

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 9-241 and 16-108.5 as follows:

6 (220 ILCS 5/9-241) (from Ch. 111 2/3, par. 9-241)

7 Sec. 9-241. Nondiscrimination.

8 (a) No public utility shall, as to rates or other charges,
9 services, facilities or in other respect, make or grant any
10 preference or advantage to any corporation or person or
11 subject any corporation or person to any prejudice or
12 disadvantage. No public utility shall establish or maintain
13 any unreasonable difference as to rates or other charges,
14 services, facilities, or in any other respect, either as
15 between localities or as between classes of service.

16 (b) An electric utility in a county with a population of
17 3,000,000 or more shall not establish or maintain any
18 unreasonable difference as to rates or other charges,
19 services, contractual terms, or facilities for access to or
20 the use of its utility infrastructure by another person or for
21 any other purpose. Notwithstanding any other provision of law,
22 the Commission and its staff shall interpret this Section in
23 accordance with Article XVI of this Act.

1 (c) Nothing ~~However, nothing~~ in this Section shall be
2 construed as limiting the authority of the Commission to
3 permit the establishment of economic development rates as
4 incentives to economic development either in enterprise zones
5 as designated by the State of Illinois or in other areas of a
6 utility's service area. Such rates should be available to
7 existing businesses which demonstrate an increase to existing
8 load as well as new businesses which create new load for a
9 utility so as to create a more balanced utilization of
10 generating capacity. The Commission shall ensure that such
11 rates are established at a level which provides a net benefit
12 to customers within a public utility's service area.

13 (d) On or before January 1, 2023, the Commission shall
14 conduct a comprehensive study to assess whether low-income
15 discount rates for electric and natural gas residential
16 customers are appropriate and the potential design and
17 implementation of any such rates. The Commission shall include
18 its findings, together with the appropriate recommendations,
19 in a report to be provided to the General Assembly. Upon
20 completion of the study, the Commission shall have the
21 authority to permit or require electric and natural gas
22 utilities to file a tariff establishing low-income discount
23 rates.

24 Such study shall assess, at a minimum, the following:

25 (1) customer eligibility requirements, including
26 income-based eligibility and eligibility based on

1 participation in or eligibility for certain public
2 assistance programs;

3 (2) appropriate rate structures, including
4 consideration of tiered discounts for different income
5 levels;

6 (3) appropriate recovery mechanisms, including the
7 consideration of volumetric charges and customer charges;

8 (4) appropriate verification mechanisms;

9 (5) measures to ensure customer confidentiality and
10 data safeguards;

11 (6) outreach and consumer education procedures; and

12 (7) the impact that a low-income discount rate would
13 have on the affordability of delivery service to
14 low-income customers and customers overall.

15 (e) The Commission shall adopt rules requiring utility
16 companies to produce information, in the form of a mailing,
17 and other approved methods of distribution, to its consumers,
18 to inform the consumers of available rebates, discounts,
19 credits, and other cost-saving mechanisms that can help them
20 lower their monthly utility bills, and send out such
21 information semi-annually, unless otherwise provided by this
22 Article.

23 (f) Prior to October 1, 1989, no public utility providing
24 electrical or gas service shall consider the use of solar or
25 other nonconventional renewable sources of energy by a
26 customer as a basis for establishing higher rates or charges

1 for any service or commodity sold to such customer; nor shall a
2 public utility subject any customer utilizing such energy
3 source or sources to any other prejudice or disadvantage on
4 account of such use. No public utility shall without the
5 consent of the Commission, charge or receive any greater
6 compensation in the aggregate for a lesser commodity, product,
7 or service than for a greater commodity, product or service of
8 like character.

9 The Commission, in order to expedite the determination of
10 rate questions, or to avoid unnecessary and unreasonable
11 expense, or to avoid unjust or unreasonable discrimination
12 between classes of customers, or, whenever in the judgment of
13 the Commission public interest so requires, may, for rate
14 making and accounting purposes, or either of them, consider
15 one or more municipalities either with or without the adjacent
16 or intervening rural territory as a regional unit where the
17 same public utility serves such region under substantially
18 similar conditions, and may within such region prescribe
19 uniform rates for consumers or patrons of the same class.

20 Any public utility, with the consent and approval of the
21 Commission, may as a basis for the determination of the
22 charges made by it classify its service according to the
23 amount used, the time when used, the purpose for which used,
24 and other relevant factors.

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

1 (220 ILCS 5/16-108.5)

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

4 (a) (Blank).

5 (b) For purposes of this Section, "participating utility"
6 means an electric utility or a combination utility serving
7 more than 1,000,000 customers in Illinois that voluntarily
8 elects and commits to undertake (i) the infrastructure
9 investment program consisting of the commitments and
10 obligations described in this subsection (b) and (ii) the
11 customer assistance program consisting of the commitments and
12 obligations described in subsection (b-10) of this Section,
13 notwithstanding any other provisions of this Act and without
14 obtaining any approvals from the Commission or any other
15 agency other than as set forth in this Section, regardless of
16 whether any such approval would otherwise be required.
17 "Combination utility" means a utility that, as of January 1,
18 2011, provided electric service to at least one million retail
19 customers in Illinois and gas service to at least 500,000
20 retail customers in Illinois. A participating utility shall
21 recover the expenditures made under the infrastructure
22 investment program through the ratemaking process, including,
23 but not limited to, the performance-based formula rate and
24 process set forth in this Section.

