



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

HB3152

by Rep. Jay Hoffman

#### SYNOPSIS AS INTRODUCED:

220 ILCS 5/16-108.5

Amends the Electric Service Customer Choice and Rate Relief Law of 1997 of the Public Utilities Act. In provisions concerning infrastructure investment and modernization: Provides that beginning in 2022, 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 and reconnecting customers who have been disconnected for nonpayment and makes conforming changes. Makes a change concerning the computation of the performance-based formula rate beginning with the rates applicable for the rate year commencing January 1, 2023, and each rate year thereafter. Removes provisions requiring that, by December 31, 2017, the Illinois Commerce Commission shall prepare and file with the General Assembly a report on the infrastructure program and the performance-based formula rate; provisions making the infrastructure investment and modernization, Smart Grid Advanced Metering Infrastructure Deployment Plan, Illinois Science and Energy Innovation Trust, and Illinois Smart Grid test bed provisions inoperative after December 31, 2022; and provisions limiting the ability of a participating utility to annually update the performance-based formula rate. Makes other changes. Effective immediately.

LRB101 11121 RJF 56346 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

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

4 Section 5. The Public Utilities Act is amended by changing  
5 Section 16-108.5 as follows:

6 (220 ILCS 5/16-108.5)

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

9 (a) (Blank).

10 (b) For purposes of this Section, "participating utility"  
11 means an electric utility or a combination utility serving more  
12 than 1,000,000 customers in Illinois that voluntarily elects  
13 and commits to undertake (i) the infrastructure investment  
14 program consisting of the commitments and obligations  
15 described in this subsection (b) and (ii) the customer  
16 assistance program consisting of the commitments and  
17 obligations described in subsection (b-10) of this Section,  
18 notwithstanding any other provisions of this Act and without  
19 obtaining any approvals from the Commission or any other agency  
20 other than as set forth in this Section, regardless of whether  
21 any such approval would otherwise be required. "Combination  
22 utility" means a utility that, as of January 1, 2011, provided  
23 electric service to at least one million retail customers in

1 Illinois and gas service to at least 500,000 retail customers  
2 in Illinois. A participating utility shall recover the  
3 expenditures made under the infrastructure investment program  
4 through the ratemaking process, including, but not limited to,  
5 the performance-based formula rate and process set forth in  
6 this Section.

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

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

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

12 (A) over a 5-year period, invest an estimated  
13 \$1,300,000,000 in electric system upgrades,  
14 modernization projects, and training facilities,  
15 including, but not limited to:

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

21 (ii) training facility construction or upgrade  
22 projects totaling an estimated \$10,000,000,  
23 provided that, at a minimum, one such facility  
24 shall be located in a municipality having a  
25 population of more than 2 million residents and one  
26 such facility shall be located in a municipality

1 having a population of more than 150,000 residents  
2 but fewer than 170,000 residents; any such new  
3 facility located in a municipality having a  
4 population of more than 2 million residents must be  
5 designed for the purpose of obtaining, and the  
6 owner of the facility shall apply for,  
7 certification under the United States Green  
8 Building Council's Leadership in Energy Efficiency  
9 Design Green Building Rating System;

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

12 (iv) an estimated \$200,000,000 for reducing  
13 the susceptibility of certain circuits to  
14 storm-related damage, including, but not limited  
15 to, high winds, thunderstorms, and ice storms;  
16 improvements may include, but are not limited to,  
17 overhead to underground conversion and other  
18 engineered outcomes for circuits; the  
19 participating utility shall prioritize the  
20 selection of circuits based on each circuit's  
21 historical susceptibility to storm-related damage  
22 and the ability to provide the greatest customer  
23 benefit upon completion of the improvements; to be  
24 eligible for improvement, the participating  
25 utility's ability to maintain proper tree  
26 clearances surrounding the overhead circuit must

1 not have been impeded by third parties; and

2 (B) over a 10-year period, invest an estimated  
3 \$1,300,000,000 to upgrade and modernize its  
4 transmission and distribution infrastructure and in  
5 Smart Grid electric system upgrades, including, but  
6 not limited to:

7 (i) additional smart meters;

8 (ii) distribution automation;

9 (iii) associated cyber secure data  
10 communication network; and

11 (iv) substation micro-processor relay  
12 upgrades.

