, directions and a deadline for correction of the violation.

(8) Any party may file a petition requesting the Commission to review the decision of the administrative law judge ~~hearing examiner~~ or arbitrator within 5 days of such decision. Any party may file a response to a petition for review within 3 business days after actual service of the petition. After the time for filing of the petition for review, but no later than 15 days after the decision of the administrative law judge ~~hearing examiner~~ or arbitrator, the Commission shall decide to adopt the decision of the

administrative law judge ~~hearing examiner~~ or arbitrator or shall issue its own final order.

(e) If the alleged violation has a substantial adverse effect on the ability of the complainant to provide service to customers, the complainant may include in its complaint a request for an order for emergency relief. The Commission, acting through its designated administrative law judge ~~hearing examiner~~ or arbitrator, shall act upon such a request within 2 business days of the filing of the complaint. An order for emergency relief may be granted, without an evidentiary hearing, upon a verified factual showing that the party seeking relief will likely succeed on the merits, that the party will suffer irreparable harm in its ability to serve customers if emergency relief is not granted, and that the order is in the public interest. An order for emergency relief shall include a finding that the requirements of this subsection have been fulfilled and shall specify the directives that must be fulfilled by the respondent and deadlines for meeting those directives. The decision of the administrative law judge ~~hearing examiner~~ or arbitrator to grant or deny emergency relief shall be considered an order of the Commission unless the Commission enters its own order within 2 calendar days of the decision of the administrative law judge ~~hearing examiner~~ or arbitrator. The order for emergency relief may require the responding party to act or refrain from acting so as to protect the provision of competitive service offerings to customers.

Any action required by an emergency relief order must be technically feasible and economically reasonable and the respondent must be given a reasonable period of time to comply with the order.

(f) The Commission is authorized to obtain outside resources including, but not limited to, arbitrators and consultants for the purposes of the hearings authorized by this Section. Any arbitrator or consultant obtained by the Commission shall be approved by both parties to the hearing. The cost of such outside resources including, but not limited to, arbitrators and consultants shall be borne by the parties. The Commission shall review the bill for reasonableness and assess the parties for reasonable costs dividing the costs according to the resolution of the complaint brought under this Section. Such costs shall be paid by the parties directly to the arbitrators, consultants, and other providers of outside resources within 60 days after receiving notice of the assessments from the Commission. Interest at the statutory rate shall accrue after expiration of the 60-day period. The Commission, arbitrators, consultants, or other providers of outside resources may apply to a court of competent jurisdiction for an order requiring payment.

(g) The Commission shall assess the parties under this subsection for all of the Commission's costs of investigation and conduct of the proceedings brought under this Section including, but not limited to, the prorated salaries of staff,

attorneys, administrative law judges ~~hearing examiners~~, and support personnel and including any travel and per diem, directly attributable to the complaint brought pursuant to this Section, but excluding those costs provided for in subsection (f), dividing the costs according to the resolution of the complaint brought under this Section. All assessments made under this subsection shall be paid into the Public Utility Fund within 60 days after receiving notice of the assessments from the Commission. Interest at the statutory rate shall accrue after the expiration of the 60 day period. The Commission is authorized to apply to a court of competent jurisdiction for an order requiring payment.

(h) If the Commission determines that there is an imminent threat to competition or to the public interest, the Commission may, notwithstanding any other provision of this Act, seek temporary, preliminary, or permanent injunctive relief from a court of competent jurisdiction either prior to or after the hearing.

(i) A party shall not bring or defend a proceeding brought under this Section or assert or controvert an issue in a proceeding brought under this Section, unless there is a non-frivolous basis for doing so. By presenting a pleading, written motion, or other paper in complaint or defense of the actions or inaction of a party under this Section, a party is certifying to the Commission that to the best of that party's knowledge, information, and belief, formed after a reasonable

inquiry of the subject matter of the complaint or defense, that the complaint or defense is well grounded in law and fact, and under the circumstances:

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

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

(j) If, after notice and a reasonable opportunity to respond, the Commission determines that subsection (i) has been violated, the Commission shall impose appropriate sanctions upon the party or parties that have violated subsection (i) or are responsible for the violation. The sanctions shall be not more than $30,000, plus the amount of expenses accrued by the Commission for conducting the hearing. Payment of sanctions imposed under this subsection shall be made to the Common School Fund within 30 days of imposition of such sanctions.

(k) An appeal of a Commission Order made pursuant to this Section shall not effectuate a stay of the Order unless a court of competent jurisdiction specifically finds that the party seeking the stay will likely succeed on the merits, that the party will suffer irreparable harm without the stay, and that

the stay is in the public interest.

