



Rep. Kevin A. McCarthy

Filed: 2/18/2011

09700HB0014ham001

LRB097 05207 ASK 47288 a

1 AMENDMENT TO HOUSE BILL 14

2 AMENDMENT NO. _____. Amend House Bill 14 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Public Utilities Act is amended by adding
5 Sections 16-108.5 and 19-150 as follows:

6 (220 ILCS 5/16-108.5 new)

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

9 (a) The General Assembly recognizes that for well over a
10 century Illinois residents and businesses have been
11 well-served by and have benefitted from a comprehensive
12 electric utility system. The General Assembly finds that
13 electric utilities are now entering a new construction cycle
14 that is needed to refurbish, rebuild, modernize, and expand
15 systems to continue to provide safe, reliable, and affordable
16 service to the State's current and future utility customers in

1 this newly digitized age. In particular, the General Assembly
2 finds that it is the policy of this State that significant
3 investments must be made in the State's electric grid over the
4 next decade to modernize and upgrade transmission and
5 distribution facilities in the State. These investments will
6 ensure that the State's electric utility infrastructure will
7 promote future economic development in the State and that the
8 State's electric utilities will be able to continue to provide
9 quality electric service to their customers, including
10 innovative technological offerings that will enhance customer
11 experience and choice such as smart meters that are dependent
12 on a modernized or smart grid. These investments, including
13 programs to reinforce the safety and security of high voltage
14 transmission lines, will also ensure that the State's electric
15 utility infrastructure continues to be safe and reliable. The
16 introduction of performance metrics will further ensure that
17 safety and reliability and other indicators are not just
18 maintained but improved by more than 15% over the next decade.

19 The General Assembly further recognizes that, in addition
20 to attracting capital and businesses to the State, these
21 investments will create training opportunities for the
22 citizens of this State, all of which will create new employment
23 opportunities for Illinoisans at a time when they are most
24 needed, especially for minority-owned and female-owned
25 business enterprises. The General Assembly further finds that
26 regulatory reform measures that increase predictability,

1 stability, and transparency in the ratemaking process are
2 needed to promote prudent, long-term infrastructure investment
3 and to mutually benefit the State's electric utilities and
4 their customers, regulators, and investors.

5 (b) For purposes of this Section, "participating utility"
6 means an electric utility that voluntarily elects and commits
7 to undertake the infrastructure investment program consisting
8 of the commitments and obligations described in paragraphs (1)
9 and (2) of this subsection (b), notwithstanding any other
10 provisions of this Act and without obtaining any approvals from
11 the Commission or any other agency other than as set forth in
12 this Section, regardless of whether any such approval would
13 otherwise be required, provided further that Illinois electric
14 utilities that are affiliated by virtue of a common parent
15 company may, at such utilities' election, be considered a
16 single electric utility. The utility shall recover the
17 expenditures made under the infrastructure investment program
18 through the ratemaking process, including, but not limited to,
19 the formula rate and process set forth in this Section.

20 During the infrastructure investment program's peak
21 program year, it shall create approximately 2000 full-time
22 equivalent jobs, including direct jobs, contractor positions,
23 positions that would otherwise be eliminated, and induced jobs.
24 For purposes of this Section, "peak program year" means the
25 consecutive 12-month period with the highest number of
26 full-time equivalent jobs that occurs between the beginning of

1 investment year 2 and the end of investment year 4.

2 Beginning on the date that the initial rates take effect
3 pursuant to subsection (c) of this Section, a participating
4 utility shall:

5 (1) over a 5-year period, invest at least \$1.1 billion
6 in electric system upgrades, modernization projects, and
7 training facilities, including, but not limited to:

8 (A) distribution infrastructure improvements
9 totaling at least \$1 billion, including underground
10 residential distribution cable injection and
11 replacement and mainline cable system refurbishment
12 and replacement projects;

13 (B) training facility construction or upgrade
14 projects totaling at least \$5 million; any such new
15 facility must be designed for the purpose of obtaining,
16 and the owner of the facility shall apply for,
17 certification under the United States Green Building
18 Council's Leadership in Energy Efficiency Design Green
19 Building Rating System; and

20 (C) wood pole inspection, treatment, and
21 replacement programs; and

22 (2) over a 10-year period, invest at least \$1.5 billion
23 to upgrade and modernize its transmission and distribution
24 infrastructure and in smart grid electric system upgrades,
25 including, but not limited to:

26 (A) additional smart meters;

1 (B) distribution automation;

2 (C) associated cyber secure data communication
3 network; and

4 (D) substation micro-processor relay upgrades.