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

22 (A) over a 10-year period, invest an estimated  
23 \$265,000,000 in electric system upgrades,  
24 modernization projects, and training facilities,  
25 including, but not limited to:

26 (i) distribution infrastructure improvements

1 totaling an estimated \$245,000,000, which may  
2 include bulk supply substations, transformers,  
3 reconductoring, and rebuilding overhead  
4 distribution and sub-transmission lines,  
5 underground residential distribution cable  
6 injection and replacement and mainline cable  
7 system refurbishment and replacement projects;

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

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

18 (B) over a 10-year period, invest an estimated  
19 \$360,000,000 to upgrade and modernize its transmission  
20 and distribution infrastructure and in Smart Grid  
21 electric system upgrades, including, but not limited  
22 to:

23 (i) additional smart meters;

24 (ii) distribution automation;

25 (iii) associated cyber secure data  
26 communication network; and

1                   (iv)       substation       micro-processor       relay  
2                   upgrades.

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

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

21          Within 60 days after filing a tariff under subsection (c)  
22      of this Section, a participating utility shall submit to the  
23      Commission its plan, including scope, schedule, and staffing,  
24      for satisfying its infrastructure investment program  
25      commitments pursuant to this subsection (b). The submitted plan  
26      shall include a schedule and staffing plan for the next



1 calendar year. The plan shall also include a plan for the  
2 creation, operation, and administration of a Smart Grid test  
3 bed as described in subsection (c) of Section 16-108.8. The  
4 plan need not allocate the work equally over the respective  
5 periods, but should allocate material increments throughout  
6 such periods commensurate with the work to be undertaken. No  
7 later than April 1 of each subsequent year, the utility shall  
8 submit to the Commission a report that includes any updates to  
9 the plan, a schedule for the next calendar year, the  
10 expenditures made for the prior calendar year and cumulatively,  
11 and the number of full-time equivalent jobs created for the  
12 prior calendar year and cumulatively. If the utility is  
13 materially deficient in satisfying a schedule or staffing plan,  
14 then the report must also include a corrective action plan to  
15 address the deficiency. The fact that the plan, implementation  
16 of the plan, or a schedule changes shall not imply the  
17 imprudence or unreasonableness of the infrastructure  
18 investment program, plan, or schedule. Further, no later than  
19 45 days following the last day of the first, second, and third  
20 quarters of each year of the plan, a participating utility  
21 shall submit to the Commission a verified quarterly report for  
22 the prior quarter that includes (i) the total number of  
23 full-time equivalent jobs created during the prior quarter,  
24 (ii) the total number of employees as of the last day of the  
25 prior quarter, (iii) the total number of full-time equivalent  
26 hours in each job classification or job title, (iv) the total

1 number of incremental employees and contractors in support of  
2 the investments undertaken pursuant to this subsection (b) for  
3 the prior quarter, and (v) any other information that the  
4 Commission may require by rule.

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

25 With respect to the participating utility's investment  
26 amount commitments, if, after considering the utility's

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

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

21 In meeting the obligations of this subsection (b), to the  
22 extent feasible and consistent with State and federal law, the  
23 investments under the infrastructure investment program should  
24 provide employment opportunities for all segments of the  
25 population and workforce, including minority-owned and  
26 female-owned business enterprises, and shall not, consistent

1 with State and federal law, discriminate based on race or  
2 socioeconomic status.

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

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

24 In no event, absent General Assembly approval, shall the  
25 capital investment costs incurred by a participating utility  
26 other than a combination utility in satisfying its

1 infrastructure investment program commitments described in  
2 subsection (b) of this Section exceed \$3,000,000,000 or, for a  
3 participating utility that is a combination utility,  
4 \$720,000,000. If the participating utility's updated cost  
5 estimates for satisfying its infrastructure investment program  
6 commitments described in subsection (b) of this Section exceed  
7 the limitation imposed by this subsection (b-5), then it shall  
8 submit a report to the Commission that identifies the increased  
9 costs and explains the reason or reasons for the increased  
10 costs no later than the year in which the utility estimates it  
11 will exceed the limitation. The Commission shall review the  
12 report and shall, within 90 days after the participating  
13 utility files the report, report to the General Assembly its  
14 findings regarding the participating utility's report. If the  
15 General Assembly does not amend the limitation imposed by this  
16 subsection (b-5), then the utility may modify its plan so as  
17 not to exceed the limitation imposed by this subsection (b-5)  
18 and may propose corresponding changes to the metrics  
19 established pursuant to subparagraphs (5) through (8) of  
20 subsection (f) of this Section, and the Commission may modify  
21 the metrics and incremental savings goals established pursuant  
22 to subsection (f) of this Section accordingly.

