



## 103RD GENERAL ASSEMBLY

### State of Illinois

### 2023 and 2024

#### HB2541

Introduced 2/15/2023, by Rep. Theresa Mah

#### SYNOPSIS AS INTRODUCED:

220 ILCS 5/1-102	from Ch. 111 2/3, par. 1-102
220 ILCS 5/9-201	from Ch. 111 2/3, par. 9-201
220 ILCS 5/16-108.18	

Amends the Public Utilities Act. Provides that in a ratemaking proceeding, the Illinois Commerce Commission shall not approve for ratemaking purposes either a cost of equity exceeding 8% unless clear and convincing record evidence demonstrates that a higher return on equity is strictly necessary to prevent an imminent and significant threat of negative credit action that would be expected to increase the cost of service for the utility's ratepayers; or a capital structure comprised of more than 50% common equity unless clear and convincing record evidence demonstrates that a higher equity ratio is strictly necessary to prevent an imminent and significant threat of negative credit action that would be expected to increase the cost of service for the utility's ratepayers. Provides that the Commission shall not treat the utility's interest in offsetting the revenue impact of enforcing either of these limitations as justification for approving or adjusting any other proposed revenues. Makes corresponding changes to the Multi-Year Rate Plan.

LRB103 29016 AMQ 55402 b

1 AN ACT concerning regulation.

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

4 Section 5. The Public Utilities Act is amended by changing  
5 Sections 1-102, 9-201, and 16-108.18 as follows:

6 (220 ILCS 5/1-102) (from Ch. 111 2/3, par. 1-102)

7 Sec. 1-102. Findings and Intent. The General Assembly  
8 finds that the health, welfare and prosperity of all Illinois  
9 citizens require the provision of adequate, efficient,  
10 reliable, environmentally safe and least-cost public utility  
11 services at prices which accurately reflect the long-term cost  
12 of such services and which are equitable to all citizens. It is  
13 therefore declared to be the policy of the State that public  
14 utilities shall continue to be regulated effectively and  
15 comprehensively. It is further declared that the goals and  
16 objectives of such regulation shall be to ensure

17 (a) Efficiency: the provision of reliable energy  
18 services at the least possible cost to the citizens of the  
19 State; in such manner that:

20 (i) physical, human and financial resources are  
21 allocated efficiently;

22 (ii) all supply and demand options are considered  
23 and evaluated using comparable terms and methods in

1 order to determine how utilities shall meet their  
2 customers' demands for public utility services at the  
3 least cost;

4 (iii) utilities are allowed only a sufficient  
5 return on investment so as to enable them to attract  
6 capital in financial markets at competitive rates and  
7 no more;

8 (iv) tariff rates for the sale of various public  
9 utility services are authorized such that they  
10 accurately reflect the cost of delivering those  
11 services and allow utilities to recover the total  
12 costs prudently and reasonably incurred;

13 (v) variation in costs by customer class and time  
14 of use is taken into consideration in authorizing  
15 rates for each class.

16 (b) Environmental Quality: the protection of the  
17 environment from the adverse external costs of public  
18 utility services so that

19 (i) environmental costs of proposed actions having  
20 a significant impact on the environment and the  
21 environmental impact of the alternatives are  
22 identified, documented and considered in the  
23 regulatory process;

24 (ii) the prudently and reasonably incurred costs  
25 of environmental controls are recovered.

26 (c) Reliability: the ability of utilities to provide

1 consumers with public utility services under varying  
2 demand conditions in such manner that suppliers of public  
3 utility services are able to provide service at varying  
4 levels of economic reliability giving appropriate  
5 consideration to the costs likely to be incurred as a  
6 result of service interruptions, and to the costs of  
7 increasing or maintaining current levels of reliability  
8 consistent with commitments to consumers.

9 (d) Equity: the fair treatment of consumers and  
10 investors in order that

11 (i) the public health, safety and welfare shall be  
12 protected;

13 (ii) the application of rates is based on public  
14 understandability and acceptance of the reasonableness  
15 of the rate structure and level;

16 (iii) the cost of supplying public utility  
17 services is allocated to those who cause the costs to  
18 be incurred;

19 (iv) if factors other than cost of service are  
20 considered in regulatory decisions, the rationale for  
21 these actions is set forth;

22 (v) regulation allows for orderly transition  
23 periods to accommodate changes in public utility  
24 service markets;

25 (vi) regulation does not result in undue or  
26 sustained adverse impact on utility earnings;

1 (vii) the impacts of regulatory actions on all  
2 sectors of the State are carefully weighed;

3 (viii) the rates for utility services are  
4 affordable and therefore preserve the availability of  
5 such services to all citizens.

6 It is further declared to be the policy of the State that  
7 this Act shall not apply in relation to motor carriers and rail  
8 carriers as defined in the Illinois Commercial Transportation  
9 Law, or to the Commission in the regulation of such carriers.

10 Nothing in this Act shall be construed to limit, restrict,  
11 or mitigate in any way the power and authority of the State's  
12 Attorneys or the Attorney General under the Consumer Fraud and  
13 Deceptive Business Practices Act.

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

15 (220 ILCS 5/9-201) (from Ch. 111 2/3, par. 9-201)

16 Sec. 9-201. (a) Unless the Commission otherwise orders,  
17 and except as otherwise provided in this Section, no change  
18 shall be made by any public utility in any rate or other charge  
19 or classification, or in any rule, regulation, practice or  
20 contract relating to or affecting any rate or other charge,  
21 classification or service, or in any privilege or facility,  
22 except after 45 days' notice to the Commission and to the  
23 public as herein provided. Such notice shall be given by  
24 filing with the Commission and keeping open for public  
25 inspection new schedules or supplements stating plainly the

1 change or changes to be made in the schedule or schedules then  
2 in force, and the time when the change or changes will go into  
3 effect, and by publication in a newspaper of general  
4 circulation or such other notice to persons affected by such  
5 change as may be prescribed by rule of the Commission. The  
6 Commission, for good cause shown, may allow changes without  
7 requiring the 45 days' notice herein provided for, by an order  
8 specifying the changes so to be made and the time when they  
9 shall take effect and the manner in which they shall be filed  
10 and published.

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

19 When any public utility providing water or sewer service  
20 proposes any change in any rate or other charge, or  
21 classification, or in any rule, regulation, practice, or  
22 contract relating to or affecting any rate or other charge,  
23 classification or service, or in any privilege or facility,  
24 such utility shall, in addition to the other notice  
25 requirements of this Act, provide notice of such change to all  
26 customers potentially affected by including a notice and

1 description of such change, and of Commission procedures for  
2 intervention, in the first bill sent to each such customer  
3 after the filing of the proposed change.

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

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

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

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

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

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

1 volumetric rate;

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

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

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

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

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

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



1 individual customer's bill;

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

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

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

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

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

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

17 Within 30 days after such changes have been authorized by  
18 the Commission, copies of the new or revised schedules shall  
19 be posted or filed in accordance with the terms of Section  
20 9-103 of this Act, in such a manner that all changes shall be  
21 plainly indicated. The Commission shall incorporate into the  
22 period of suspension a review period of 4 business days during  
23 which the Commission may review and determine whether the new  
24 or revised schedules comply with the Commission's decision  
25 approving a change to the public utility's rates. Such review  
26 period shall not extend the suspension period by more than 2

1 days. Absent notification to the contrary within the 4  
2 business day period, the new or revised schedules shall be  
3 deemed approved.