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

(220 ILCS 5/16-108.5)

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

(a) (Blank).

(b) For purposes of this Section, "participating utility" means an electric utility or a combination utility serving more than 1,000,000 customers in Illinois that voluntarily elects and commits to undertake (i) the infrastructure investment program consisting of the commitments and obligations described in this subsection (b) and (ii) the customer assistance program consisting of the commitments and obligations described in subsection (b-10) of this Section, notwithstanding any other provisions of this Act and without obtaining any approvals from the Commission or any other agency other than as set forth in this Section, regardless of whether any such approval would otherwise be required. "Combination utility" means a utility that, as of January 1, 2011, provided electric service to at least one million retail customers in Illinois and gas service to at least 500,000 retail customers in Illinois. A participating utility shall recover the expenditures made under the infrastructure investment program through the ratemaking process, including, but not limited to, the performance-based formula rate and process set forth in

this Section.

During the infrastructure investment program's peak program year, a participating utility other than a combination utility shall create 2,000 full-time equivalent jobs in Illinois, and a participating utility that is a combination utility shall create 450 full-time equivalent jobs in Illinois related to the provision of electric service. These jobs shall include direct jobs, contractor positions, and induced jobs, but shall not include any portion of a job commitment, not specifically contingent on an amendatory Act of the 97th General Assembly becoming law, between a participating utility and a labor union that existed on December 30, 2011 (the effective date of Public Act 97-646) and that has not yet been fulfilled. A portion of the full-time equivalent jobs created by each participating utility shall include incremental personnel hired subsequent to December 30, 2011 (the effective date of Public Act 97-646). For purposes of this Section, "peak program year" means the consecutive 12-month period with the highest number of full-time equivalent jobs that occurs between the beginning of investment year 2 and the end of investment year 4.

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

(1) Beginning no later than 180 days after a participating utility other than a combination utility files a performance-based formula rate tariff pursuant to

subsection (c) of this Section, or, beginning no later than January 1, 2012 if such utility files such performance-based formula rate tariff within 14 days of October 26, 2011 (the effective date of Public Act 97-616), the participating utility shall, except as provided in subsection (b-5):

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

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

(ii) training facility construction or upgrade projects totaling an estimated $10,000,000, provided that, at a minimum, one such facility shall be located in a municipality having a population of more than 2 million residents and one such facility shall be located in a municipality having a population of more than 150,000 residents but fewer than 170,000 residents; any such new facility located in a municipality having a population of more than 2 million residents must be designed for the purpose of obtaining, and the

owner of the facility shall apply for, certification under the United States Green Building Council's Leadership in Energy Efficiency Design Green Building Rating System;

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

(iv) an estimated $200,000,000 for reducing the susceptibility of certain circuits to storm-related damage, including, but not limited to, high winds, thunderstorms, and ice storms; improvements may include, but are not limited to, overhead to underground conversion and other engineered outcomes for circuits; the participating utility shall prioritize the selection of circuits based on each circuit's historical susceptibility to storm-related damage and the ability to provide the greatest customer benefit upon completion of the improvements; to be eligible for improvement, the participating utility's ability to maintain proper tree clearances surrounding the overhead circuit must not have been impeded by third parties; and

(B) over a 10-year period, invest an estimated $1,300,000,000 to upgrade and modernize its transmission and distribution infrastructure and in Smart Grid electric system upgrades, including, but

not limited to:

(i) additional smart meters;

(ii) distribution automation;

(iii) associated cyber secure data communication network; and

(iv) substation micro-processor relay upgrades.

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

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

(i) distribution infrastructure improvements totaling an estimated $245,000,000, which may include bulk supply substations, transformers, reconductoring, and rebuilding overhead distribution and sub-transmission lines, underground residential distribution cable

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

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

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

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

(i) additional smart meters;

(ii) distribution automation;

(iii) associated cyber secure data communication network; and

(iv) substation micro-processor relay upgrades.