23 (b-10) All participating utilities shall make  
24 contributions for an energy low-income and support program in  
25 accordance with this subsection. Beginning no later than 180  
26 days after a participating utility files a performance-based

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

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

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

1 the Governor and who demonstrate a hardship;

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

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

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

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

20 Programs that use funds that are provided by a  
21 participating utility to reduce utility bills may be  
22 implemented through tariffs that are filed with and reviewed by  
23 the Commission. If a utility elects to file tariffs with the  
24 Commission to implement all or a portion of the programs, those  
25 tariffs shall, regardless of the date actually filed, be deemed  
26 accepted and approved, and shall become effective on December

1 30, 2011 (the effective date of Public Act 97-646). The  
2 participating utilities whose customers benefit from the funds  
3 that are disbursed as contemplated in this Section shall file  
4 annual reports documenting the disbursement of those funds with  
5 the Commission. The Commission has the authority to audit  
6 disbursement of the funds to ensure they were disbursed  
7 consistently with this Section.

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

15 (b-15) Beginning in 2022, without obtaining any approvals  
16 from the Commission or any other agency, regardless of whether  
17 any such approval would otherwise be required, a participating  
18 utility other than a combination utility shall pay \$10,000,000  
19 per year for 5 years and a participating utility that is a  
20 combination utility shall pay \$1,000,000 per year for 10 years  
21 to the energy low-income and support program, which is intended  
22 to fund customer assistance programs with the primary purpose  
23 being avoidance of imminent disconnection and reconnecting  
24 customers who have been disconnected for nonpayment. Such  
25 programs may include those described in paragraphs (1) through  
26 (5) of subsection (b-10) of this Section.



1       The payments made by a participating utility pursuant to  
2 this subsection (b-15) shall not be a recoverable expense. A  
3 participating utility may elect to fund either new or existing  
4 customer assistance programs, including, but not limited to,  
5 those that are administered by the utility.

6       Programs that use funds that are provided by a  
7 participating utility to reduce utility bills may be  
8 implemented through tariffs that are filed with and reviewed by  
9 the Commission. If a utility elects to file tariffs with the  
10 Commission to implement all or a portion of the programs, those  
11 tariffs shall, regardless of the date actually filed, be deemed  
12 accepted and approved, and shall become effective on the first  
13 business day after they are filed. The participating utilities  
14 whose customers benefit from the funds that are disbursed as  
15 contemplated in this subsection (b-15) shall file annual  
16 reports documenting the disbursement of those funds with the  
17 Commission. The Commission has the authority to audit  
18 disbursement of the funds to ensure they were disbursed  
19 consistently with this subsection (b-15).

20       If the Commission finds that a participating utility is no  
21 longer eligible to update the performance-based formula rate  
22 tariff pursuant to subsection (d) of this Section, or the  
23 performance-based formula rate is otherwise terminated, then  
24 the participating utility's voluntary commitments and  
25 obligations under this subsection (b-15) shall immediately  
26 terminate.

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

1 such notice, the Commission shall dismiss with prejudice any  
2 docket that had been initiated to investigate the electric  
3 delivery services tariffs filed pursuant to Section 9-201 of  
4 this Act, and such tariffs and the record related thereto shall  
5 not be the subject of any further hearing, investigation, or  
6 proceeding of any kind related to rates for electric delivery  
7 services.

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

22 (1) Provide for the recovery of the utility's actual  
23 costs of delivery services that are prudently incurred and  
24 reasonable in amount consistent with Commission practice  
25 and law. The sole fact that a cost differs from that  
26 incurred in a prior calendar year or that an investment is

1 different from that made in a prior calendar year shall not  
2 imply the imprudence or unreasonableness of that cost or  
3 investment.