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

25 (d) Except where compliance with Section 8-401 of this Act  
26 is of urgent and immediate concern, no representative of a

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

1 commissioner, commissioner's assistant, or administrative law  
2 judge who is involved in any such communication shall be  
3 recused from the affected proceeding. The Commission, or any  
4 commissioner or administrative law judge presiding over the  
5 proceeding shall, in the event of a violation of this Section,  
6 take action necessary to ensure that such violation does not  
7 prejudice any party or adversely affect the fairness of the  
8 proceedings including dismissing the affected proceeding.  
9 Nothing in this subsection (d) is intended to preclude  
10 otherwise allowable updates on issues that may be indirectly  
11 related to a general rate case filing because cost recovery  
12 for the underlying activity may be requested. Such updates may  
13 include, without limitation, issues related to outages and  
14 restoration, credit ratings, security issuances, reliability,  
15 Federal Energy Regulatory Commission matters, Federal  
16 Communications Commission matters, regional reliability  
17 organizations, consumer education, or labor matters, provided  
18 that such updates may not include cost recovery in a planned  
19 rate case.

20 (e) In a ratemaking proceeding, the Commission shall not  
21 approve for ratemaking purposes either of the following:

22 (1) a cost of equity exceeding 8% unless clear and  
23 convincing record evidence demonstrates that a higher  
24 return on equity is strictly necessary to prevent an  
25 imminent and significant threat of negative credit action  
26 that would be expected to increase the cost of service for

1 the utility's ratepayers;

2 (2) a capital structure comprised of more than 50%  
3 common equity unless clear and convincing record evidence  
4 demonstrates that a higher equity ratio is strictly  
5 necessary to prevent an imminent and significant threat of  
6 negative credit action that would be expected to increase  
7 the cost of service for the utility's ratepayers.

8 The Commission shall not treat the utility's interest in  
9 offsetting the revenue impact of enforcing either of the  
10 limitations set forth in this subsection as justification for  
11 approving or adjusting any other proposed revenues.

12 (Source: P.A. 100-840, eff. 8-13-18.)

13 (220 ILCS 5/16-108.18)

14 Sec. 16-108.18. Performance-based ratemaking.

15 (a) The General Assembly finds:

16 (1) That improving the alignment of utility customer  
17 and company interests is critical to ensuring equity,  
18 rapid growth of distributed energy resources, electric  
19 vehicles, and other new technologies that substantially  
20 change the makeup of the grid and protect Illinois  
21 residents and businesses from potential economic and  
22 environmental harm from the State's energy systems.

23 (2) There is urgency around addressing increasing  
24 threats from climate change and assisting communities that  
25 have borne disproportionate impacts from climate change,

1 including air pollution, greenhouse gas emissions, and  
2 energy burdens. Addressing this problem requires changes  
3 to the business model under which utilities in Illinois  
4 have traditionally functioned.

5 (3) Providing targeted incentives to support change  
6 through a new performance-based structure to enhance  
7 ratemaking is intended to enable alignment of utility,  
8 customer, community, and environmental goals.

9 (4) Though Illinois has taken some measures to move  
10 utilities to performance-based ratemaking through the  
11 establishment of performance incentives and a  
12 performance-based formula rate under the Energy  
13 Infrastructure Modernization Act, these measures have not  
14 been sufficiently transformative in urgently moving  
15 electric utilities toward the State's ambitious energy  
16 policy goals: protecting a healthy environment and  
17 climate, improving public health, and creating quality  
18 jobs and economic opportunities, including wealth  
19 building, especially in economically disadvantaged  
20 communities and communities of color.

21 (5) These measures were not developed through a  
22 process to understand first what performance measures and  
23 penalties would help drive the sought-after behavior by  
24 the utilities.

25 (6) While the General Assembly has not made a finding  
26 that the spending related to the Energy Infrastructure and

1 Modernization Act and its performance metrics was not  
2 reasonable, it is important to address concerns that these  
3 measures may have resulted in excess utility spending and  
4 guaranteed profits without meaningful improvements in  
5 customer experience, rate affordability, or equity.

6 (7) Discussions of performance incentive mechanisms  
7 must always take into account the affordability of  
8 customer rates and bills for all customers, including  
9 low-income customers.

10 (8) The General Assembly therefore directs the  
11 Illinois Commerce Commission to complete a transition that  
12 includes a comprehensive performance-based regulation  
13 framework for electric utilities serving more than 500,000  
14 customers. The breadth of this framework should revise  
15 existing utility regulations to position Illinois electric  
16 utilities to effectively and efficiently achieve current  
17 and anticipated future energy needs of this State, while  
18 ensuring affordability for consumers.

19 (b) As used in this Section:

20 "Commission" means the Illinois Commerce Commission.

21 "Demand response" means measures that decrease peak  
22 electricity demand or shift demand from peak to off-peak  
23 periods.

24 "Distributed energy resources" or "DER" means a wide range  
25 of technologies that are connected to the grid including those  
26 that are located on the customer side of the customer's



1 electric meter and can provide value to the distribution  
2 system, including, but not limited to, distributed generation,  
3 energy storage, electric vehicles, and demand response  
4 technologies.

5 "Economically disadvantaged communities" means areas of  
6 one or more census tracts where average household income does  
7 not exceed 80% of area median income.

8 "Environmental justice communities" means the definition  
9 of that term as used and as may be updated in the long-term  
10 renewable resources procurement plan by the Illinois Power  
11 Agency and its Program Administrator in the Illinois Solar for  
12 All Program.

13 "Equity investment eligible community" means the  
14 geographic areas throughout Illinois which would most benefit  
15 from equitable investments by the State designed to combat  
16 discrimination. Specifically, the equity investment eligible  
17 communities shall be defined as the following areas:

18 (1) R3 Areas as established pursuant to Section 10-40  
19 of the Cannabis Regulation and Tax Act, where residents  
20 have historically been excluded from economic  
21 opportunities, including opportunities in the energy  
22 sector; and

23 (2) Environmental justice communities, as defined by  
24 the Illinois Power Agency pursuant to the Illinois Power  
25 Agency Act, where residents have historically been subject  
26 to disproportionate burdens of pollution, including

1 pollution from the energy sector.

2 "Performance incentive mechanism" means an instrument by  
3 which utility performance is incentivized, which could include  
4 a monetary performance incentive.

5 "Performance metric" means a manner of measurement for a  
6 particular utility activity.

7 (c) Through coordinated, comprehensive system planning,  
8 ratemaking, and performance incentives, the performance-based  
9 ratemaking framework should be designed to accomplish the  
10 following objectives:

11 (1) maintain and improve service reliability and  
12 safety, including and particularly in environmental  
13 justice, low-income and equity investment eligible  
14 communities;

15 (2) decarbonize utility systems at a pace that meets  
16 or exceeds State climate goals, while also ensuring the  
17 affordability of rates for all customers, including  
18 low-income customers;

19 (3) direct electric utilities to make cost-effective  
20 investments that support achievement of Illinois' clean  
21 energy policies, including, at a minimum, investments  
22 designed to integrate distributed energy resources, comply  
23 with critical infrastructure protection standards, plans,  
24 and industry best practices, and support and take  
25 advantage of potential benefits from the electric vehicle  
26 charging and other electrification, while mitigating the

1 impacts;

2 (4) choose cost-effective assets and services, whether  
3 utility-supplied or through third-party contracting,  
4 considering both economic and environmental costs and the  
5 effects on utility rates, to deliver high-quality service  
6 to customers at least cost;