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

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

Within 60 days after filing a tariff under subsection (c) of this Section, a participating utility shall submit to the Commission its plan, including scope, schedule, and staffing, for satisfying its infrastructure investment program commitments pursuant to this subsection (b). The submitted plan shall include a schedule and staffing plan for the next calendar year. The plan shall also include a plan for the creation, operation, and administration of a Smart Grid test bed as described in subsection (c) of Section 16-108.8. The plan need not allocate the work equally over the respective periods, but should allocate material increments throughout

such periods commensurate with the work to be undertaken. No later than April 1 of each subsequent year, the utility shall submit to the Commission a report that includes any updates to the plan, a schedule for the next calendar year, the expenditures made for the prior calendar year and cumulatively, and the number of full-time equivalent jobs created for the prior calendar year and cumulatively. If the utility is materially deficient in satisfying a schedule or staffing plan, then the report must also include a corrective action plan to address the deficiency. The fact that the plan, implementation of the plan, or a schedule changes shall not imply the imprudence or unreasonableness of the infrastructure investment program, plan, or schedule. Further, no later than 45 days following the last day of the first, second, and third quarters of each year of the plan, a participating utility shall submit to the Commission a verified quarterly report for the prior quarter that includes (i) the total number of full-time equivalent jobs created during the prior quarter, (ii) the total number of employees as of the last day of the prior quarter, (iii) the total number of full-time equivalent hours in each job classification or job title, (iv) the total number of incremental employees and contractors in support of the investments undertaken pursuant to this subsection (b) for the prior quarter, and (v) any other information that the Commission may require by rule.

With respect to the participating utility's peak job

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

With respect to the participating utility's investment amount commitments, if, after considering the utility's corrective action plan and compliance thereunder, the Commission enters an order finding, after notice and hearing, that a participating utility is not satisfying its investment amount commitments described in this subsection (b), then the utility shall no longer be eligible to annually update the

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

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

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

(b-5) Nothing in this Section shall prohibit the Commission from investigating the prudence and reasonableness of the expenditures made under the infrastructure investment program

during the annual review required by subsection (d) of this Section and shall, as part of such investigation, determine whether the utility's actual costs under the program are prudent and reasonable. The fact that a participating utility invests more than the minimum amounts specified in subsection (b) of this Section or its plan shall not imply imprudence or unreasonableness.

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

In no event, absent General Assembly approval, shall the capital investment costs incurred by a participating utility other than a combination utility in satisfying its infrastructure investment program commitments described in subsection (b) of this Section exceed $3,000,000,000 or, for a participating utility that is a combination utility, $720,000,000. If the participating utility's updated cost estimates for satisfying its infrastructure investment program

commitments described in subsection (b) of this Section exceed the limitation imposed by this subsection (b-5), then it shall submit a report to the Commission that identifies the increased costs and explains the reason or reasons for the increased costs no later than the year in which the utility estimates it will exceed the limitation. The Commission shall review the report and shall, within 90 days after the participating utility files the report, report to the General Assembly its findings regarding the participating utility's report. If the General Assembly does not amend the limitation imposed by this subsection (b-5), then the utility may modify its plan so as not to exceed the limitation imposed by this subsection (b-5) and may propose corresponding changes to the metrics established pursuant to subparagraphs (5) through (8) of subsection (f) of this Section, and the Commission may modify the metrics and incremental savings goals established pursuant to subsection (f) of this Section accordingly.

(b-10) All participating utilities shall make contributions for an energy low-income and support program in accordance with this subsection. Beginning no later than 180 days after a participating utility files a performance-based formula rate tariff pursuant to subsection (c) of this Section, or beginning no later than January 1, 2012 if such utility files such performance-based formula rate tariff within 14 days of December 30, 2011 (the effective date of Public Act 97-646), and without obtaining any approvals from the Commission or any

other agency other than as set forth in this Section, regardless of whether any such approval would otherwise be required, a participating utility other than a combination utility shall pay $10,000,000 per year for 5 years and a participating utility that is a combination utility shall pay $1,000,000 per year for 10 years to the energy low-income and support program, which is intended to fund customer assistance programs with the primary purpose being avoidance of imminent disconnection. Such programs may include:

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

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

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

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

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

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

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

disbursement of the funds to ensure they were disbursed consistently with this Section.

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

(c) A participating utility may elect to recover its delivery services costs through a performance-based formula rate approved by the Commission, which shall specify the cost components that form the basis of the rate charged to customers with sufficient specificity to operate in a standardized manner and be updated annually with transparent information that reflects the utility's actual costs to be recovered during the applicable rate year, which is the period beginning with the first billing day of January and extending through the last billing day of the following December. In the event the utility recovers a portion of its costs through automatic adjustment clause tariffs on October 26, 2011 (the effective date of Public Act 97-616), the utility may elect to continue to recover these costs through such tariffs, but then these costs shall not be recovered through the performance-based formula rate. In the event the participating utility, prior to December 30, 2011 (the effective date of Public Act 97-646), filed

electric delivery services tariffs with the Commission pursuant to Section 9-201 of this Act that are related to the recovery of its electric delivery services costs that are still pending on December 30, 2011 (the effective date of Public Act 97-646), the participating utility shall, at the time it files its performance-based formula rate tariff with the Commission, also file a notice of withdrawal with the Commission to withdraw the electric delivery services tariffs previously filed pursuant to Section 9-201 of this Act. Upon receipt of such notice, the Commission shall dismiss with prejudice any docket that had been initiated to investigate the electric delivery services tariffs filed pursuant to Section 9-201 of this Act, and such tariffs and the record related thereto shall not be the subject of any further hearing, investigation, or proceeding of any kind related to rates for electric delivery services.