25 During the infrastructure investment program's peak
26 program year, a participating utility other than a combination

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

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

- 21 (1) Beginning no later than 180 days after a
22 participating utility other than a combination utility
23 files a performance-based formula rate tariff pursuant to
24 subsection (c) of this Section, or, beginning no later
25 than January 1, 2012 if such utility files such
26 performance-based formula rate tariff within 14 days of

1 October 26, 2011 (the effective date of Public Act
2 97-616), the participating utility shall, except as
3 provided in subsection (b-5):

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

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

13 (ii) training facility construction or upgrade
14 projects totaling an estimated \$10,000,000,
15 provided that, at a minimum, one such facility
16 shall be located in a municipality having a
17 population of more than 2 million residents and
18 one such facility shall be located in a
19 municipality having a population of more than
20 150,000 residents but fewer than 170,000
21 residents; any such new facility located in a
22 municipality having a population of more than 2
23 million residents must be designed for the purpose
24 of obtaining, and the owner of the facility shall
25 apply for, certification under the United States
26 Green Building Council's Leadership in Energy

1 Efficiency Design Green Building Rating System;

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

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

20 (B) over a 10-year period, invest an estimated
21 \$1,300,000,000 to upgrade and modernize its
22 transmission and distribution infrastructure and in
23 Smart Grid electric system upgrades, including, but
24 not limited to:

25 (i) additional smart meters;

26 (ii) distribution automation;

1 (iii) associated cyber secure data
2 communication network; and

3 (iv) substation micro-processor relay
4 upgrades.

5 (2) Beginning no later than 180 days after a
6 participating utility that is a combination utility files
7 a performance-based formula rate tariff pursuant to
8 subsection (c) of this Section, or, beginning no later
9 than January 1, 2012 if such utility files such
10 performance-based formula rate tariff within 14 days of
11 October 26, 2011 (the effective date of Public Act
12 97-616), the participating utility shall, except as
13 provided in subsection (b-5):

14 (A) over a 10-year period, invest an estimated
15 \$265,000,000 in electric system upgrades,
16 modernization projects, and training facilities,
17 including, but not limited to:

18 (i) distribution infrastructure improvements
19 totaling an estimated \$245,000,000, which may
20 include bulk supply substations, transformers,
21 reconductoring, and rebuilding overhead
22 distribution and sub-transmission lines,
23 underground residential distribution cable
24 injection and replacement and mainline cable
25 system refurbishment and replacement projects;

26 (ii) training facility construction or upgrade

1 projects totaling an estimated \$1,000,000; any
2 such new facility must be designed for the purpose
3 of obtaining, and the owner of the facility shall
4 apply for, certification under the United States
5 Green Building Council's Leadership in Energy
6 Efficiency Design Green Building Rating System;
7 and

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

10 (B) over a 10-year period, invest an estimated
11 \$360,000,000 to upgrade and modernize its transmission
12 and distribution infrastructure and in Smart Grid
13 electric system upgrades, including, but not limited
14 to:

15 (i) additional smart meters;

16 (ii) distribution automation;

17 (iii) associated cyber secure data
18 communication network; and

19 (iv) substation micro-processor relay
20 upgrades.

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

24 The investments in the infrastructure investment program
25 described in this subsection (b) shall be incremental to the
26 participating utility's annual capital investment program, as

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

13 Within 60 days after filing a tariff under subsection (c)
14 of this Section, a participating utility shall submit to the
15 Commission its plan, including scope, schedule, and staffing,
16 for satisfying its infrastructure investment program
17 commitments pursuant to this subsection (b). The submitted
18 plan shall include a schedule and staffing plan for the next
19 calendar year. The plan shall also include a plan for the
20 creation, operation, and administration of a Smart Grid test
21 bed as described in subsection (c) of Section 16-108.8. The
22 plan need not allocate the work equally over the respective
23 periods, but should allocate material increments throughout
24 such periods commensurate with the work to be undertaken. No
25 later than April 1 of each subsequent year, the utility shall
26 submit to the Commission a report that includes any updates to

1 the plan, a schedule for the next calendar year, the
2 expenditures made for the prior calendar year and
3 cumulatively, and the number of full-time equivalent jobs
4 created for the prior calendar year and cumulatively. If the
5 utility is materially deficient in satisfying a schedule or
6 staffing plan, then the report must also include a corrective
7 action plan to address the deficiency. The fact that the plan,
8 implementation of the plan, or a schedule changes shall not
9 imply the imprudence or unreasonableness of the infrastructure
10 investment program, plan, or schedule. Further, no later than
11 45 days following the last day of the first, second, and third
12 quarters of each year of the plan, a participating utility
13 shall submit to the Commission a verified quarterly report for
14 the prior quarter that includes (i) the total number of
15 full-time equivalent jobs created during the prior quarter,
16 (ii) the total number of employees as of the last day of the
17 prior quarter, (iii) the total number of full-time equivalent
18 hours in each job classification or job title, (iv) the total
19 number of incremental employees and contractors in support of
20 the investments undertaken pursuant to this subsection (b) for
21 the prior quarter, and (v) any other information that the
22 Commission may require by rule.