4 (2) Reflect the utility's actual year-end capital  
5 structure for the applicable calendar year, excluding  
6 goodwill, subject to a determination of prudence and  
7 reasonableness consistent with Commission practice and  
8 law. For those rate years commencing after December 31,  
9 2022, the non-equity component of the capital structure  
10 calculated pursuant to this paragraph (2) shall be reduced  
11 by an amount that is equal to the value of the pension  
12 assets described in subparagraph (D) of paragraph (4) of  
13 this subsection (c). To enable the financing of the  
14 incremental capital expenditures, including regulatory  
15 assets, for electric utilities that serve less than  
16 3,000,000 retail customers but more than 500,000 retail  
17 customers in the State, a participating electric utility's  
18 actual year-end capital structure that includes a common  
19 equity ratio, excluding goodwill, of up to and including  
20 50% of the total capital structure shall be deemed  
21 reasonable and used to set rates.

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

24 (A) the average for the applicable calendar year of  
25 the monthly average yields of 30-year U.S. Treasury  
26 bonds published by the Board of Governors of the

1 Federal Reserve System in its weekly H.15 Statistical  
2 Release or successor publication; and

3 (B) 580 basis points.

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

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

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

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

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

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

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

26 (F) amortization over a 5-year period of the full

1 amount of each charge or credit that exceeds \$3,700,000  
2 for a participating utility that is a combination  
3 utility or \$10,000,000 for a participating utility  
4 that serves more than 3 million retail customers in the  
5 applicable calendar year and that relates to a  
6 workforce reduction program's severance costs, changes  
7 in accounting rules, changes in law, compliance with  
8 any Commission-initiated audit, or a single storm or  
9 other similar expense, provided that any unamortized  
10 balance shall be reflected in rate base. For purposes  
11 of this subparagraph (F), changes in law includes any  
12 enactment, repeal, or amendment in a law, ordinance,  
13 rule, regulation, interpretation, permit, license,  
14 consent, or order, including those relating to taxes,  
15 accounting, or to environmental matters, or in the  
16 interpretation or application thereof by any  
17 governmental authority occurring after October 26,  
18 2011 (the effective date of Public Act 97-616);

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

21 (H) historical weather normalized billing  
22 determinants; and

23 (I) allocation methods for common costs.

24 (5) Provide that if the participating utility's earned  
25 rate of return on common equity related to the provision of  
26 delivery services for the prior rate year (calculated using

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



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

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

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

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

19 After the utility files its proposed performance-based  
20 formula rate structure and protocols and initial rates, the  
21 Commission shall initiate a docket to review the filing. The  
22 Commission shall enter an order approving, or approving as  
23 modified, the performance-based formula rate, including the  
24 initial rates, as just and reasonable within 270 days after the  
25 date on which the tariff was filed, or, if the tariff is filed  
26 within 14 days after October 26, 2011 (the effective date of

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

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

15 Subsequent changes to the performance-based formula rate  
16 structure or protocols shall be made as set forth in Section  
17 9-201 of this Act, but nothing in this subsection (c) is  
18 intended to limit the Commission's authority under Article IX  
19 and other provisions of this Act to initiate an investigation  
20 of a participating utility's performance-based formula rate  
21 tariff, provided that any such changes shall be consistent with  
22 paragraphs (1) through (6) of this subsection (c). Any change  
23 ordered by the Commission shall be made at the same time new  
24 rates take effect following the Commission's next order  
25 pursuant to subsection (d) of this Section, provided that the  
26 new rates take effect no less than 30 days after the date on

1 which the Commission issues an order adopting the change.

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

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

17 Notwithstanding anything to the contrary, it is the intent  
18 of the General Assembly that the changes made to paragraph (2)  
19 of this subsection (c) by this amendatory Act of the 101st  
20 General Assembly shall apply to the computations and inputs to  
21 the performance-based formula rate beginning with the rates  
22 applicable for the rate year commencing January 1, 2023, and  
23 each rate year thereafter. Such changes shall apply to all  
24 applicable computations and inputs to establish rates for the  
25 applicable rate year, including the reconciliation of the  
26 revenue requirement in effect during the prior rate year and

1 the initial revenue requirement to be placed into effect for  
2 the applicable rate year. It is further the intent of the  
3 General Assembly that the changes made to paragraph (2) of this  
4 subsection (c) by this amendatory Act of the 101st General  
5 Assembly shall not alter, impair, or diminish the investment  
6 return calculated pursuant to subparagraph (D) of paragraph (4)  
7 of this subsection (c).