The performance-based formula rate shall be implemented through a tariff filed with the Commission consistent with the provisions of this subsection (c) that shall be applicable to all delivery services customers. The Commission shall initiate and conduct an investigation of the tariff in a manner consistent with the provisions of this subsection (c) and the provisions of Article IX of this Act to the extent they do not conflict with this subsection (c). Except in the case where the Commission finds, after notice and hearing, that a participating utility is not satisfying its investment amount

commitments under subsection (b) of this Section, the performance-based formula rate shall remain in effect at the discretion of the utility. The performance-based formula rate approved by the Commission shall do the following:

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

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

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

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

(B) 580 basis points.

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

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

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

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

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

(D) investment return at a rate equal to the utility's weighted average cost of long-term debt, on the pension assets as, and in the amount, reported in Account 186 (or in such other Account or Accounts as such asset may subsequently be recorded) of the utility's most recently filed FERC Form 1, net of deferred tax benefits;

(E) recovery of the expenses related to the Commission proceeding under this subsection (c) to approve this performance-based formula rate and initial rates or to subsequent proceedings related to the formula, provided that the recovery shall be amortized over a 3-year period; recovery of expenses related to the annual Commission proceedings under subsection (d) of this Section to review the inputs to the performance-based formula rate shall be expensed

and recovered through the performance-based formula rate;

(F) amortization over a 5-year period of the full amount of each charge or credit that exceeds $3,700,000 for a participating utility that is a combination utility or $10,000,000 for a participating utility that serves more than 3 million retail customers in the applicable calendar year and that relates to a workforce reduction program's severance costs, changes in accounting rules, changes in law, compliance with any Commission-initiated audit, or a single storm or other similar expense, provided that any unamortized balance shall be reflected in rate base. For purposes of this subparagraph (F), changes in law includes any enactment, repeal, or amendment in a law, ordinance, rule, regulation, interpretation, permit, license, consent, or order, including those relating to taxes, accounting, or to environmental matters, or in the interpretation or application thereof by any governmental authority occurring after October 26, 2011 (the effective date of Public Act 97-616);

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

(H) historical weather normalized billing determinants; and

(I) allocation methods for common costs.

(5) Provide that if the participating utility's earned rate of return on common equity related to the provision of delivery services for the prior rate year (calculated using costs and capital structure approved by the Commission as provided in subparagraph (2) of this subsection (c), consistent with this Section, in accordance with Commission rules and orders, including, but not limited to, adjustments for goodwill, and after any Commission-ordered disallowances and taxes) is more than 50 basis points higher than the rate of return on common equity calculated pursuant to paragraph (3) of this subsection (c) (after adjusting for any penalties to the rate of return on common equity applied pursuant to the performance metrics provision of subsection (f) of this Section), then the participating utility shall apply a credit through the performance-based formula rate that reflects an amount equal to the value of that portion of the earned rate of return on common equity that is more than 50 basis points higher than the rate of return on common equity calculated pursuant to paragraph (3) of this subsection (c) (after adjusting for any penalties to the rate of return on common equity applied pursuant to the performance metrics provision of subsection (f) of this Section) for the prior rate year, adjusted for taxes. If the participating utility's earned rate of return on common equity related to the provision of delivery services for the prior rate year

(calculated using costs and capital structure approved by the Commission as provided in subparagraph (2) of this subsection (c), consistent with this Section, in accordance with Commission rules and orders, including, but not limited to, adjustments for goodwill, and after any Commission-ordered disallowances and taxes) is more than 50 basis points less than the return on common equity calculated pursuant to paragraph (3) of this subsection (c) (after adjusting for any penalties to the rate of return on common equity applied pursuant to the performance metrics provision of subsection (f) of this Section), then the participating utility shall apply a charge through the performance-based formula rate that reflects an amount equal to the value of that portion of the earned rate of return on common equity that is more than 50 basis points less than the rate of return on common equity calculated pursuant to paragraph (3) of this subsection (c) (after adjusting for any penalties to the rate of return on common equity applied pursuant to the performance metrics provision of subsection (f) of this Section) for the prior rate year, adjusted for taxes.