5 The investment amounts and job figures set forth in this
6 subsection (b) are applicable to a participating utility that
7 serves 3 million or more electric distribution customers in
8 Illinois. If a participating utility serves less than 3 million
9 electric distribution customers in Illinois, then the
10 infrastructure investment program commitments and obligations
11 described in this subsection (b) shall be reduced
12 proportionately, based on the number of customers, for the
13 utility.

14 The investments in the infrastructure investment program
15 described in this subsection (b) shall be incremental to the
16 participating utility's annual capital investment program, as
17 defined by, for purposes of this subsection (b), the
18 participating utility's average capital spend for calendar
19 years 2008, 2009, and 2010 as reported in the applicable
20 Federal Energy Regulatory Commission (FERC) Form 1.

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

1 year. The plan need not allocate the work equally over the
2 respective periods, but should allocate material increments
3 throughout such periods commensurate with the work to be
4 undertaken. No later than September 1 of each subsequent year,
5 the utility shall submit to the Commission a report that
6 includes any update to the plan, a schedule for the current
7 year, the expenditures made for the prior year and
8 cumulatively, and the number of full-time equivalent jobs for
9 the prior year and cumulatively. If the utility is materially
10 deficient in satisfying a schedule or staffing plan, then the
11 plan must also include a corrective action plan to address the
12 deficiency. The fact that the plan or a schedule changes shall
13 not imply the imprudence or unreasonableness of the
14 infrastructure investment program, plan, or schedule.

15 If, subsequent to completion of a corrective action plan,
16 the Commission enters an order finding, after notice and
17 hearing, that a participating utility did not satisfy its peak
18 job commitment described in this subsection (b) for reasons
19 that are reasonably within its control, then the Commission
20 shall also determine, after consideration of the evidence,
21 including, but not limited to, evidence submitted by the
22 Department of Commerce and Economic Opportunity and the
23 utility, the reduction in the number of full-time equivalent
24 jobs during the peak program year due to such failure. The
25 Commission shall notify the Department of any proceeding that
26 is initiated pursuant to this paragraph. For each full-time

1 equivalent job deficiency during the peak program year that the
2 Commission finds as set forth in this paragraph, the
3 participating utility shall, within 30 days after the entry of
4 the Commission's order, pay \$1,500 to a fund for training
5 grants administered under Section 605-800 of The Department of
6 Commerce and Economic Opportunity Law.

7 If the Commission finds, after notice and hearing, that a
8 participating utility is not satisfying its investment amount
9 commitments described in this subsection (b), then the utility
10 shall no longer be eligible for a formula rate tariff under
11 subsection (c) of this Section.

12 The fact that a participating utility invests more than the
13 minimum amounts specified in this subsection (b) shall not
14 imply imprudence or unreasonableness.

15 If a participating utility ceases to have in effect a
16 formula rate under subsection (c) of this Section, then the
17 participating utility's voluntary commitments and obligations
18 under this subsection (b) shall immediately terminate, except
19 for the utility's obligation to pay an amount already owed to
20 the fund for training grants pursuant to a Commission order.

21 In meeting the obligations of paragraphs (1) and (2) of
22 this subsection (b), to the extent feasible and consistent with
23 State and federal law, the investments under the infrastructure
24 investment program should provide employment opportunities for
25 all segments of the population and workforce, including
26 minority-owned and female-owned business enterprises.

1 (c) A participating utility may elect to recover its
2 delivery services costs through a formula rate approved by the
3 Commission, which shall specify the cost components that form
4 the basis of the rate charged to customers with sufficient
5 specificity to operate in a standardized manner and be updated
6 annually with transparent information included in the
7 utility's most recent FERC Form 1 that reflects the utility's
8 actual costs for the applicable 12-month period. In the event
9 the utility recovers a portion of its costs through automatic
10 adjustment clause tariffs on the effective date of this
11 amendatory Act of the 97th General Assembly, the utility may
12 elect to continue to recover these costs through such tariffs,
13 but then these costs shall not be recovered through the formula
14 rate.

15 The formula rate shall be implemented through a tariff
16 filed with the Commission consistent with the provisions of
17 this subsection (c) that shall be applicable to all delivery
18 service customers. The Commission shall initiate and conduct an
19 investigation of the tariff in a manner consistent with the
20 provisions of this subsection (c) and the provisions of Article
21 IX of this Act to the extent they do not conflict with this
22 subsection (c). The formula rate shall remain in effect at the
23 discretion of the utility. The formula rate approved by the
24 Commission shall do the following:

25 (1) Provide for the recovery of the utility's actual
26 costs of service for the applicable 12-month period that

1 are prudently incurred and reasonable in amount consistent
2 with Commission practice and law. The fact that a cost
3 differs from that incurred in a prior 12-month period or
4 that an investment is different from that made in a prior
5 12-month period shall not imply the imprudence or
6 unreasonableness of that cost or investment.