23 With respect to the participating utility's peak job
24 commitment, if, after considering the utility's corrective
25 action plan and compliance thereunder, the Commission enters
26 an order finding, after notice and hearing, that a

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

18 With respect to the participating utility's investment
19 amount commitments, if, after considering the utility's
20 corrective action plan and compliance thereunder, the
21 Commission enters an order finding, after notice and hearing,
22 that a participating utility is not satisfying its investment
23 amount commitments described in this subsection (b), then the
24 utility shall no longer be eligible to annually update the
25 performance-based formula rate tariff pursuant to subsection
26 (d) of this Section. In such event, the then current rates

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

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

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

22 (b-5) Nothing in this Section shall prohibit the
23 Commission from investigating the prudence and reasonableness
24 of the expenditures made under the infrastructure investment
25 program during the annual review required by subsection (d) of
26 this Section and shall, as part of such investigation,

1 determine whether the utility's actual costs under the program
2 are prudent and reasonable. The fact that a participating
3 utility invests more than the minimum amounts specified in
4 subsection (b) of this Section or its plan shall not imply
5 imprudence or unreasonableness.

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

17 In no event, absent General Assembly approval, shall the
18 capital investment costs incurred by a participating utility
19 other than a combination utility in satisfying its
20 infrastructure investment program commitments described in
21 subsection (b) of this Section exceed \$3,000,000,000 or, for a
22 participating utility that is a combination utility,
23 \$720,000,000. If the participating utility's updated cost
24 estimates for satisfying its infrastructure investment program
25 commitments described in subsection (b) of this Section exceed
26 the limitation imposed by this subsection (b-5), then it shall

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

16 (b-10) All participating utilities shall make
17 contributions for an energy low-income and support program in
18 accordance with this subsection. Beginning no later than 180
19 days after a participating utility files a performance-based
20 formula rate tariff pursuant to subsection (c) of this
21 Section, or beginning no later than January 1, 2012 if such
22 utility files such performance-based formula rate tariff
23 within 14 days of December 30, 2011 (the effective date of
24 Public Act 97-646), and without obtaining any approvals from
25 the Commission or any other agency other than as set forth in
26 this Section, regardless of whether any such approval would

1 otherwise be required, a participating utility other than a
2 combination utility shall pay \$10,000,000 per year for 5 years
3 and a participating utility that is a combination utility
4 shall pay \$1,000,000 per year for 10 years to the energy
5 low-income and support program, which is intended to fund
6 customer assistance programs with the primary purpose being
7 avoidance of imminent disconnection. Such programs may
8 include:

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

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

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

26 (4) a non-residential special hardship program that

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

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

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

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

1 consistently with this Section.

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

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

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

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

1 performance-based formula rate shall remain in effect at the
2 discretion of the utility. The performance-based formula rate
3 approved by the Commission shall do the following:

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

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

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

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

6 (B) 580 basis points.

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

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

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

1 performance-based formula rate;

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

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

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

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

1 the performance-based formula rate shall be expensed
2 and recovered through the performance-based formula
3 rate;

4 (F) amortization over a 5-year period of the full
5 amount of each charge or credit that exceeds
6 \$3,700,000 for a participating utility that is a
7 combination utility or \$10,000,000 for a participating
8 utility that serves more than 3 million retail
9 customers in the applicable calendar year and that
10 relates to a workforce reduction program's severance
11 costs, changes in accounting rules, changes in law,
12 compliance with any Commission-initiated audit, or a
13 single storm or other similar expense, provided that
14 any unamortized balance shall be reflected in the rate
15 base. For purposes of this subparagraph (F), changes
16 in law includes any enactment, repeal, or amendment in
17 a law, ordinance, rule, regulation, interpretation,
18 permit, license, consent, or order, including those
19 relating to taxes, accounting, or to environmental
20 matters, or in the interpretation or application
21 thereof by any governmental authority occurring after
22 October 26, 2011 (the effective date of Public Act
23 97-616);

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

26 (H) historical weather normalized billing

1 determinants; and

2 (I) allocation methods for common costs.

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

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

25 (6) Provide for an annual reconciliation, as described
26 in subsection (d) of this Section, with interest, of the

1 revenue requirement reflected in rates for each calendar
2 year, beginning with the calendar year in which the
3 utility files its performance-based formula rate tariff
4 pursuant to subsection (c) of this Section, with what the
5 revenue requirement would have been had the actual cost
6 information for the applicable calendar year been
7 available at the filing date.

8 The utility shall file, together with its tariff, final
9 data based on its most recently filed FERC Form 1, plus
10 projected plant additions and correspondingly updated
11 depreciation reserve and expense for the calendar year in
12 which the tariff and data are filed, that shall populate the
13 performance-based formula rate and set the initial delivery
14 services rates under the formula. For purposes of this
15 Section, "FERC Form 1" means the Annual Report of Major
16 Electric Utilities, Licensees and Others that electric
17 utilities are required to file with the Federal Energy
18 Regulatory Commission under the Federal Power Act, Sections 3,
19 4(a), 304 and 209, modified as necessary to be consistent with
20 83 Ill. Adm. Code Part 415 as of May 1, 2011. Nothing in this
21 Section is intended to allow costs that are not otherwise
22 recoverable to be recoverable by virtue of inclusion in FERC
23 Form 1.