(6) Provide for an annual reconciliation, as described in subsection (d) of this Section, with interest, of the revenue requirement reflected in rates for each calendar year, beginning with the calendar year in which the utility files its performance-based formula rate tariff pursuant

to subsection (c) of this Section, with what the revenue requirement would have been had the actual cost information for the applicable calendar year been available at the filing date.

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

After the utility files its proposed performance-based formula rate structure and protocols and initial rates, the Commission shall initiate a docket to review the filing. The Commission shall enter an order approving, or approving as modified, the performance-based formula rate, including the initial rates, as just and reasonable within 270 days after the date on which the tariff was filed, or, if the tariff is filed

within 14 days after October 26, 2011 (the effective date of Public Act 97-616), then by May 31, 2012. Such review shall be based on the same evidentiary standards, including, but not limited to, those concerning the prudence and reasonableness of the costs incurred by the utility, the Commission applies in a hearing to review a filing for a general increase in rates under Article IX of this Act. The initial rates shall take effect within 30 days after the Commission's order approving the performance-based formula rate tariff.

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

Subsequent changes to the performance-based formula rate structure or protocols shall be made as set forth in Section 9-201 of this Act, but nothing in this subsection (c) is intended to limit the Commission's authority under Article IX and other provisions of this Act to initiate an investigation of a participating utility's performance-based formula rate tariff, provided that any such changes shall be consistent with paragraphs (1) through (6) of this subsection (c). Any change ordered by the Commission shall be made at the same time new rates take effect following the Commission's next order pursuant to subsection (d) of this Section, provided that the

new rates take effect no less than 30 days after the date on which the Commission issues an order adopting the change.

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

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

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

(1) The inputs to the performance-based formula rate for the applicable rate year shall be based on final historical data reflected in the utility's most recently filed annual FERC Form 1 plus projected plant additions and correspondingly updated depreciation reserve and expense for the calendar year in which the inputs are filed. The filing shall also include a reconciliation of the revenue requirement that was in effect for the prior rate year (as set by the cost inputs for the prior rate year) with the actual revenue requirement for the prior rate year (determined using a year-end rate base) that uses amounts reflected in the applicable FERC Form 1 that reports the actual costs for the prior rate year. Any over-collection or under-collection indicated by such reconciliation shall be reflected as a credit against, or recovered as an additional charge to, respectively, with interest calculated at a rate equal to the utility's weighted average cost of capital approved by the Commission for the prior rate year, the charges for the applicable rate year. Provided, however, that the first such reconciliation shall be for the calendar year in which the utility files its performance-based formula rate tariff pursuant to subsection (c) of this Section and shall reconcile (i) the revenue requirement or requirements established by the rate order or orders in effect from time to time during such calendar year (weighted, as applicable) with (ii) the

revenue requirement determined using a year-end rate base for that calendar year calculated pursuant to the performance-based formula rate using (A) actual costs for that year as reflected in the applicable FERC Form 1, and (B) for the first such reconciliation only, the cost of equity, which shall be calculated as the sum of 590 basis points plus the average for the applicable calendar year of the monthly average yields of 30-year U.S. Treasury bonds published by the Board of Governors of the Federal Reserve System in its weekly H.15 Statistical Release or successor publication. The first such reconciliation is not intended to provide for the recovery of costs previously excluded from rates based on a prior Commission order finding of imprudence or unreasonableness. Each reconciliation shall be certified by the participating utility in the same manner that FERC Form 1 is certified. The filing shall also include the charge or credit, if any, resulting from the calculation required by paragraph (6) of subsection (c) of this Section.

Notwithstanding anything that may be to the contrary, the intent of the reconciliation is to ultimately reconcile the revenue requirement reflected in rates for each calendar year, beginning with the calendar year in which the utility files its performance-based formula rate tariff pursuant to subsection (c) of this Section, with what the revenue requirement determined using a year-end

rate base for the applicable calendar year would have been had the actual cost information for the applicable calendar year been available at the filing date.