7 (5) maintain the affordability of electric delivery  
8 services for all customers, including low-income  
9 customers;

10 (6) maintain and grow a diverse workforce, diverse  
11 supplier procurement base and, for relevant programs,  
12 diverse approved-vendor pools, including increased  
13 opportunities for minority-owned, female-owned,  
14 veteran-owned, and disability-owned business enterprises;

15 (7) improve customer service performance and  
16 engagement;

17 (8) address the particular burdens faced by consumers  
18 in environmental justice and equity investment eligible  
19 communities, including shareholder, consumer, and publicly  
20 funded bill payment assistance and credit and collection  
21 policies, and ensure equitable disconnections, late fees,  
22 or arrearages as a result of utility credit and collection  
23 practices, which may include consideration of impact by  
24 zip code; and

25 (9) implement or otherwise enhance current supplier  
26 diversity programs to increase diverse contractor

1 participation in professional services, subcontracting,  
2 and prime contracting opportunities with programs that  
3 address barriers to access. Supplier diversity programs  
4 shall address specific barriers related to RFP and  
5 contract access, access to capital, information technology  
6 and cyber security access and costs, administrative  
7 burdens, and quality control with specific metrics,  
8 outcomes, and demographic data reported.

9 (d) Multi-Year Rate Plan.

10 (1) If an electric utility had a performance-based  
11 formula rate in effect under Section 16-108.5 as of  
12 December 31, 2020, then the utility may file a petition  
13 proposing tariffs implementing a 4-year Multi-Year Rate  
14 Plan as provided in this Section no later than, January  
15 20, 2023, for delivery service rates to be effective for  
16 the billing periods January 1, 2024 through December 31,  
17 2027. The Commission shall issue an order approving or  
18 approving as modified the utility's plan no later than  
19 December 20, 2023. The term "Multi-Year Rate Plan" refers  
20 to a plan establishing the base rates the utility shall  
21 charge for each delivery year of the 4-year period to be  
22 covered by the plan, which shall be subject to  
23 modification only as expressly allowed in this Section.

24 (2) A utility proposing a Multi-Year Rate Plan shall  
25 provide a 4-year investment plan and a description of the  
26 utility's major planned investments, including, at a

1 minimum, all investments of \$2,000,000 or greater over the  
2 plan period for an electric utility that serves more than  
3 3,000,000 retail customers in the State or \$500,000 for an  
4 electric utility that serves less than 3,000,000 retail  
5 customers in the State but more than 500,000 retail  
6 customers in the State. The 4-year investment plan must be  
7 consistent with the Multi-Year Integrated Grid Plan  
8 described in Section 16-105.17 of this Act. The investment  
9 plan shall provide sufficiently detailed information, as  
10 required by the Commission, including, at a minimum, a  
11 description of each investment, the location of the  
12 investment, and an explanation of the need for and benefit  
13 of such an investment to the extent known.

14 (3) The Multi-Year Rate Plan shall be implemented  
15 through a tariff filed with the Commission consistent with  
16 the provisions of this paragraph (3) that shall apply to  
17 all delivery service customers. The Commission shall  
18 initiate and conduct an investigation of the tariff in a  
19 manner consistent with the provisions of this paragraph  
20 (3) and the provisions of Article IX of this Act, to the  
21 extent they do not conflict with this paragraph (3). The  
22 Multi-Year Rate Plan approved by the Commission shall do  
23 the following:

24 (A) Provide for the recovery of the utility's  
25 forecasted rate base, based on the 4-year investment  
26 plan and the utility's Integrated Grid Plan. The

1 forecasted rate base must include the utility's  
2 planned capital investments, with rates based on  
3 average annual plant investment, and  
4 investment-related costs, including income tax  
5 impacts, depreciation, and ratemaking adjustments and  
6 costs that are prudently incurred and reasonable in  
7 amount consistent with Commission practice and law.  
8 The process used to develop the forecasts must be  
9 iterative, rigorous, and lead to forecasts that  
10 reasonably represent the utility's investments during  
11 the forecasted period and ensure that the investments  
12 are projected to be used and useful during the annual  
13 investment period and least cost, consistent with the  
14 provisions of Articles VIII and IX of this Act.

15 (B) The cost of equity shall be approved by the  
16 Commission consistent with Commission practice and law  
17 and shall not exceed 8% unless clear and convincing  
18 record evidence demonstrates that a higher return on  
19 equity is strictly necessary to prevent an imminent  
20 and significant threat of negative credit action that  
21 would be expected to increase the cost of service for  
22 the utility's ratepayers. The Commission shall not  
23 treat offsetting the impact of the cap on equity ratio  
24 in subparagraph (C) of this Section on the utility's  
25 revenues as a justification for increasing the cost of  
26 equity beyond what is otherwise sufficient and

1 necessary. A cost of equity of more than 8% shall not  
2 be permitted unless specifically approved by the  
3 Commission.

4 (C) The revenue requirement shall reflect the  
5 utility's actual capital structure for the applicable  
6 calendar year, subject to the limitations that (i) the  
7 Commission shall not approve a common equity ratio  
8 above 50% absent clear and convincing record evidence  
9 demonstrating that a higher equity ratio is strictly  
10 necessary to prevent an imminent and significant  
11 threat of negative credit action that would be  
12 expected to increase the cost of service for  
13 ratepayers, and (ii) the Commission shall not treat  
14 offsetting the impact of the cap on cost of equity in  
15 subparagraph (B) on the utility's revenues as a  
16 justification for increasing the equity ratio beyond  
17 what is otherwise sufficient and necessary. ~~A year-end~~  
18 capital structure that includes a common equity ratio  
19 of up to and including 50% of the total capital  
20 structure shall be deemed prudent and reasonable. A  
21 higher common equity ratio of more than 50% shall not  
22 be permitted unless ~~must be~~ specifically approved by  
23 the Commission.

24 (E) Provide for recovery of prudent and reasonable  
25 projected operating expenses, giving effect to  
26 ratemaking adjustments, consistent with Commission

1 practice and law under Article IX of this Act.  
2 Operating expenses for years after the first year of  
3 the Multi-Year Rate Plan may be estimated by the use of  
4 known and measurable changes, expense reductions  
5 associated with planned capital investments as  
6 appropriate, and reasonable and appropriate  
7 escalators, indices, or other metrics.

8 (F) Amortize the amount of unprotected  
9 property-related excess accumulated deferred income  
10 taxes in rates as of January 1, 2023 over a period  
11 ending December 31, 2027, unless otherwise required to  
12 amortize the excess deferred income tax pursuant to  
13 Section 16-108.21 of this Act.

14 (G) Allow recovery of incentive compensation  
15 expense that is based on the achievement of  
16 operational metrics, including metrics related to  
17 budget controls, outage duration and frequency,  
18 safety, customer service, efficiency and productivity,  
19 environmental compliance and attainment of  
20 affordability and environmental goals, and other goals  
21 and metrics approved by the Commission. Incentive  
22 compensation expense that is based on net income or an  
23 affiliate's earnings per share shall not be  
24 recoverable.

25 (H) To the maximum extent practicable, align the  
26 4-year investment plan and annual capital budgets with



1           the electric utility's Multi-Year Integrated Grid  
2           Plan.