24 After the utility files its proposed performance-based
25 formula rate structure and protocols and initial rates, the
26 Commission shall initiate a docket to review the filing. The

1 Commission shall enter an order approving, or approving as
2 modified, the performance-based formula rate, including the
3 initial rates, as just and reasonable within 270 days after
4 the date on which the tariff was filed, or, if the tariff is
5 filed within 14 days after October 26, 2011 (the effective
6 date of Public Act 97-616), then by May 31, 2012. Such review
7 shall be based on the same evidentiary standards, including,
8 but not limited to, those concerning the prudence and
9 reasonableness of the costs incurred by the utility, the
10 Commission applies in a hearing to review a filing for a
11 general increase in rates under Article IX of this Act. The
12 initial rates shall take effect within 30 days after the
13 Commission's order approving the performance-based formula
14 rate tariff.

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

21 Subsequent changes to the performance-based formula rate
22 structure or protocols shall be made as set forth in Section
23 9-201 of this Act, but nothing in this subsection (c) is
24 intended to limit the Commission's authority under Article IX
25 and other provisions of this Act to initiate an investigation
26 of a participating utility's performance-based formula rate

1 tariff, provided that any such changes shall be consistent
2 with paragraphs (1) through (6) of this subsection (c). Any
3 change ordered by the Commission shall be made at the same time
4 new rates take effect following the Commission's next order
5 pursuant to subsection (d) of this Section, provided that the
6 new rates take effect no less than 30 days after the date on
7 which the Commission issues an order adopting the change.

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

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

24 (d) Subsequent to the Commission's issuance of an order
25 approving the utility's performance-based formula rate
26 structure and protocols, and initial rates under subsection

1 (c) of this Section, the utility shall file, on or before May 1
2 of each year, with the Chief Clerk of the Commission its
3 updated cost inputs to the performance-based formula rate for
4 the applicable rate year and the corresponding new charges.
5 Each such filing shall conform to the following requirements
6 and include the following information:

7 (1) The inputs to the performance-based formula rate
8 for the applicable rate year shall be based on final
9 historical data reflected in the utility's most recently
10 filed annual FERC Form 1 plus projected plant additions
11 and correspondingly updated depreciation reserve and
12 expense for the calendar year in which the inputs are
13 filed. The filing shall also include a reconciliation of
14 the revenue requirement that was in effect for the prior
15 rate year (as set by the cost inputs for the prior rate
16 year) with the actual revenue requirement for the prior
17 rate year (determined using a year-end rate base) that
18 uses amounts reflected in the applicable FERC Form 1 that
19 reports the actual costs for the prior rate year. Any
20 over-collection or under-collection indicated by such
21 reconciliation shall be reflected as a credit against, or
22 recovered as an additional charge to, respectively, with
23 interest calculated at a rate equal to the utility's
24 weighted average cost of capital approved by the
25 Commission for the prior rate year, the charges for the
26 applicable rate year. Provided, however, that the first

1 such reconciliation shall be for the calendar year in
2 which the utility files its performance-based formula rate
3 tariff pursuant to subsection (c) of this Section and
4 shall reconcile (i) the revenue requirement or
5 requirements established by the rate order or orders in
6 effect from time to time during such calendar year
7 (weighted, as applicable) with (ii) the revenue
8 requirement determined using a year-end rate base for that
9 calendar year calculated pursuant to the performance-based
10 formula rate using (A) actual costs for that year as
11 reflected in the applicable FERC Form 1, and (B) for the
12 first such reconciliation only, the cost of equity, which
13 shall be calculated as the sum of 590 basis points plus the
14 average for the applicable calendar year of the monthly
15 average yields of 30-year U.S. Treasury bonds published by
16 the Board of Governors of the Federal Reserve System in
17 its weekly H.15 Statistical Release or successor
18 publication. The first such reconciliation is not intended
19 to provide for the recovery of costs previously excluded
20 from rates based on a prior Commission order finding of
21 imprudence or unreasonableness. Each reconciliation shall
22 be certified by the participating utility in the same
23 manner that FERC Form 1 is certified. The filing shall
24 also include the charge or credit, if any, resulting from
25 the calculation required by paragraph (6) of subsection
26 (c) of this Section.

1 Notwithstanding anything that may be to the contrary,
2 the intent of the reconciliation is to ultimately
3 reconcile the revenue requirement reflected in rates for
4 each calendar year, beginning with the calendar year in
5 which the utility files its performance-based formula rate
6 tariff pursuant to subsection (c) of this Section, with
7 what the revenue requirement determined using a year-end
8 rate base for the applicable calendar year would have been
9 had the actual cost information for the applicable
10 calendar year been available at the filing date.