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

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

Within 45 days after the utility files its annual update of cost inputs to the performance-based formula rate, the Commission shall have the authority, either upon complaint or its own initiative, but with reasonable notice, to enter upon a

hearing concerning the prudence and reasonableness of the costs incurred by the utility to be recovered during the applicable rate year that are reflected in the inputs to the performance-based formula rate derived from the utility's FERC Form 1. During the course of the hearing, each objection shall be stated with particularity and evidence provided in support thereof, after which the utility shall have the opportunity to rebut the evidence. Discovery shall be allowed consistent with the Commission's Rules of Practice, which Rules shall be enforced by the Commission or the assigned administrative law judge ~~hearing examiner~~. The Commission shall apply the same evidentiary standards, including, but not limited to, those concerning the prudence and reasonableness of the costs incurred by the utility, in the hearing as it would apply in a hearing to review a filing for a general increase in rates under Article IX of this Act. The Commission shall not, however, have the authority in a proceeding under this subsection (d) to consider or order any changes to the structure or protocols of the performance-based formula rate approved pursuant to subsection (c) of this Section. In a proceeding under this subsection (d), the Commission shall enter its order no later than the earlier of 240 days after the utility's filing of its annual update of cost inputs to the performance-based formula rate or December 31. The Commission's determinations of the prudence and reasonableness of the costs incurred for the applicable calendar year shall be

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

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

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

(e) Nothing in subsections (c) or (d) of this Section shall prohibit the Commission from investigating, or a participating utility from filing, revenue-neutral tariff changes related to rate design of a performance-based formula rate that has been placed into effect for the utility. Following approval of a

participating utility's performance-based formula rate tariff pursuant to subsection (c) of this Section, the utility shall make a filing with the Commission within one year after the effective date of the performance-based formula rate tariff that proposes changes to the tariff to incorporate the findings of any final rate design orders of the Commission applicable to the participating utility and entered subsequent to the Commission's approval of the tariff. The Commission shall, after notice and hearing, enter its order approving, or approving with modification, the proposed changes to the performance-based formula rate tariff within 240 days after the utility's filing. Following such approval, the utility shall make a filing with the Commission during each subsequent 3-year period that either proposes revenue-neutral tariff changes or re-files the existing tariffs without change, which shall present the Commission with an opportunity to suspend the tariffs and consider revenue-neutral tariff changes related to rate design.

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

(1) Twenty percent improvement in the System Average Interruption Frequency Index, using a baseline of the

average of the data from 2001 through 2010.

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

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

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

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

(5) Reduction in issuance of estimated electric bills:

90% improvement for a participating utility other than a combination utility, and 56% improvement for a participating utility that is a combination utility, using a baseline of the average number of estimated bills for the years 2008 through 2010.

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

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

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

(9) Opportunities for minority-owned and female-owned business enterprises: design a performance metric regarding the creation of opportunities for minority-owned and female-owned business enterprises consistent with State and federal law using a base performance value of the percentage of the participating utility's capital

expenditures that were paid to minority-owned and female-owned business enterprises in 2010.

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

The metrics shall include incremental performance goals for each year of the 10-year period, which shall be designed to demonstrate that the utility is on track to achieve the performance goal in each category at the end of the 10-year period. The utility shall elect when the 10-year period shall

commence for the metrics set forth in subparagraphs (1) through (4) and (9) of this subsection (f), provided that it begins no later than 14 months following the date on which the utility begins investing pursuant to subsection (b) of this Section, and when the 10-year period shall commence for the metrics set forth in subparagraphs (5) through (8) of this subsection (f), provided that it begins no later than 14 months following the date on which the Commission enters its order approving the utility's Advanced Metering Infrastructure Deployment Plan pursuant to subsection (c) of Section 16-108.6 of this Act.

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

(f-5) The financial penalties applicable to the metrics described in subparagraphs (1) through (8) of subsection (f) of this Section, as applicable, shall be applied through an

adjustment to the participating utility's return on equity of no more than a total of 30 basis points in each of the first 3 years, of no more than a total of 34 basis points in each of the 3 years thereafter, and of no more than a total of 38 basis points in each of the 4 years thereafter, as follows:

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

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

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

(2) With respect to each of the incremental annual performance goals established pursuant to paragraph (2) of subsection (f) of this Section, for each year that the participating utility does not achieve each such goal, the

participating utility's return on equity shall be reduced as follows: during years 1 through 3, by 5 basis points; during years 4 through 6, by 6 basis points; and during years 7 through 10, by 7 basis points.

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

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

(5) With respect to each of the incremental annual performance goals established pursuant to subparagraph (5) of subsection (f) of this Section, for each year that the participating utility does not achieve at least 95% of each such goal, the participating utility's return on equity

shall be reduced by 5 basis points for each such unachieved goal.

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

The financial penalties shall be applied as described in this subsection (f-5) for the 12-month period in which the deficiency occurred through a separate tariff mechanism, which shall be filed by the utility together with its metrics. In the event the formula rate tariff established pursuant to subsection (c) of this Section terminates, the utility's obligations under subsection (f) of this Section and this subsection (f-5) shall also terminate, provided, however, that the tariff mechanism established pursuant to subsection (f) of

this Section and this subsection (f-5) shall remain in effect until any penalties due and owing at the time of such termination are applied.

