



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB2080

Introduced 2/15/2019, by Sen. Michael E. Hastings - Kimberly A. Lightford - Sue Rezin - Iris Y. Martinez

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 11122 RJF 56347 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.