7 (2) Reflect the utility's actual capital structure for
8 the applicable 12-month period, excluding goodwill,
9 subject to a determination of prudence and reasonableness
10 consistent with Commission practice and law.

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

13 (A) the average for the applicable 12-month period
14 of the monthly average yields of 30-year U.S. Treasury
15 bonds published by the Board of Governors of the
16 Federal Reserve System in its weekly H.15 Statistical
17 Release or successor publication; and

18 (B) 650 basis points.

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

1 deemed appropriate by the Commission.

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

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

14 (B) recovery of pension and other post-employment
15 benefits expense based on actual costs incurred for the
16 applicable 12-month period, provided that such costs
17 are supported by an actuarial study;

18 (C) recovery of severance costs amortized over a
19 period that is consistent with savings resulting from
20 the severance;

21 (D) investment return on pension assets net of
22 deferred tax benefits equal to the utility's long-term
23 debt cost of capital as of the end of the applicable
24 12-month period;

25 (E) recovery of the expenses incurred related to
26 the Commission proceeding under this subsection (c) to

1 approve this formula rate and initial rates or to
2 subsequent proceedings related to the formula,
3 provided that the recovery shall be amortized over a
4 three year period; recovery of expenses incurred
5 related to the annual Commission proceedings under
6 subsection (d) of this Section to review the inputs to
7 the formula rate shall be recoverable as expenses in
8 the 12-month period incurred;

9 (F) recovery of existing regulatory assets over
10 the periods previously authorized by the Commission;

11 (G) historical weather normalized billing
12 determinants; and

13 (H) allocation methods for common costs.

14 The Commission's review and order with respect to these
15 protocols shall otherwise be consistent with Commission
16 practice and law.

17 The utility shall file, together with its tariff, data
18 based on its most recent FERC Form 1, plus projected plant
19 additions and correspondingly updated depreciation reserve and
20 expense for the current 12-month period, that shall populate
21 the formula rate and set the initial delivery services rates
22 under the formula. These initial rates shall take effect 30
23 days after the filing, provided, however, that the initial
24 rates shall be subject to retroactive rate adjustments by the
25 Commission, including, but not limited to, refunds or
26 surcharges, that are designed to incorporate the provisions of

1 the Commission's final order approving the formula rate
2 structure and protocols and to give effect to the initial rates
3 as therein approved such that the refunds or surcharges that
4 are applied for the remainder of the period until the first
5 rate update will take effect under subsection (d) shall enable
6 the utility to recover the same amount of revenues the utility
7 otherwise would have recovered had the Commission-approved
8 initial rates been in effect as of the date the tariff was
9 filed.

10 After the utility files its proposed formula rate structure
11 and protocols and initial rates, the Commission shall initiate
12 a docket to review and by order approve, or approve as
13 modified, the formula rate, including the initial rates, as
14 just and reasonable within 180 days after the date on which the
15 tariff was filed, or, if the tariff is filed within 30 days
16 after the effective date of this amendatory Act of the 97th
17 General Assembly, then by December 31, 2011. Such review shall
18 be based on the same evidentiary standards, including, but not
19 limited to, those concerning the prudence and reasonableness of
20 the costs incurred by the utility, the Commission applies in a
21 hearing to review a filing for a general increase in rates
22 under Article IX of this Act.

23 Subsequent changes to the formula rate, including changes
24 to the structure or protocols, shall be made as tariff
25 amendments and filed with the Commission as set forth in
26 Section 9-201 of this Act, provided that any such changes shall

1 be consistent with paragraphs (1) through (4) of this
2 subsection (c).

3 After 11 years following the effective date of this
4 amendatory Act of the 97th General Assembly, the Commission may
5 upon petition or its own initiative, but with reasonable
6 notice, enter upon a hearing concerning proposed changes to the
7 formula rate, including those protocols established under
8 paragraph (4) of this subsection (c), provided that there shall
9 be a rebuttable presumption that the protocols are just and
10 reasonable. These proposed changes shall be stated with
11 particularity and accompanied by clear and convincing evidence
12 that the changes are just and reasonable. No such change
13 adopted by the Commission shall be applied to the calculation
14 of the utility's rates until the next calendar year, with the
15 rates to become effective on June 1 of the year following that
16 calendar year, provided that the next calendar year begins no
17 less than 90 days following the date on which the Commission
18 issues an order adopting the change.