The Commission shall, after notice and hearing, enter an order within 120 days after the metrics are filed approving, or approving with modification, a participating utility's tariff or mechanism to satisfy the metrics set forth in subsection (f) of this Section. On June 1 of each subsequent year, each participating utility shall file a report with the Commission that includes, among other things, a description of how the participating utility performed under each metric and an identification of any extraordinary events that adversely impacted the utility's performance. Whenever a participating utility does not satisfy the metrics required pursuant to subsection (f) of this Section, the Commission shall, after notice and hearing, enter an order approving financial penalties in accordance with this subsection (f-5). The Commission-approved financial penalties shall be applied beginning with the next rate year. Nothing in this Section shall authorize the Commission to reduce or otherwise obviate the imposition of financial penalties for failing to achieve one or more of the metrics established pursuant to subparagraph (1) through (4) of subsection (f) of this Section.

(g) On or before July 31, 2014, each participating utility shall file a report with the Commission that sets forth the average annual increase in the average amount paid per

kilowatthour for residential eligible retail customers, exclusive of the effects of energy efficiency programs, comparing the 12-month period ending May 31, 2012; the 12-month period ending May 31, 2013; and the 12-month period ending May 31, 2014. For a participating utility that is a combination utility with more than one rate zone, the weighted average aggregate increase shall be provided. The report shall be filed together with a statement from an independent auditor attesting to the accuracy of the report. The cost of the independent auditor shall be borne by the participating utility and shall not be a recoverable expense. "The average amount paid per kilowatthour" shall be based on the participating utility's tariffed rates actually in effect and shall not be calculated using any hypothetical rate or adjustments to actual charges (other than as specified for energy efficiency) as an input.

In the event that the average annual increase exceeds 2.5% as calculated pursuant to this subsection (g), then Sections 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of this Act, other than this subsection, shall be inoperative as they relate to the utility and its service area as of the date of the report due to be submitted pursuant to this subsection and the utility shall no longer be eligible to annually update the performance-based formula rate tariff pursuant to subsection (d) of this Section. In such event, the then current rates shall remain in effect until such time as new rates are set pursuant to Article IX of this Act, subject to retroactive

adjustment, with interest, to reconcile rates charged with actual costs, and the participating utility's voluntary commitments and obligations under subsection (b) of this Section shall immediately terminate, except for the utility's obligation to pay an amount already owed to the fund for training grants pursuant to a Commission order issued under subsection (b) of this Section.

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

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

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

(h) By December 31, 2017, the Commission shall prepare and file with the General Assembly a report on the infrastructure

program and the performance-based formula rate. The report shall include the change in the average amount per kilowatthour paid by residential customers between June 1, 2011 and May 31, 2017. If the change in the total average rate paid exceeds 2.5% compounded annually, the Commission shall include in the report an analysis that shows the portion of the change due to the delivery services component and the portion of the change due to the supply component of the rate. The report shall include separate sections for each participating utility.

Sections 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of this Act, other than this subsection (h), are inoperative after December 31, 2022 for every participating utility, after which time a participating utility shall no longer be eligible to annually update the performance-based formula rate tariff pursuant to subsection (d) of this Section. At such time, the then current rates shall remain in effect until such time as new rates are set pursuant to Article IX of this Act, subject to retroactive adjustment, with interest, to reconcile rates charged with actual costs.

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

(i) While a participating utility may use, develop, and maintain broadband systems and the delivery of broadband services, voice-over-internet-protocol services,

telecommunications services, and cable and video programming services for use in providing delivery services and Smart Grid functionality or application to its retail customers, including, but not limited to, the installation, implementation and maintenance of Smart Grid electric system upgrades as defined in Section 16-108.6 of this Act, a participating utility is prohibited from offering to its retail customers broadband services or the delivery of broadband services, voice-over-internet-protocol services, telecommunications services, or cable or video programming services, unless they are part of a service directly related to delivery services or Smart Grid functionality or applications as defined in Section 16-108.6 of this Act, and from recovering the costs of such offerings from retail customers.

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

(k) The changes made in subsections (c) and (d) of this Section by Public Act 98-15 are intended to be a restatement and clarification of existing law, and intended to give binding effect to the provisions of House Resolution 1157 adopted by

the House of Representatives of the 97th General Assembly and Senate Resolution 821 adopted by the Senate of the 97th General Assembly that are reflected in paragraph (3) of this subsection. In addition, Public Act 98-15 preempts and supersedes any final Commission orders entered in Docket Nos. 11-0721, 12-0001, 12-0293, and 12-0321 to the extent inconsistent with the amendatory language added to subsections (c) and (d).