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

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

1 (determined using a year-end rate base) that uses amounts  
2 reflected in the applicable FERC Form 1 that reports the  
3 actual costs for the prior rate year. Any over-collection  
4 or under-collection indicated by such reconciliation shall  
5 be reflected as a credit against, or recovered as an  
6 additional charge to, respectively, with interest  
7 calculated at a rate equal to the utility's weighted  
8 average cost of capital approved by the Commission for the  
9 prior rate year, the charges for the applicable rate year.  
10 Provided, however, that the first such reconciliation  
11 shall be for the calendar year in which the utility files  
12 its performance-based formula rate tariff pursuant to  
13 subsection (c) of this Section and shall reconcile (i) the  
14 revenue requirement or requirements established by the  
15 rate order or orders in effect from time to time during  
16 such calendar year (weighted, as applicable) with (ii) the  
17 revenue requirement determined using a year-end rate base  
18 for that calendar year calculated pursuant to the  
19 performance-based formula rate using (A) actual costs for  
20 that year as reflected in the applicable FERC Form 1, and  
21 (B) for the first such reconciliation only, the cost of  
22 equity, which shall be calculated as the sum of 590 basis  
23 points plus the average for the applicable calendar year of  
24 the monthly average yields of 30-year U.S. Treasury bonds  
25 published by the Board of Governors of the Federal Reserve  
26 System in its weekly H.15 Statistical Release or successor

1 publication. The first such reconciliation is not intended  
2 to provide for the recovery of costs previously excluded  
3 from rates based on a prior Commission order finding of  
4 imprudence or unreasonableness. Each reconciliation shall  
5 be certified by the participating utility in the same  
6 manner that FERC Form 1 is certified. The filing shall also  
7 include the charge or credit, if any, resulting from the  
8 calculation required by paragraph (6) of subsection (c) of  
9 this Section.

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

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

26 (3) The filing shall include relevant and necessary

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

13 Within 45 days after the utility files its annual update of  
14 cost inputs to the performance-based formula rate, the  
15 Commission shall have the authority, either upon complaint or  
16 its own initiative, but with reasonable notice, to enter upon a  
17 hearing concerning the prudence and reasonableness of the costs  
18 incurred by the utility to be recovered during the applicable  
19 rate year that are reflected in the inputs to the  
20 performance-based formula rate derived from the utility's FERC  
21 Form 1. During the course of the hearing, each objection shall  
22 be stated with particularity and evidence provided in support  
23 thereof, after which the utility shall have the opportunity to  
24 rebut the evidence. Discovery shall be allowed consistent with  
25 the Commission's Rules of Practice, which Rules shall be  
26 enforced by the Commission or the assigned administrative law



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

23 In the event the Commission does not, either upon complaint  
24 or its own initiative, enter upon a hearing within 45 days  
25 after the utility files the annual update of cost inputs to its  
26 performance-based formula rate, then the costs incurred for the

1 applicable calendar year shall be deemed prudent and  
2 reasonable, and the filed charges shall not be subject to  
3 reopening, reexamination, or collateral attack in any other  
4 proceeding, case, docket, order, rule, or regulation.

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

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

1 utility's filing. Following such approval, the utility shall  
2 make a filing with the Commission during each subsequent 3-year  
3 period that either proposes revenue-neutral tariff changes or  
4 re-files the existing tariffs without change, which shall  
5 present the Commission with an opportunity to suspend the  
6 tariffs and consider revenue-neutral tariff changes related to  
7 rate design.

8 (f) Within 30 days after the filing of a tariff pursuant to  
9 subsection (c) of this Section, each participating utility  
10 shall develop and file with the Commission multi-year metrics  
11 designed to achieve, ratably (i.e., in equal segments) over a  
12 10-year period, improvement over baseline performance values  
13 as follows:

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

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

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

1 to Section 16-125 of this Act.

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

10 (4) Seventy-five percent improvement in the total  
11 number of customers who exceed the service reliability  
12 targets as set forth in subparagraphs (A) through (C) of  
13 paragraph (4) of subsection (b) of 83 Ill. Admin. Code Part  
14 411.140 as of May 1, 2011, using 2010 as the baseline year.

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

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

26 (7) Unaccounted for energy: 50% improvement for a

1 participating utility other than a combination utility  
2 using a baseline of the non-technical line loss unaccounted  
3 for energy kilowatthours for the year 2009.