3           (4) The Commission shall establish annual rates for  
4           each year of the Multi-Year Rate Plan that accurately  
5           reflect and are based only upon the utility's reasonable  
6           and prudent costs of service over the term of the plan,  
7           including the effect of all ratemaking adjustments  
8           consistent with Commission practice and law as determined  
9           by the Commission, provided that the costs are not being  
10          recovered elsewhere in rates. Tariff riders authorized by  
11          the Commission may continue outside of a plan authorized  
12          under this Section to the extent such costs are not  
13          recovered elsewhere in rates. For the first multi-year  
14          rate plan, the burden of proof shall be on the electric  
15          utility to establish the prudence of investments and  
16          expenditures and to establish that such investments  
17          consistent with and reasonably necessary to meet the  
18          requirements of the utility's first approved Multi-Year  
19          Integrated Grid Plan described in Section 16-105.17 of  
20          this Act. For subsequent Multi-Year Rate Plans, the burden  
21          of proof shall be on the electric utility to establish the  
22          prudence of investments and expenditures and to establish  
23          that such investments are consistent with and reasonably  
24          necessary to meet the requirements of the utility's most  
25          recently approved Multi-Year Integrated Grid Plan  
26          described in Section 16-105.17 of this Act. The sole fact

1           that a cost differs from that incurred in a prior period or  
2           that an investment is different from that described in the  
3           Multi-Year Integrated Grid Plan shall not imply the  
4           imprudence or unreasonableness of that cost or investment.  
5           The sole fact that an investment is the same or similar to  
6           that described in the Multi-Year Integrated Grid Plan  
7           shall not imply prudence and reasonableness of that  
8           investment.

9           (5) To facilitate public transparency, all materials,  
10          data, testimony, and schedules shall be provided to the  
11          Commission in an editable, machine-readable electronic  
12          format including .doc, .docx, .xls, .xlsx, and similar  
13          file formats, but not including .pdf or .exif. Should  
14          utilities designate any materials confidential, they shall  
15          have an affirmative duty to explain why the particular  
16          information is marked confidential. In determining  
17          prudence and reasonableness of rates, the Commission shall  
18          make its determination based upon the record, including  
19          each public comment filed or provided orally at open  
20          meetings consistent with the Commission's rules and  
21          practices.

22          (6) The Commission may, by order, establish terms,  
23          conditions, and procedures for submitting and approving a  
24          Multi-Year Rate Plan necessary to implement this Section  
25          and ensure that rates remain just and reasonable during  
26          the course of the plan, including terms and procedures for

1 rate adjustment.

2 (7) An electric utility that files a tariff pursuant  
3 to paragraph (3) of this subsection (e) must submit a  
4 one-time \$300,000 filing fee at the time the Chief Clerk  
5 of the Commission accepts the filing, which shall be a  
6 recoverable expense.

7 (8) An electric utility operating under a Multi-Year  
8 Rate Plan shall file a new Multi-Year Rate Plan at least  
9 300 days prior to the end of the initial Multi-Year Rate  
10 Plan unless it elects to file a general rate case pursuant  
11 to paragraph (9), and every 4 years thereafter, with a  
12 rate-effective date of the proposed tariffs such that,  
13 after the Commission suspension period, the rates would  
14 take effect immediately at the close of the final year of  
15 the initial Multi-Year Rate Plan. In subsequent Multi-Year  
16 Rate Plans, as in the initial plans, utilities and  
17 stakeholders may propose additional metrics that achieve  
18 the outcomes described in paragraph (2) of subsection (f)  
19 of this Section.

20 (9) Election of Rate Case.

21 (A) On or before the date prescribed by  
22 subparagraph (B) of paragraph (9) of this Section,  
23 electric utilities that serve more than 500,000 retail  
24 customers in the State shall file either a general  
25 rate case under Section 9-201 of this Act, or a  
26 Multi-Year Rate Plan, as set forth in paragraph (1) of

1           this subsection (d).

2           (B) Electric utilities described in subparagraph  
3           (A) of paragraph (9) of this Section shall file their  
4           initial general rate case or Multi-Year Rate Plan, as  
5           applicable, with the Commission no later than January  
6           20, 2023.

7           (C) Notwithstanding which rate filing option an  
8           electric utility elects to file on the date prescribed  
9           by subparagraph (B) of paragraph (9) of this Section,  
10          the electric utility shall be subject to the  
11          Multi-year Integrated Plan filing requirements.

12          (D) Following its initial rate filing pursuant to  
13          paragraph (2), an electric utility subject to the  
14          requirements of this Section shall thereafter be  
15          permitted to elect a different rate filing option  
16          consistent with any filing intervals established for a  
17          general rate case or Multi-Year Rate Plan, as follows:

18                 (i) An electric utility that initially elected  
19                 to file a Multi-Year Rate Plan and thereafter  
20                 elects to transition to a general rate case may do  
21                 so upon completion of the 4-year Multi-Year Rate  
22                 Plan by filing a general rate case at the same time  
23                 that the utility would have filed its subsequent  
24                 Multi-Year Rate Plan, as specified in paragraph  
25                 (8) of this subsection (d). Notwithstanding this  
26                 election, the annual adjustment of the final year

1 of the Multi-Year Rate Plan shall proceed as  
2 specified in paragraph (6) of subsection (f).

3 (ii) An electric utility that initially  
4 elected to a file general rate case and thereafter  
5 elects to transition to a Multi-Year Rate Plan may  
6 do so only at the 4-year filing intervals  
7 identified by paragraph (8) of this subsection  
8 (d).

9 (10) The Commission shall approve tariffs establishing  
10 rate design for all delivery service customers unless the  
11 electric utility makes the election specified in Section  
12 16-105.5, in which case the rate design shall be subject  
13 to the provisions of that Section.

14 (11) The Commission shall establish requirements for  
15 annual performance evaluation reports to be submitted  
16 annually for performance metrics. Such reports shall  
17 include, but not be limited to, a description of the  
18 utility's performance under each metric and an  
19 identification of any extraordinary events that adversely  
20 affected the utility's performance.

21 (12) For the first Multi-Year Rate Plan, the  
22 Commission shall consolidate its investigation with the  
23 proceeding under Section 16-105.17 to establish the  
24 Multi-Year Integrated Grid Plan no later than 45 days  
25 after plan filing.

26 (13) Where a rate change under a Multi-Year Rate Plan

1 will result in a rate increase, an electric utility may  
2 propose a rate phase-in plan that the Commission shall  
3 approve with or without modification or deny in its final  
4 order approving the new delivery services rates. A  
5 proposed rate phase-in plan under this paragraph (13) must  
6 allow the new delivery services rates to be implemented in  
7 no more than 2 steps, as follows: in the first step, at  
8 least 50% of the approved rate increase must be reflected  
9 in rates, and, in the second step, 100% of the rate  
10 increase must be reflected in rates. The second step's  
11 rates must take effect no later than 12 months after the  
12 first step's rates were placed into effect. The portion of  
13 the approved rate increase not implemented in the first  
14 step shall be recorded on the electric utility's books as  
15 a regulatory asset, and shall accrue carrying costs to  
16 ensure that the utility does not recover more or less than  
17 it otherwise would because of the deferral. This portion  
18 shall be recovered, with such carrying costs at the  
19 weighted average cost of capital, through a surcharge  
20 applied to retail customer bills that (i) begins no later  
21 than 12 months after the date on which the second step's  
22 rates went into effect and (ii) is applied over a period  
23 not to exceed 24 months. Nothing in this paragraph is  
24 intended to limit the Commission's authority to mitigate  
25 the impact of rates caused by rate plans, or any other  
26 instance on a revenue-neutral basis; nor shall it mitigate

1 a utility's ability to make proposals to mitigate the  
2 impact of rates. When a deferral, or similar method, is  
3 used to mitigate the impact of rates, the utility should  
4 be allowed to recover carrying costs.