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

17 (3) The filing shall include relevant and necessary
18 data and documentation for the applicable rate year that
19 is consistent with the Commission's rules applicable to a
20 filing for a general increase in rates or any rules
21 adopted by the Commission to implement this Section.
22 Normalization adjustments shall not be required.
23 Notwithstanding any other provision of this Section or Act
24 or any rule or other requirement adopted by the
25 Commission, a participating utility that is a combination
26 utility with more than one rate zone shall not be required

1 to file a separate set of such data and documentation for
2 each rate zone and may combine such data and documentation
3 into a single set of schedules.

4 Within 45 days after the utility files its annual update
5 of cost inputs to the performance-based formula rate, the
6 Commission shall have the authority, either upon complaint or
7 its own initiative, but with reasonable notice, to enter upon
8 a hearing concerning the prudence and reasonableness of the
9 costs incurred by the utility to be recovered during the
10 applicable rate year that are reflected in the inputs to the
11 performance-based formula rate derived from the utility's FERC
12 Form 1. During the course of the hearing, each objection shall
13 be stated with particularity and evidence provided in support
14 thereof, after which the utility shall have the opportunity to
15 rebut the evidence. Discovery shall be allowed consistent with
16 the Commission's Rules of Practice, which Rules shall be
17 enforced by the Commission or the assigned administrative law
18 judge. The Commission shall apply the same evidentiary
19 standards, including, but not limited to, those concerning the
20 prudence and reasonableness of the costs incurred by the
21 utility, in the hearing as it would apply in a hearing to
22 review a filing for a general increase in rates under Article
23 IX of this Act. The Commission shall not, however, have the
24 authority in a proceeding under this subsection (d) to
25 consider or order any changes to the structure or protocols of
26 the performance-based formula rate approved pursuant to

1 subsection (c) of this Section. In a proceeding under this
2 subsection (d), the Commission shall enter its order no later
3 than the earlier of 240 days after the utility's filing of its
4 annual update of cost inputs to the performance-based formula
5 rate or December 31. The Commission's determinations of the
6 prudence and reasonableness of the costs incurred for the
7 applicable calendar year shall be final upon entry of the
8 Commission's order and shall not be subject to reopening,
9 reexamination, or collateral attack in any other Commission
10 proceeding, case, docket, order, rule or regulation, provided,
11 however, that nothing in this subsection (d) shall prohibit a
12 party from petitioning the Commission to rehear or appeal to
13 the courts the order pursuant to the provisions of this Act.

14 In the event the Commission does not, either upon
15 complaint or its own initiative, enter upon a hearing within
16 45 days after the utility files the annual update of cost
17 inputs to its performance-based formula rate, then the costs
18 incurred for the applicable calendar year shall be deemed
19 prudent and reasonable, and the filed charges shall not be
20 subject to reopening, reexamination, or collateral attack in
21 any other proceeding, case, docket, order, rule, or
22 regulation.

23 A participating utility's first filing of the updated cost
24 inputs, and any Commission investigation of such inputs
25 pursuant to this subsection (d) shall proceed notwithstanding
26 the fact that the Commission's investigation under subsection

1 (c) of this Section is still pending and notwithstanding any
2 other law, order, rule, or Commission practice to the
3 contrary.

4 (e) Nothing in subsections (c) or (d) of this Section
5 shall prohibit the Commission from investigating, or a
6 participating utility from filing, revenue-neutral tariff
7 changes related to rate design of a performance-based formula
8 rate that has been placed into effect for the utility.
9 Following approval of a participating utility's
10 performance-based formula rate tariff pursuant to subsection
11 (c) of this Section, the utility shall make a filing with the
12 Commission within one year after the effective date of the
13 performance-based formula rate tariff that proposes changes to
14 the tariff to incorporate the findings of any final rate
15 design orders of the Commission applicable to the
16 participating utility and entered subsequent to the
17 Commission's approval of the tariff. The Commission shall,
18 after notice and hearing, enter its order approving, or
19 approving with modification, the proposed changes to the
20 performance-based formula rate tariff within 240 days after
21 the utility's filing. Following such approval, the utility
22 shall make a filing with the Commission during each subsequent
23 3-year period that either proposes revenue-neutral tariff
24 changes or re-files the existing tariffs without change, which
25 shall present the Commission with an opportunity to suspend
26 the tariffs and consider revenue-neutral tariff changes

1 related to rate design.

2 (f) Within 30 days after the filing of a tariff pursuant to
3 subsection (c) of this Section, each participating utility
4 shall develop and file with the Commission multi-year metrics
5 designed to achieve, ratably (i.e., in equal segments) over a
6 10-year period, improvement over baseline performance values
7 as follows:

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

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

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

22 (3.5) For a participating utility other than a
23 combination utility, 20% improvement in the System Average
24 Interruption Frequency Index for its Northeastern Region,
25 using a baseline of the average of the data from 2001
26 through 2010. For purposes of this paragraph (3.5),

1 Northeastern Region shall have the meaning set forth in
2 the participating utility's most recent report filed
3 pursuant to Section 16-125 of this Act.

4 (4) Seventy-five percent improvement in the total
5 number of customers who exceed the service reliability
6 targets as set forth in subparagraphs (A) through (C) of
7 paragraph (4) of subsection (b) of 83 Ill. Adm. Code
8 411.140 as of May 1, 2011, using 2010 as the baseline year.