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

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

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

1 baseline period. For purposes of this Section, an extreme  
2 weather event day is a 24-hour calendar day (beginning at 12:00  
3 a.m. and ending at 11:59 p.m.) during which any weather event  
4 (e.g., storm, tornado) caused interruptions for 10,000 or more  
5 of the participating utility's customers for 3 hours or more.  
6 If there are more than 9 extreme weather event days in a year,  
7 then the utility may choose no more than 9 extreme weather  
8 event days to exclude, provided that the same extreme weather  
9 event days are excluded from each of the calculations performed  
10 under paragraphs (1) through (3.5) of this subsection (f).

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

26 The metrics and performance goals set forth in

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

13 (f-5) The financial penalties applicable to the metrics  
14 described in subparagraphs (1) through (8) of subsection (f) of  
15 this Section, as applicable, shall be applied through an  
16 adjustment to the participating utility's return on equity of  
17 no more than a total of 30 basis points in each of the first 3  
18 years, of no more than a total of 34 basis points in each of the  
19 3 years thereafter, and of no more than a total of 38 basis  
20 points in each of the 4 years thereafter, as follows:

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

24 (A) for each year that a participating utility  
25 other than a combination utility does not achieve the  
26 annual goal, the participating utility's return on

1 equity shall be reduced as follows: during years 1  
2 through 3, by 5 basis points; during years 4 through 6,  
3 by 6 basis points; and during years 7 through 10, by 7  
4 basis points; and

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

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

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



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

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

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

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

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

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

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

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

13 (f-10) Each applicable 10-year period previously approved  
14 by the Commission pursuant to subsections (f) and (f-5) of this  
15 Section shall be extended for an additional 10-year period that  
16 commences immediately after the termination of the previous  
17 10-year period. The performance goals and financial penalties  
18 applicable to each year of an additional 10-year period shall  
19 be fixed at, and the same as, the performance goals applicable  
20 to year 10 that were previously approved by the Commission  
21 pursuant to subsections (f) and (f-5) of this Section and the  
22 financial penalties applicable to year 10 set forth in  
23 subsection (f-5) of this Section. The total amount of financial  
24 penalties applicable in any given year shall not exceed 38  
25 basis points. During the additional 10-year period, each  
26 participating utility shall continue to file the annual reports

1 required by subsection (f-5) of this Section, and the  
2 requirements of this subsection (f-5) related to Commission  
3 approval of any financial penalties shall continue to apply.  
4 Each participating utility's tariff or tariffs approved under  
5 subsection (f-5) shall remain in effect during the additional  
6 10-year period, and each participating utility is authorized to  
7 submit a compliance filing after the effective date of this  
8 amendatory Act of the 101st General Assembly conforming its  
9 tariff or tariffs to the provisions of this subsection (f-10).  
10 In the event the formula rate tariff established pursuant to  
11 subsection (c) of this Section terminates, the utility's  
12 obligations under this subsection (f-10) shall also terminate;  
13 provided, however, that the tariff mechanism established  
14 pursuant to subsections (f) and (f-5) of this Section, and  
15 extended under this subsection (f-10), shall remain in effect  
16 until any penalties due and owing at the time of such  
17 termination are applied.

18 The metrics and performance goals set forth in  
19 subparagraphs (5) through (8) of subsection (f) of this  
20 Section, and extended under this subsection (f-10), are based  
21 on the assumptions that the participating utility may fully  
22 implement the technology described in subsection (b) of this  
23 Section, including utilizing the full functionality of such  
24 technology and that there is no requirement for personal  
25 on-site notification. If the utility is unable to meet the  
26 metrics and performance goals applicable to subparagraphs (5)

1 through (8) of subsection (f) of this Section for such reasons  
2 during the additional 10-year period, as those metrics and  
3 goals are set by this subsection (f-10), and the Commission so  
4 finds after notice and hearing, then the utility shall be  
5 excused from compliance, but only to the limited extent  
6 achievement of the affected metrics and performance goals was  
7 hindered by the less than full implementation.