5 (14) Notwithstanding the provisions of Section (13),  
6 the Commission may, on its own initiative, take  
7 revenue-neutral measures to relieve the impact of rate  
8 increases on customers. Such initiatives may be taken by  
9 the Commission in the first Multi-Year Rate Plan,  
10 subsequent multi-year plans, or in other instances  
11 described in this Act.

12 (15) Whenever during the pendency of a Multi-year Rate  
13 Plan, an electric utility subject to this Section becomes  
14 aware that, due to circumstances beyond its control,  
15 prudent operating practices will require the utility to  
16 make adjustments to the Multi-Year Rate Plan, the electric  
17 utility may file a petition with the Commission requesting  
18 modification of the approved annual revenue requirements  
19 included in the Multi-Year Rate Plan. The electric utility  
20 must support its request with evidence demonstrating why a  
21 modification is necessary, due to circumstances beyond the  
22 utility's control, to follow prudent operating practices  
23 and must set forth the changes to each annual revenue  
24 requirement to be approved, and the basis for any changes  
25 in anticipated operating expenses or capital investment  
26 levels. The utility shall affirmatively address the impact

1 of the changes on the Multi-Year Integrated Grid Plan and  
2 Multi-Year Rate Plan originally submitted and approved by  
3 the Commission. Any interested party may file an objection  
4 to the changes proposed, or offer alternatives to the  
5 utility's proposal, as supported by testimony and  
6 evidence. After notice and hearing, the Commission shall  
7 issue a final order regarding the electric utility's  
8 request no later than 180 days after the filing of the  
9 petition.

10 (e) Performance incentive mechanisms.

11 (1) The electric industry is undergoing rapid  
12 transformation, including fundamental changes in how  
13 electricity is generated, procured, and delivered and how  
14 customers are choosing to participate in the supply and  
15 delivery of electricity to and from the electric grid.  
16 Building upon the State's goals to increase the  
17 procurement of electricity from renewable energy  
18 resources, including distributed generation and storage  
19 devices, the General Assembly finds that electric  
20 utilities should make cost-effective investments that  
21 support moving forward on Illinois' clean energy policies.  
22 It is therefore in the State's interest for the Commission  
23 to establish performance incentive mechanisms in order to  
24 better tie utility revenues to performance and customer  
25 benefits, accelerate progress on Illinois energy and other  
26 goals, ensure equity and affordability of rates for all



1 customers, including low-income customers, and hold  
2 utilities publicly accountable.

3 (2) The Commission shall approve, based on the  
4 substantial evidence proffered in the proceeding initiated  
5 pursuant to this subsection performance metrics that, to  
6 the extent practicable and achievable by the electric  
7 utility, encourage cost-effective, equitable utility  
8 achievement of the outcomes described in this subsection  
9 (e) while ensuring no degradation in the significant  
10 performance improvement achieved through previously  
11 established performance metrics. For each electric  
12 utility, the Commission shall approve metrics designed to  
13 achieve incremental improvements over baseline performance  
14 values and targets, over a performance period of up to 10  
15 years, and no less than 4 years.

16 (A) The Commission shall approve no more than 8  
17 metrics, with at least one metric from each of the  
18 categories below, for each electric utility, from  
19 subparagraphs (i) through (vi) of this subsection (A).  
20 Upon a utility request, the Commission may approve the  
21 use of a specific, measurable, and achievable tracking  
22 metric described in paragraph (3) of subsection (e) as  
23 a performance metric pursuant to paragraph (2) of  
24 subsection (e).

25 (i) Metrics designed to ensure the utility  
26 maintains and improves the high standards of both

1 overall and locational reliability and resiliency,  
2 and makes improvements in power quality, including  
3 and particularly in environmental justice and  
4 equity investment eligible communities.

5 (ii) Peak load reductions attributable to  
6 demand response programs.

7 (iii) Supplier diversity expansion, including  
8 diverse contractor participation in professional  
9 services, subcontracting, and prime contracting  
10 opportunities, development of programs that  
11 address the barriers to access, aligning  
12 demographics of contractors to the demographics in  
13 the utility's service territory, establish  
14 long-term mentoring relationships that develop and  
15 remove barriers to access for diverse and  
16 underserved contractors. The utilities shall  
17 provide solutions, resources, and tools to address  
18 complex barriers of entry related to costly and  
19 time-intensive cyber security requirements,  
20 increasingly complex information technology  
21 requirements, insurance barriers, service provider  
22 sign-up process barriers, administrative process  
23 barriers, and other barriers that inhibit access  
24 to RFPs and contracts. For programs with contracts  
25 over \$1,000,000, winning bidders must demonstrate  
26 a subcontractor development or mentoring

1 relationship with at least one of their diverse  
2 subcontracting partners for a core component of  
3 the scope of the project. The mentoring time and  
4 cost shall be taken into account in the creation  
5 of RFP and shall include a structured and measured  
6 plan by the prime contractor to increase the  
7 capabilities of the subcontractor in their  
8 proposed scope. The metric shall include reporting  
9 on all supplier diversity programs by goals,  
10 program results, demographics and geography, with  
11 separate reporting by category of minority-owned,  
12 female-owned, veteran-owned, and disability-owned  
13 business enterprise metrics. The report shall  
14 include resources and expenses committed to the  
15 programs and conversion rates of new diverse  
16 utility contractors.

17 (iv) Achieve affordable customer delivery  
18 service costs, with particular emphasis on keeping  
19 the bills of lower-income households, households  
20 in equity investment eligible communities, and  
21 household in environmental justice communities  
22 within a manageable portion of their income and  
23 adopting credit and collection policies that  
24 reduce disconnections for these households  
25 specifically and for customers overall to ensure  
26 equitable disconnections, late fees, or arrearages

1 as a result of utility credit and collection  
2 practices, which may include consideration of  
3 impact by zip code.

4 (v) Metrics designed around the utility's  
5 timeliness to customer requests for  
6 interconnection in key milestone areas, such as:  
7 initial response, supplemental review, and system  
8 feasibility study; improved average service  
9 reliability index for those customers that have  
10 interconnected a distributed renewable energy  
11 generation device to the utility's distribution  
12 system and are lawfully taking service under an  
13 applicable tariff; offering a variety of  
14 affordable rate options, including demand  
15 response, time of use rates for delivery and  
16 supply, real-time pricing rates for supply;  
17 comprehensive and predictable net metering, and  
18 maximizing the benefits of grid modernization and  
19 clean energy for ratepayers; and improving  
20 customer access to utility system information  
21 according to consumer demand and interest.

22 (vi) Metrics designed to measure the utility's  
23 customer service performance, which may include  
24 the average length of time to answer a customer's  
25 call by a customer service representative, the  
26 abandoned call rate and the relative ranking of

1           the electric utility, by a reputable third-party  
2           organization, in customer service satisfaction  
3           when compared to other similar electric utilities  
4           in the Midwest region.