9 (5) Reduction in issuance of estimated electric bills:
10 90% improvement for a participating utility other than a
11 combination utility, and 56% improvement for a
12 participating utility that is a combination utility, using
13 a baseline of the average number of estimated bills for
14 the years 2008 through 2010.

15 (6) Consumption on inactive meters: 90% improvement
16 for a participating utility other than a combination
17 utility, and 56% improvement for a participating utility
18 that is a combination utility, using a baseline of the
19 average unbilled kilowatthours for the years 2009 and
20 2010.

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

25 (8) Uncollectible expense: reduce uncollectible
26 expense by at least \$30,000,000 for a participating

1 utility other than a combination utility and by at least
2 \$3,500,000 for a participating utility that is a
3 combination utility, using a baseline of the average
4 uncollectible expense for the years 2008 through 2010.

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

13 The definitions set forth in 83 Ill. Adm. Code 411.20 as of
14 May 1, 2011 shall be used for purposes of calculating
15 performance under paragraphs (1) through (3.5) of this
16 subsection (f), provided, however, that the participating
17 utility may exclude up to 9 extreme weather event days from
18 such calculation for each year, and provided further that the
19 participating utility shall exclude 9 extreme weather event
20 days when calculating each year of the baseline period to the
21 extent that there are 9 such days in a given year of the
22 baseline period. For purposes of this Section, an extreme
23 weather event day is a 24-hour calendar day (beginning at
24 12:00 a.m. and ending at 11:59 p.m.) during which any weather
25 event (e.g., storm, tornado) caused interruptions for 10,000
26 or more of the participating utility's customers for 3 hours

1 or more. If there are more than 9 extreme weather event days in
2 a year, then the utility may choose no more than 9 extreme
3 weather event days to exclude, provided that the same extreme
4 weather event days are excluded from each of the calculations
5 performed under paragraphs (1) through (3.5) of this
6 subsection (f).

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

23 The metrics and performance goals set forth in
24 subparagraphs (5) through (8) of this subsection (f) are based
25 on the assumptions that the participating utility may fully
26 implement the technology described in subsection (b) of this

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

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

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

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

1 basis points; and

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

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

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

26 (4) With respect to each of the incremental annual

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

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

15 (6) With respect to each of the incremental annual
16 performance goals established pursuant to paragraphs (6),
17 (7), and (8) of subsection (f) of this Section, as
18 applicable, which together measure non-operational
19 customer savings and benefits relating to the
20 implementation of the Advanced Metering Infrastructure
21 Deployment Plan, as defined in Section 16-108.6 of this
22 Act, the performance under each such goal shall be
23 calculated in terms of the percentage of the goal
24 achieved. The percentage of goal achieved for each of the
25 goals shall be aggregated, and an average percentage value
26 calculated, for each year of the 10-year period. If the

1 utility does not achieve an average percentage value in a
2 given year of at least 95%, the participating utility's
3 return on equity shall be reduced by 5 basis points.

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

16 The Commission shall, after notice and hearing, enter an
17 order within 120 days after the metrics are filed approving,
18 or approving with modification, a participating utility's
19 tariff or mechanism to satisfy the metrics set forth in
20 subsection (f) of this Section. On June 1 of each subsequent
21 year, each participating utility shall file a report with the
22 Commission that includes, among other things, a description of
23 how the participating utility performed under each metric and
24 an identification of any extraordinary events that adversely
25 impacted the utility's performance. Whenever a participating
26 utility does not satisfy the metrics required pursuant to

1 subsection (f) of this Section, the Commission shall, after
2 notice and hearing, enter an order approving financial
3 penalties in accordance with this subsection (f-5). The
4 Commission-approved financial penalties shall be applied
5 beginning with the next rate year. Nothing in this Section
6 shall authorize the Commission to reduce or otherwise obviate
7 the imposition of financial penalties for failing to achieve
8 one or more of the metrics established pursuant to
9 subparagraphs (1) through (4) of subsection (f) of this
10 Section.

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

1 shall not be calculated using any hypothetical rate or
2 adjustments to actual charges (other than as specified for
3 energy efficiency) as an input.

4 In the event that the average annual increase exceeds 2.5%
5 as calculated pursuant to this subsection (g), then Sections
6 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of this Act, other
7 than this subsection, shall be inoperative as they relate to
8 the utility and its service area as of the date of the report
9 due to be submitted pursuant to this subsection and the
10 utility shall no longer be eligible to annually update the
11 performance-based formula rate tariff pursuant to subsection
12 (d) of this Section. In such event, the then current rates
13 shall remain in effect until such time as new rates are set
14 pursuant to Article IX of this Act, subject to retroactive
15 adjustment, with interest, to reconcile rates charged with
16 actual costs, and the participating utility's voluntary
17 commitments and obligations under subsection (b) of this
18 Section shall immediately terminate, except for the utility's
19 obligation to pay an amount already owed to the fund for
20 training grants pursuant to a Commission order issued under
21 subsection (b) of this Section.

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

26 For purposes of this Section, the amount per kilowatthour

1 means the total amount paid for electric service expressed on
2 a per kilowatthour basis, and the total amount paid for
3 electric service includes without limitation amounts paid for
4 supply, transmission, distribution, surcharges, and add-on
5 taxes exclusive of any increases in taxes or new taxes imposed
6 after October 26, 2011 (the effective date of Public Act
7 97-616). For purposes of this Section, "eligible retail
8 customers" shall have the meaning set forth in Section
9 16-111.5 of this Act.