(1) No earlier than 5 business days after May 22, 2013 (the effective date of Public Act 98-15), each participating utility shall file any tariff changes necessary to implement the amendatory language set forth in subsections (c) and (d) of this Section by Public Act 98-15 and a revised revenue requirement under the participating utility's performance-based formula rate. The Commission shall enter a final order approving such tariff changes and revised revenue requirement within 21 days after the participating utility's filing.

(2) Notwithstanding anything that may be to the contrary, a participating utility may file a tariff to retroactively recover its previously unrecovered actual costs of delivery service that are no longer subject to recovery through a reconciliation adjustment under subsection (d) of this Section. This retroactive recovery shall include any derivative adjustments resulting from the changes to subsections (c) and (d) of this Section by

Public Act 98-15. Such tariff shall allow the utility to assess, on current customer bills over a period of 12 monthly billing periods, a charge or credit related to those unrecovered costs with interest at the utility's weighted average cost of capital during the period in which those costs were unrecovered. A participating utility may file a tariff that implements a retroactive charge or credit as described in this paragraph for amounts not otherwise included in the tariff filing provided for in paragraph (1) of this subsection (k). The Commission shall enter a final order approving such tariff within 21 days after the participating utility's filing.

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

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

this Section of Public Act 98-15.

(l) Each participating utility shall be deemed to have been in full compliance with all requirements of subsection (b) of this Section, subsection (c) of this Section, Section 16-108.6 of this Act, and all Commission orders entered pursuant to Sections 16-108.5 and 16-108.6 of this Act, up to and including May 22, 2013 (the effective date of Public Act 98-15). The Commission shall not undertake any investigation of such compliance and no penalty shall be assessed or adverse action taken against a participating utility for noncompliance with Commission orders associated with subsection (b) of this Section, subsection (c) of this Section, and Section 16-108.6 of this Act prior to such date. Each participating utility other than a combination utility shall be permitted, without penalty, a period of 12 months after such effective date to take actions required to ensure its infrastructure investment program is in compliance with subsection (b) of this Section and with Section 16-108.6 of this Act. Provided further, the following subparagraphs shall apply to a participating utility other than a combination utility:

(A) if the Commission has initiated a proceeding pursuant to subsection (e) of Section 16-108.6 of this Act that is pending as of May 22, 2013 (the effective date of Public Act 98-15), then the order entered in such proceeding shall, after notice and hearing, accelerate the commencement of the meter deployment schedule approved in

the final Commission order on rehearing entered in Docket No. 12-0298;

(B) if the Commission has entered an order pursuant to subsection (e) of Section 16-108.6 of this Act prior to May 22, 2013 (the effective date of Public Act 98-15) that does not accelerate the commencement of the meter deployment schedule approved in the final Commission order on rehearing entered in Docket No. 12-0298, then the utility shall file with the Commission, within 45 days after such effective date, a plan for accelerating the commencement of the utility's meter deployment schedule approved in the final Commission order on rehearing entered in Docket No. 12-0298; the Commission shall reopen the proceeding in which it entered its order pursuant to subsection (e) of Section 16-108.6 of this Act and shall, after notice and hearing, enter an amendatory order that approves or approves as modified such accelerated plan within 90 days after the utility's filing; or

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

Commission shall, after notice and hearing, approve or approve as modified such plan within 90 days after the utility's filing.

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

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

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

(220 ILCS 5/4-305 rep.)

(220 ILCS 5/8-304 rep.)

(220 ILCS 5/8-405 rep.)

(220 ILCS 5/8-405.1 rep.)

(220 ILCS 5/9-216 rep.)

(220 ILCS 5/9-222.3 rep.)

(220 ILCS 5/9-242 rep.)

(220 ILCS 5/13-407 rep.)

Section 15. The Public Utilities Act is amended by repealing Sections 4-305, 8-304, 8-405, 8-405.1, 9-216, 9-222.3, 9-242, and 13-407.

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

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Statutes amended in order of appearance

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

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

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

220 ILCS 5/13-506.2

220 ILCS 5/13-515

220 ILCS 5/16-108.5

220 ILCS 5/16-111

220 ILCS 5/4-305 rep.

220 ILCS 5/8-304 rep.

220 ILCS 5/8-405 rep.

220 ILCS 5/8-405.1 rep.

220 ILCS 5/9-216 rep.

220 ILCS 5/9-222.3 rep.

220 ILCS 5/9-242 rep.

220 ILCS 5/9-244 rep.

220 ILCS 5/13-407 rep.