5           (B) Performance metrics shall include a  
6           description of the metric, a calculation method, a  
7           data collection method, annual performance targets,  
8           and any incentives or penalties for the utility's  
9           achievement of, or failure to achieve, their  
10          performance targets, provided that the total amount of  
11          potential incentives and penalties shall be  
12          symmetrical. Incentives shall be rewards or penalties  
13          or both, reflected as basis points added to, or  
14          subtracted from, the utility's cost of equity. The  
15          metrics and incentives shall apply for the entire time  
16          period covered by a Multi-Year Rate Plan. The total  
17          for all metrics shall be equal to 40 basis points,  
18          however, the Commission may adjust the basis points  
19          upward or downward by up to 20 basis points for any  
20          given Multi-Year Rate Plan, as appropriate, but in no  
21          event may the total exceed 60 basis points or fall  
22          below 20 basis points.

23          (C) Metrics related to reliability shall be  
24          implemented to ensure equitable benefits to  
25          environmental justice and equity investment eligible  
26          communities, as defined in this Act.

1           (D) The Commission shall approve performance  
2 metrics that are reasonably within control of the  
3 utility to achieve. The Commission also shall not  
4 approve a metric that is solely expected to have the  
5 effect of reducing the workforce. Performance metrics  
6 should measure outcomes and actual, rather than  
7 projected, results where possible. Nothing in this  
8 paragraph is intended to require that different  
9 electric utilities must be subject to the same  
10 metrics, goals, or incentives.

11           (E) Increases or enhancements to an existing  
12 performance goal or target shall be considered in  
13 light of other metrics, cost-effectiveness, and other  
14 factors the Commission deems appropriate. Performance  
15 metrics shall include one year of tracking data  
16 collected in a consistent manner, verifiable by an  
17 independent evaluator in order to establish a baseline  
18 and measure outcomes and actual results against  
19 projections where possible.

20           (F) For the purpose of determining reasonable  
21 performance metrics and related incentives, the  
22 Commission shall develop a methodology to calculate  
23 net benefits that includes customer and societal costs  
24 and benefits and quantifies the effect on delivery  
25 rates. In determining the appropriate level of a  
26 performance incentive, the Commission shall consider:

1 the extent to which the amount is likely to encourage  
2 the utility to achieve the performance target in the  
3 least cost manner; the value of benefits to customers,  
4 the grid, public health and safety, and the  
5 environment from achievement of the performance  
6 target, including in particular benefits to equity  
7 investment eligible community; the affordability of  
8 customer's electric bills, including low-income  
9 customers, the utility's revenue requirement, the  
10 promotion of renewable and distributed energy, and  
11 other such factors that the Commission deems  
12 appropriate. The consideration of these factors shall  
13 result in an incentive level that ensures benefits  
14 exceed costs for customers.

15 (G) Achievement of performance metrics are based  
16 on the assumptions that the utility will adopt or  
17 implement the technology and equipment, and make the  
18 investments to the extent reasonably necessary to  
19 achieve the goal. If the electric utility is unable to  
20 meet the performance metrics as a result of  
21 extraordinary circumstances outside of its control,  
22 including but not limited to government-declared  
23 emergencies, then the utility shall be permitted to  
24 file a petition with the Commission requesting that  
25 the utility be excused from compliance with the  
26 applicable performance goal or goals and the

1 associated financial incentives and penalties. The  
2 burden of proof shall be on the utility, consistent  
3 with Article IX, and the utility's petition shall be  
4 supported by substantial evidence. The Commission  
5 shall, after notice and hearing, enter its order  
6 approving or denying, in whole or in part, the  
7 utility's petition based on the extent to which the  
8 utility demonstrated that its achievement of the  
9 affected metrics and performance goals was hindered by  
10 extraordinary circumstances outside of the utility's  
11 control.

12 (3) The Commission shall approve reasonable and  
13 appropriate tracking metrics to collect and monitor data  
14 for the purpose of measuring and reporting utility  
15 performance and for establishing future performance  
16 metrics. These additional tracking metrics shall include  
17 at least one metric from each of the following categories  
18 of performance:

19 (A) Minimize emissions of greenhouse gases and  
20 other air pollutants that harm human health,  
21 particularly in environmental justice and equity  
22 investment eligible communities, through minimizing  
23 total emissions by accelerating electrification of  
24 transportation, buildings and industries where such  
25 electrification results in net reductions, across all  
26 fuels and over the life of electrification measures,



1 of greenhouse gases and other pollutants, taking into  
2 consideration the fuel mix used to produce electricity  
3 at the relevant hour and the effect of accelerating  
4 electrification on electricity delivery services  
5 rates, supply prices and peak demand, provided the  
6 revenues the utility receives from accelerating  
7 electrification of transportation, buildings and  
8 industries exceed the costs.

9 (B) Enhance the grid's flexibility to adapt to  
10 increased deployment of nondispatchable resources,  
11 improve the ability and performance of the grid on  
12 load balancing, and offer a variety of rate plans to  
13 match consumer consumption patterns and lower consumer  
14 bills for electricity delivery and supply.

15 (C) Ensure rates reflect cost savings attributable  
16 to grid modernization and utilize distributed energy  
17 resources that allow the utility to defer or forgo  
18 traditional grid investments that would otherwise be  
19 required to provide safe and reliable service.

20 (D) Metrics designed to create and sustain  
21 full-time-equivalent jobs and opportunities for all  
22 segments of the population and workforce, including  
23 minority-owned businesses, women-owned businesses,  
24 veteran-owned businesses, and businesses owned by a  
25 person or persons with a disability, and that do not,  
26 consistent with State and federal law, discriminate

1 based on race or socioeconomic status as a result of  
2 this amendatory Act of the 102nd General Assembly.

3 (E) Maximize and prioritize the allocation of grid  
4 planning benefits to environmental justice and  
5 economically disadvantaged customers and communities,  
6 such that all metrics provide equitable benefits  
7 across the utility's service territory and maintain  
8 and improve utility customers' access to uninterrupted  
9 utility services.

10 (4) The Commission may establish new tracking and  
11 performance metrics in future Multi-Year Rate Plans to  
12 further measure achievement of the outcomes set forth in  
13 paragraph (2) of subsection (f) of this Section and the  
14 other goals and requirements of this Section.

15 (5) The Commission shall also evaluate metrics that  
16 were established in prior Multi-Year Rate Plans to  
17 determine if there has been an unanticipated material  
18 change in circumstances such that adjustments are required  
19 to improve the likelihood of the outcomes described in  
20 paragraph (2) of subsection (f). For metrics that were  
21 established in prior Multi-Year Rate Plan proceedings and  
22 that the Commission elects to continue, the design of  
23 these metrics, including the goals of tracking metrics and  
24 the targets and incentive levels and structures of  
25 performance metrics, may be adjusted pursuant to the  
26 requirements in this Section. The Commission may also

1 change, adjust or phase out tracking and performance  
2 metrics that were established in prior Multi-Year Rate  
3 Plan proceedings if these metrics no longer meet the  
4 requirements of this Section or if they are rendered  
5 obsolete by the changing needs and technology of an  
6 evolving grid. Additionally, performance metrics that no  
7 longer require an incentive to create improved utility  
8 performance may become tracking metrics in a Multi-Year  
9 Rate Plan proceeding.