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

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

26 The provisions of Sections ~~16-108.5~~, 16-108.6, 16-108.7,

1 and 16-108.8 of this Act and the provisions of this Section,
2 other than this subsection (h) and subsection (i) of this
3 Section, are inoperative after December 31, 2022 for every
4 participating utility, after which time a participating
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. At such time, the then current rates shall
8 remain in effect until such time as new rates are set pursuant
9 to Article IX of this Act, subject to retroactive adjustment,
10 with interest, to reconcile rates charged with actual costs.

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

15 (i) The provisions of this subsection (i) are inoperative
16 after December 31, 2027.

17 While an electric ~~a participating~~ utility may use,
18 develop, and maintain broadband systems and the delivery of
19 broadband services, Voice over Internet Protocol (VoIP)
20 ~~voice over internet protocol~~ services, telecommunications
21 services, and cable or ~~and~~ video programming services for use
22 in providing delivery services ~~and Smart Grid functionality or~~
23 ~~application~~ to its retail customers, an electric including,
24 ~~but not limited to, the installation, implementation and~~
25 ~~maintenance of Smart Grid electric system upgrades as defined~~
26 ~~in Section 16 108.6 of this Act, a participating utility is~~

1 prohibited from providing to its retail customers broadband
2 services, Voice over Internet Protocol (VoIP)
3 ~~voice over internet protocol~~ services, telecommunications
4 services, or cable or video programming services, unless they
5 are part of a service directly related to delivery services ~~or~~
6 ~~Smart Grid functionality or applications as defined in Section~~
7 ~~16-108.6 of this Act~~, and from recovering the costs of such
8 offerings from retail customers. ~~The prohibition set forth in~~
9 ~~this subsection (i) is inoperative after December 31, 2027 for~~
10 ~~every participating utility.~~

11 Furthermore, an electric utility in a county with a
12 population of 3,000,000 or more shall not authorize any other
13 person or grant any other person the right, by agreement,
14 lease, license, or otherwise, to access, control, use, or
15 operate that electric utility's infrastructure, facilities, or
16 assets of any kind or to deliver or provide to that electric
17 utility's customers or any other person's customers, broadband
18 services, Voice over Internet Protocol (VoIP) services,
19 telecommunications services, or cable or video programming
20 services.

21 However, notwithstanding the prohibitions set forth in
22 this Section, an electric utility in a county with a
23 population of 3,000,000 or more may authorize or grant another
24 person the right to access or use the electric utility's
25 infrastructure, facilities, or assets, including, but not
26 limited to, middle mile infrastructure, to facilitate the

1 delivery of broadband services to Illinois residential and
2 commercial customers on the condition that the access to and
3 use of that electric utility's infrastructure, facilities, and
4 assets (A) be granted on a non-discriminatory, non-exclusive,
5 and competitively neutral basis; and (B) comply with all other
6 State and federal laws, rules, and regulations, including, but
7 not limited to, all applicable safety codes and requirements.
8 If there is any dispute regarding the terms, rates, or
9 conditions of access to or use of that electric utility's
10 infrastructure, facilities, and assets to facilitate the
11 delivery of broadband services to Illinois residential and
12 commercial customers, the Commission, upon the petition of any
13 party, shall hear and decide the dispute in accordance with
14 the Commission's Rules of Practice (83 Ill. Adm. Code Part
15 200).

16 Nothing in this amendatory Act of the 103rd General
17 Assembly shall be construed to authorize any electric utility
18 in a county with a population of 3,000,000 or more to consent
19 to, or grant to, any other person by agreement, lease,
20 license, or otherwise, the right to access, occupy, or use any
21 infrastructure, facility, easement, or asset of any kind not
22 owned by the electric utility.

23 Nothing in this amendatory Act of the 103rd General
24 Assembly shall be construed to alter or diminish the rights or
25 obligations of any person under, nor shall it be deemed to
26 conflict with, the federal Pole Attachment Act (47 U.S.C.

1 224).

2 As used in this subsection (i):

3 "Broadband services" means the services that are used to
4 deliver to subscribers a high-speed service connection to the
5 public Internet that is capable of supporting, in at least one
6 direction, a speed in excess of 200 kilobits per second (kbps)
7 to the network demarcation point at the subscribers' premises.

8 "Electric utility" has the meaning set forth in Section
9 16-102.

10 "Middle mile infrastructure" has the meaning provided in
11 Section 60401 of the federal Infrastructure Investment and
12 Jobs Act (47 U.S.C. 1741).

13 (j) Nothing in this Section is intended to legislatively
14 overturn the opinion issued in Commonwealth Edison Co. v. Ill.
15 Commerce Comm'n, Nos. 2-08-0959, 2-08-1037, 2-08-1137,
16 1-08-3008, 1-08-3030, 1-08-3054, 1-08-3313 cons. (Ill. App.
17 Ct. 2d Dist. Sept. 30, 2010). Public Act 97-616 shall not be
18 construed as creating a contract between the General Assembly
19 and the participating utility, and shall not establish a
20 property right in the participating utility.