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

26 In the event that the average annual increase exceeds 2.5%

1 as calculated pursuant to this subsection (g), then Sections  
2 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of this Act, other  
3 than this subsection, shall be inoperative as they relate to  
4 the utility and its service area as of the date of the report  
5 due to be submitted pursuant to this subsection and the utility  
6 shall no longer be eligible to annually update the  
7 performance-based formula rate tariff pursuant to subsection  
8 (d) of this Section. In such event, the then current rates  
9 shall remain in effect until such time as new rates are set  
10 pursuant to Article IX of this Act, subject to retroactive  
11 adjustment, with interest, to reconcile rates charged with  
12 actual costs, and the participating utility's voluntary  
13 commitments and obligations under subsection (b) of this  
14 Section shall immediately terminate, except for the utility's  
15 obligation to pay an amount already owed to the fund for  
16 training grants pursuant to a Commission order issued under  
17 subsection (b) of this Section.

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

22 For purposes of this Section, the amount per kilowatthour  
23 means the total amount paid for electric service expressed on a  
24 per kilowatthour basis, and the total amount paid for electric  
25 service includes without limitation amounts paid for supply,  
26 transmission, distribution, surcharges, and add-on taxes

1 exclusive of any increases in taxes or new taxes imposed after  
2 October 26, 2011 (the effective date of Public Act 97-616). For  
3 purposes of this Section, "eligible retail customers" shall  
4 have the meaning set forth in Section 16-111.5 of this Act.

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

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

21 ~~Sections 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of~~  
22 ~~this Act, other than this subsection (h), are inoperative after~~  
23 ~~December 31, 2022 for every participating utility, after which~~  
24 ~~time a participating utility shall no longer be eligible to~~  
25 ~~annually update the performance based formula rate tariff~~  
26 ~~pursuant to subsection (d) of this Section. At such time, the~~

1 ~~then current rates shall remain in effect until such time as~~  
2 ~~new rates are set pursuant to Article IX of this Act, subject~~  
3 ~~to retroactive adjustment, with interest, to reconcile rates~~  
4 ~~charged with actual costs.~~

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

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

26 (j) Nothing in this Section is intended to legislatively



1 overturn the opinion issued in Commonwealth Edison Co. v. Ill.  
2 Commerce Comm'n, Nos. 2-08-0959, 2-08-1037, 2-08-1137,  
3 1-08-3008, 1-08-3030, 1-08-3054, 1-08-3313 cons. (Ill. App.  
4 Ct. 2d Dist. Sept. 30, 2010). Public Act 97-616 shall not be  
5 construed as creating a contract between the General Assembly  
6 and the participating utility, and shall not establish a  
7 property right in the participating utility.

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

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

1 shall enter a final order approving such tariff changes and  
2 revised revenue requirement within 21 days after the  
3 participating utility's filing.

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

24 (3) The tariff changes described in paragraphs (1) and  
25 (2) of this subsection (k) shall relate only to, and be  
26 consistent with, the following provisions of Public Act

1 98-15: paragraph (2) of subsection (c) regarding year-end  
2 capital structure, subparagraph (D) of paragraph (4) of  
3 subsection (c) regarding pension assets, and subsection  
4 (d) regarding the reconciliation components related to  
5 year-end rate base and interest calculated at a rate equal  
6 to the utility's weighted average cost of capital.

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

13 (1) Each participating utility shall be deemed to have been  
14 in full compliance with all requirements of subsection (b) of  
15 this Section, subsection (c) of this Section, Section 16-108.6  
16 of this Act, and all Commission orders entered pursuant to  
17 Sections 16-108.5 and 16-108.6 of this Act, up to and including  
18 May 22, 2013 (the effective date of Public Act 98-15). The  
19 Commission shall not undertake any investigation of such  
20 compliance and no penalty shall be assessed or adverse action  
21 taken against a participating utility for noncompliance with  
22 Commission orders associated with subsection (b) of this  
23 Section, subsection (c) of this Section, and Section 16-108.6  
24 of this Act prior to such date. Each participating utility  
25 other than a combination utility shall be permitted, without  
26 penalty, a period of 12 months after such effective date to

1 take actions required to ensure its infrastructure investment  
2 program is in compliance with subsection (b) of this Section  
3 and with Section 16-108.6 of this Act. Provided further, the  
4 following subparagraphs shall apply to a participating utility  
5 other than a combination utility:

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

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

1 hearing, enter an amendatory order that approves or  
2 approves as modified such accelerated plan within 90 days  
3 after the utility's filing; or

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

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

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

1 (Source: P.A. 99-143, eff. 7-27-15; 99-642, eff. 7-28-16;  
2 99-906, eff. 6-1-17; 100-840, eff. 8-13-18.)

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