10 (6) The Commission shall initiate a workshop process  
11 no later than August 1, 2021, or 15 days after the  
12 effective date of this amendatory Act of the 102nd General  
13 Assembly, whichever is later, for the purpose of  
14 facilitating the development of metrics for each utility.  
15 The workshop shall be coordinated by the staff of the  
16 Commission, or a facilitator retained by staff, and shall  
17 be organized and facilitated in a manner that encourages  
18 representation from diverse stakeholders and ensures  
19 equitable opportunities for participation, without  
20 requiring formal intervention or representation by an  
21 attorney. Working with staff of the Commission the  
22 facilitator may conduct a combination of workshops  
23 specific to a utility or applicable to multiple utilities  
24 where content and stakeholders are substantially similar.  
25 The workshop process shall conclude no later than October  
26 31, 2021. Following the workshop, the staff of the

1 Commission, or the facilitator retained by the Staff,  
2 shall prepare and submit a report to the Commission that  
3 identifies the participants in the process, the metrics  
4 proposed during the process, any material issues that  
5 remained unresolved at the conclusions of such process,  
6 and any recommendations for workshop process improvements.  
7 Any workshop participant may file comments and reply  
8 comments in response to the Staff report.

9 (A) No later than January, 20, 2022, each electric  
10 utility that intends to file a petition pursuant to  
11 subsection (b) of this Section shall file a petition  
12 with the Commission seeking approval of its  
13 performance metrics, which shall include for each  
14 metric, at a minimum, (i) a detailed description, (ii)  
15 the calculation of the baseline, (iii) the performance  
16 period and overall performance goal, provided that the  
17 performance period shall not commence prior to January  
18 1, 2024, (iv) each annual performance goal, (v) the  
19 performance adjustment, which shall be a symmetrical  
20 basis point increase or decrease to the utility's cost  
21 of equity based on the extent to which the utility  
22 achieved the annual performance goal, and (vi) the new  
23 or modified tariff mechanism that will apply the  
24 performance adjustments. The Commission shall issue  
25 its order approving, or approving with modification,  
26 the utility's proposed performance metrics no later

1 than September 30, 2022.

2 (B) No later than August 1, 2025, the Commission  
3 shall initiate a workshop process that conforms to the  
4 workshop purpose and requirements of this paragraph  
5 (6) of this Section to the extent they do not conflict.  
6 The workshop process shall conclude no later than  
7 October 31, 2025, and the staff of the Commission, or  
8 the facilitator retained by the Staff, shall prepare  
9 and submit a report consistent with the requirements  
10 described in this paragraph (6) of this Section. No  
11 later than January 20, 2026, each electric utility  
12 subject to the requirements of this Section shall file  
13 a petition that reflects, and is consistent with, the  
14 components required in this paragraph (6) of this  
15 Section, and the Commission shall issue its order  
16 approving, or approving with modification, the  
17 utility's proposed performance metrics no later than  
18 September 30, 2026.

19 (f) On May 1 of each year, following the approval of the  
20 first Multi-Year Rate Plan and its initial year, the  
21 Commission shall open an annual performance evaluation  
22 proceeding to evaluate the utilities' performance on their  
23 metric targets during the year just completed, as well as the  
24 appropriate Annual Adjustment as defined in paragraph (6). The  
25 Commission shall determine the performance and annual  
26 adjustments to be applied through a surcharge in the following

1 calendar year.

2 (1) On February 15 of each year, prior to the annual  
3 performance evaluation proceeding, each utility shall file  
4 a performance evaluation report with the Commission that  
5 includes a description of and all data supporting how the  
6 utility performed under each performance metric and an  
7 identification of any extraordinary events that adversely  
8 impacted the utility's performance.

9 (2) The metrics approved under this Section are based  
10 on the assumptions that the utility may fully implement  
11 the technology and equipment, and make the investments,  
12 required to achieve the metrics and performance goals. If  
13 the utility is unable to meet the metrics and performance  
14 goals because it was hindered by unanticipated technology  
15 or equipment implementation delays, government-declared  
16 emergencies, or other investment impediments, then the  
17 utility shall be permitted to file a petition with the  
18 Commission on or before the date that its report is due  
19 pursuant to paragraph (1) of this subsection (f)  
20 requesting that the utility be excused from compliance  
21 with the applicable performance goal or goals. The burden  
22 of proof shall be on the utility, consistent with Article  
23 IX, and the utility's petition shall be supported by  
24 substantial evidence. No later than 90 days after the  
25 utility files its petition, the Commission shall, after  
26 notice and hearing, enter its order approving or denying,

1 in whole or in part, the utility's petition based on the  
2 extent to which the utility demonstrated that its  
3 achievement of the affected metrics and performance goals  
4 was hindered by unanticipated technology or equipment  
5 implementation delays, or other investment impediments,  
6 that were reasonably outside of the utility's control.

7 (3) The electric utility shall provide for an annual  
8 independent evaluation of its performance on metrics. The  
9 independent evaluator shall review the utility's  
10 assumptions, baselines, targets, calculation  
11 methodologies, and other relevant information, especially  
12 ensuring that the utility's data for establishing  
13 baselines matches actual performance, and shall provide a  
14 report to the Commission in each annual performance  
15 evaluation describing the results. The independent  
16 evaluator shall present this report as evidence as a  
17 nonparty participant and shall not be represented by the  
18 utility's legal counsel. The independent evaluator shall  
19 be hired through a competitive bidding process with  
20 approval of the contract by the Commission.

21 The Commission shall consider the report of the  
22 independent evaluator in determining the utility's  
23 achievement of performance targets. Discrepancies between  
24 the utility's assumptions, baselines, targets, or  
25 calculations and those of the independent evaluator shall  
26 be closely scrutinized by the Commission. If the

1 Commission finds that the utility's reported data for any  
2 metric or metrics significantly and incorrectly deviates  
3 from the data reported by the independent evaluator, then  
4 the Commission shall order the utility to revise its data  
5 collection and calculation process within 60 days, with  
6 specifications where appropriate.

7 (4) The Commission shall, after notice and hearing in  
8 the annual performance evaluation proceeding, enter an  
9 order approving the utility's performance adjustment based  
10 on its achievement of or failure to achieve its  
11 performance targets no later than December 20 each year.  
12 The Commission-approved penalties or incentives shall be  
13 applied beginning with the next calendar year.

14 (5) In order to promote the transparency of utility  
15 investments during the effective period of a multi-year  
16 rate plan, inform the Commission's investigation and  
17 adjustment of rates in the annual adjustment process, and  
18 to facilitate the participation of stakeholders in the  
19 annual adjustment process, an electric utility with an  
20 effective Multi-Year Rate Plan shall, within 90 days of  
21 the close of each quarter during the Multi-Year Rate Plan  
22 period, submit to the Commission a report that summarizes  
23 the additions to utility plant that were placed into  
24 service during the prior quarter, which for purposes of  
25 the report shall be the most recently closed fiscal  
26 quarter. The report shall also summarize the utility plant



1 the electric utility projects it will place into service  
2 through the end of the calendar year in which the report is  
3 filed. The projections, estimates, plans, and  
4 forward-looking information that are provided in the  
5 reports pursuant to this paragraph (5) are for planning  
6 purposes and are intended to be illustrative of the  
7 investments that the utility proposes to make as of the  
8 time of submittal. Nothing in this paragraph (5)  
9 precludes, or is intended to limit, a utility's ability to  
10 modify and update its projections, estimates, plans, and  
11 forward-looking information previously submitted in order  
12 to reflect stakeholder input or other new or updated  
13 information and analysis, including, but not limited to,  
14 changes in specific investment needs, customer electric  
15 use patterns, customer applications and preferences, and  
16 commercially available equipment and technologies, however  
17 the utility shall explain any changes or deviations  
18 between the projected investments from the quarterly  
19 reports and actual investments in the annual report. The  
20 reports submitted pursuant to this subsection are intended  
21 to be flexible planning tools, and are expected to evolve  
22 as new information becomes available. Within 7 days of  
23 receiving a quarterly report, the Commission shall timely  
24 make such report available to the public by posting it on  
25 the Commission's website. Each quarterly report shall  
26 include the following detail:

1           (A) The total dollar value of the additions to  
2 utility plant placed in service during the prior  
3 quarter;

4           (B) A list of the major investment categories the  
5 electric utility used to manage its routine standing  
6 operational activities during the prior quarter  
7 including the total dollar amount for the work  
8 reflected in each investment category in which utility  
9 plant in service is equal to or greater than  
10 \$2,000,000 for an electric utility that serves more  
11 than 3,000,000 customers in the State or \$500,000 for  
12 an electric utility that serves less than 3,000,000  
13 customers but more than 500,000 customers in the State  
14 as of the last day of the quarterly reporting period,  
15 as well as a summary description of each investment  
16 category;

17           (C) A list of the projects which the electric  
18 utility has identified by a unique investment tracking  
19 number for utility plant placed in service during the  
20 prior quarter for utility plant placed in service with  
21 a total dollar value as of the last day of the  
22 quarterly reporting period that is equal to or greater  
23 than \$2,000,000 for an electric utility that serves  
24 more than 3,000,000 customers in the State or \$500,000  
25 for an electric utility that serves less than  
26 3,000,000 retail customers but more than \$500,000

1 retail customers in the State, as well as a summary of  
2 each project;

3 (D) The estimated total dollar value of the  
4 additions to utility plant projected to be placed in  
5 service through the end of the calendar year in which  
6 the report is filed;

7 (E) A list of the major investment categories the  
8 electric utility used to manage its routine standing  
9 operational activities with utility plant projected to  
10 be placed in service through the end of the calendar  
11 year in which the report is filed, including the total  
12 dollar amount for the work reflected in each  
13 investment category in which utility plant in service  
14 is projected to be equal to or greater than \$2,000,000  
15 for an electric utility that serves more than  
16 3,000,000 customers in the State or \$500,000 for an  
17 electric utility that serves less than 3,000,000  
18 retail customers but more than 500,000 retail  
19 customers in the State, as well as a summary  
20 description of each investment category; and

21 (F) A list of the projects for which the electric  
22 utility has identified by a unique investment tracking  
23 number for utility plant projected to be placed in  
24 service through the end of the calendar year in which  
25 the report is filed with an estimated dollar value  
26 that is equal to or greater than \$2,000,000 for an

1 electric utility that serves more than 3,000,000  
2 customers in the State or \$500,000 for an electric  
3 utility that serves less than 3,000,000 retail  
4 customers but more than \$500,000 retail customers in  
5 the State, as well as a summary description of each  
6 project.

7 (6) As part of the Annual Performance Adjustment, the  
8 electric utility shall submit evidence sufficient to  
9 support a determination of its actual revenue requirement  
10 for the applicable calendar year, consistent with the  
11 provisions of paragraphs (d) and (f) of this subsection.  
12 The electric utility shall bear the burden of  
13 demonstrating that its costs were prudent and reasonable,  
14 subject to the provisions of paragraph (4) of this  
15 subsection (f). The Commission's review of the electric  
16 utility's annual adjustment shall be based on the same  
17 evidentiary standards, including, but not limited to,  
18 those concerning the prudence and reasonableness of the  
19 known and measurable costs forecasted to be incurred by  
20 the utility, and the used and usefulness of the actual  
21 plant investment pursuant to Section 9-211 of this Act,  
22 that the Commission applies in a proceeding to review a  
23 filing for changes in rates pursuant to Section 9-201 of  
24 this Act. The Commission shall determine the prudence and  
25 reasonableness of the actual costs incurred by the utility  
26 during the applicable calendar year, as well as determine

1 the original cost of plant in service as of the end of the  
2 applicable calendar year. The Commission shall then  
3 determine the Annual Adjustment, which shall mean the  
4 amount by which, the electric utility's actual revenue  
5 requirement for the applicable year of the Multi-Year Rate  
6 Plan either exceeded, or was exceeded by, the revenue  
7 requirement approved by the Commission for such calendar  
8 year, plus carrying costs calculated at the weighted  
9 average cost of capital approved for the Multi-Year Rate  
10 Plan.

11 The Commission's determination of the electric  
12 utility's actual revenue requirement for the applicable  
13 calendar year shall be based on:

14 (A) the Commission-approved used and useful,  
15 prudent and reasonable actual costs for the applicable  
16 calendar year, which shall be determined pursuant to  
17 the following criteria:

18 (i) The overall level of actual costs incurred  
19 during the calendar year, provided that the  
20 Commission may not allow recovery of actual costs  
21 that are more than 105% of the approved revenue  
22 requirement calculated as provided in item (ii) of  
23 this subparagraph (A), except to the extent the  
24 Commission approves a modification of the  
25 Multi-Year Rate Plan to permit such recovery.

26 (ii) The calculation of 105% of the revenue

1 requirement required by this subparagraph (A)  
2 shall exclude the revenue requirement impacts of  
3 the following volatile and fluctuating variables  
4 that occurred during the year: (i) storms and  
5 weather-related events for which the utility  
6 provides sufficient evidence to demonstrate that  
7 such expenses were not foreseeable and not in  
8 control of the utility; (ii) new business; (iii)  
9 changes in interest rates; (iv) changes in taxes;  
10 (v) facility relocations; (vi) changes in pension  
11 or post-retirement benefits costs due to  
12 fluctuations in interest rates, market returns or  
13 actuarial assumptions; (vii) amortization expenses  
14 related to costs; and (viii) changes in the timing  
15 of when an expenditure or investment is made such  
16 that it is accelerated to occur during the  
17 applicable year or deferred to occur in a  
18 subsequent year.

19 (B) the year-end rate base;

20 (C) the cost of equity approved in the multi-year  
21 rate plan; and

22 (D) the electric utility's actual year-end capital  
23 structure, provided that the common equity ratio in  
24 such capital structure may not exceed the common  
25 equity ratio that was approved by the Commission in  
26 the Multi-Year Rate Plan.

1           (2) The Commission's determinations of the prudence  
2           and reasonableness of the costs incurred for the  
3           applicable year, and of the original cost of plant in  
4           service as of the end of the applicable calendar year,  
5           shall be final upon entry of the Commission's order and  
6           shall not be subject to collateral attack in any other  
7           Commission proceeding, case, docket, order, rule, or  
8           regulation; however, nothing in this Section shall  
9           prohibit a party from petitioning the Commission to rehear  
10          or appeal to the courts the order pursuant to the  
11          provisions of this Act.

12          (g) During the period leading to approval of the first  
13          Multi-Year Integrated Grid Plan, each electric utility will  
14          necessarily continue to invest in its distribution grid. Those  
15          investments will be subject to a determination of prudence and  
16          reasonableness consistent with Commission practice and law.  
17          Any failure to conform to the Multi-Year Integrated Grid Plan  
18          ultimately approved shall not imply imprudence or  
19          unreasonableness.

20          (h) After calculating the Performance Adjustment and  
21          Annual Adjustment, the Commission shall order the electric  
22          utility to collect the amount in excess of the revenue  
23          requirement from customers, or issue a refund to customers, as  
24          applicable, to be applied through a surcharge beginning with  
25          the next calendar year.

26          Electric utilities subject to the requirements of this

1 Section shall be permitted to file new or revised tariffs to  
2 comply with the provisions of, and Commission orders entered  
3 pursuant to, this Section.

4 (Source: P.A. 102-662, eff. 9-15-21.)