21 (k) The changes made in subsections (c) and (d) of this
22 Section by Public Act 98-15 are intended to be a restatement
23 and clarification of existing law, and intended to give
24 binding effect to the provisions of House Resolution 1157
25 adopted by the House of Representatives of the 97th General
26 Assembly and Senate Resolution 821 adopted by the Senate of

1 the 97th General Assembly that are reflected in paragraph (3)
2 of this subsection. In addition, Public Act 98-15 preempts and
3 supersedes any final Commission orders entered in Docket Nos.
4 11-0721, 12-0001, 12-0293, and 12-0321 to the extent
5 inconsistent with the amendatory language added to subsections
6 (c) and (d).

7 (1) No earlier than 5 business days after May 22, 2013
8 (the effective date of Public Act 98-15), each
9 participating utility shall file any tariff changes
10 necessary to implement the amendatory language set forth
11 in subsections (c) and (d) of this Section by Public Act
12 98-15 and a revised revenue requirement under the
13 participating utility's performance-based formula rate.
14 The Commission shall enter a final order approving such
15 tariff changes and revised revenue requirement within 21
16 days after the participating utility's filing.

17 (2) Notwithstanding anything that may be to the
18 contrary, a participating utility may file a tariff to
19 retroactively recover its previously unrecovered actual
20 costs of delivery service that are no longer subject to
21 recovery through a reconciliation adjustment under
22 subsection (d) of this Section. This retroactive recovery
23 shall include any derivative adjustments resulting from
24 the changes to subsections (c) and (d) of this Section by
25 Public Act 98-15. Such tariff shall allow the utility to
26 assess, on current customer bills over a period of 12

1 monthly billing periods, a charge or credit related to
2 those unrecovered costs with interest at the utility's
3 weighted average cost of capital during the period in
4 which those costs were unrecovered. A participating
5 utility may file a tariff that implements a retroactive
6 charge or credit as described in this paragraph for
7 amounts not otherwise included in the tariff filing
8 provided for in paragraph (1) of this subsection (k). The
9 Commission shall enter a final order approving such tariff
10 within 21 days after the participating utility's filing.

11 (3) The tariff changes described in paragraphs (1) and
12 (2) of this subsection (k) shall relate only to, and be
13 consistent with, the following provisions of Public Act
14 98-15: paragraph (2) of subsection (c) regarding year-end
15 capital structure, subparagraph (D) of paragraph (4) of
16 subsection (c) regarding pension assets, and subsection
17 (d) regarding the reconciliation components related to
18 year-end rate base and interest calculated at a rate equal
19 to the utility's weighted average cost of capital.

20 (4) Nothing in this subsection is intended to effect a
21 dismissal of or otherwise affect an appeal from any final
22 Commission orders entered in Docket Nos. 11-0721, 12-0001,
23 12-0293, and 12-0321 other than to the extent of the
24 amendatory language contained in subsections (c) and (d)
25 of this Section of Public Act 98-15.

26 (1) Each participating utility shall be deemed to have

1 been in full compliance with all requirements of subsection
2 (b) of this Section, subsection (c) of this Section, Section
3 16-108.6 of this Act, and all Commission orders entered
4 pursuant to Sections 16-108.5 and 16-108.6 of this Act, up to
5 and including May 22, 2013 (the effective date of Public Act
6 98-15). The Commission shall not undertake any investigation
7 of such compliance and no penalty shall be assessed or adverse
8 action taken against a participating utility for noncompliance
9 with Commission orders associated with subsection (b) of this
10 Section, subsection (c) of this Section, and Section 16-108.6
11 of this Act prior to such date. Each participating utility
12 other than a combination utility shall be permitted, without
13 penalty, a period of 12 months after such effective date to
14 take actions required to ensure its infrastructure investment
15 program is in compliance with subsection (b) of this Section
16 and with Section 16-108.6 of this Act. Provided further, the
17 following subparagraphs shall apply to a participating utility
18 other than a combination utility:

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

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

17 (C) if the Commission has not initiated a proceeding
18 pursuant to subsection (e) of Section 16-108.6 of this Act
19 prior to May 22, 2013 (the effective date of Public Act
20 98-15), then the utility shall file with the Commission,
21 within 45 days after such effective date, a plan for
22 accelerating the commencement of the utility's meter
23 deployment schedule approved in the final Commission order
24 on rehearing entered in Docket No. 12-0298 and the
25 Commission shall, after notice and hearing, approve or
26 approve as modified such plan within 90 days after the

1 utility's filing.

2 Any schedule for meter deployment approved by the
3 Commission pursuant to this subsection (l) shall take into
4 consideration procurement times for meters and other equipment
5 and operational issues. Nothing in Public Act 98-15 shall
6 shorten or extend the end dates for the 5-year or 10-year
7 periods set forth in subsection (b) of this Section or Section
8 16-108.6 of this Act. Nothing in this subsection is intended
9 to address whether a participating utility has, or has not,
10 satisfied any or all of the metrics and performance goals
11 established pursuant to subsection (f) of this Section.

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

14 (Source: P.A. 102-1031, eff. 5-27-22; 103-154, eff. 6-30-23.)

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