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

23 (d) Subsequent to the Commission's issuance of an order
24 approving the utility's formula rate and initial rates under
25 subsection (c) of this Section, the utility shall make an
26 annual informational filing with the Chief Clerk of the

1 Commission setting forth its updated cost inputs to the formula
2 rate for the applicable 12-month period and the corresponding
3 new charges. Consistent with this subsection (d), the utility
4 shall submit information as set forth in the Commission's rules
5 applicable to a filing for a general increase in rates.
6 Specifically, for each such filing, the utility shall comply
7 with the following requirements and include the following
8 information:

9 (1) File on or before May 1, with the new charges to
10 take effect beginning with the June billing period of the
11 current year. These charges shall take effect on the first
12 billing day of the June billing period and remain in effect
13 through the last billing day of the following May billing
14 period regardless of whether the Commission enters upon a
15 hearing pursuant to this subsection (d).

16 (2) The inputs to the formula rate for the applicable
17 12-month period shall be based on historical data from the
18 utility's most recent annual FERC Form 1 plus projected
19 plant additions and correspondingly updated depreciation
20 reserve and expense for the current 12-month period. In
21 addition, the utility shall also present, for the prior
22 applicable 12-month period, a reconciliation of the inputs
23 for the prior applicable period (FERC Form 1 historical
24 data and projected plant additions) with the actual costs
25 incurred in the prior applicable period, and set forth the
26 applicable charge or credit, if any, resulting from the

1 reconciliation that is incorporated in the current formula
2 rate.

3 (3) The utility shall include, together with the filing
4 of the update of cost inputs to the formula rate,
5 supporting data and documentation for the applicable
6 12-month period that is consistent with the Commission's
7 rules applicable to a filing for a general increase in
8 rates and any rules adopted by the Commission to implement
9 this Section. Normalization adjustments shall not be
10 required. Provided, however, that the utility shall
11 amortize extraordinary charges or credits that are beyond
12 its control and non-recurring in nature, including those
13 related to storms, if the charges or credits exceed
14 \$10,000,000 in the applicable 12-month period.

15 Within 45 days after the utility files its annual update of
16 cost inputs to the formula rate, the Commission shall have the
17 authority, either upon complaint or its own initiative, but
18 with reasonable notice, to enter upon a hearing concerning the
19 prudence and reasonableness of the costs incurred by the
20 utility during the applicable 12-month period that are
21 reflected in the inputs to the formula rate derived from the
22 utility's FERC Form 1. The complaining party or Commission, to
23 the extent it is acting on its own initiative, shall state each
24 objection with particularity and provide substantial evidence
25 in support thereof, after which the utility shall have the
26 opportunity to rebut the evidence. The Commission shall apply

1 the same evidentiary standards, including, but not limited to,
2 those concerning the prudence and reasonableness of the costs
3 incurred by the utility, in the hearing as it would apply in a
4 hearing to review a filing for a general increase in rates
5 under Article IX of this Act. The Commission shall not,
6 however, have the authority in a proceeding under this
7 subsection (d) to consider or order any changes to the
8 structure or protocols of the formula rate approved pursuant to
9 subsection (c) of this Section. In a proceeding under this
10 subsection (d), the Commission shall enter its order no later
11 than 180 days after the utility's filing of its annual update
12 of cost inputs to the formula rate, provided that the
13 Commission may, in its discretion, extend the period for a
14 further period not to exceed 75 days. If, in the order, the
15 Commission approves an adjustment to the inputs of the formula
16 rate, then the adjustment, whether in the form of a charge or
17 credit, with interest, shall be applied prospectively through
18 the formula rate. The Commission's determinations of the
19 prudence and reasonableness of the costs incurred for the
20 applicable 12-month period shall be final upon entry of the
21 Commission's order and shall not be subject to reopening,
22 reexamination, or collateral attack in any other proceeding,
23 case, docket, order, rule or regulation, provided, however,
24 that nothing in this subsection (d) shall prohibit a party from
25 petitioning the Commission to rehear or appeal to the courts
26 the order pursuant to the provisions this Act.

1 In the event the Commission does not, either upon complaint
2 or its own initiative, enter upon a hearing within 45 days
3 after the utility files the annual update of cost inputs to its
4 formula rate, then the costs incurred for the applicable
5 12-month period shall be deemed prudent and reasonable, and the
6 filed charges shall not be subject to reopening, reexamination,
7 or collateral attack in any other proceeding, case, docket,
8 order, rule, or regulation.

9 (e) Nothing in subsections (c) or (d) of this Section shall
10 prohibit the Commission from investigating, or an electric
11 utility from filing, revenue-neutral tariff changes related to
12 rate design of a formula rate that has been placed into effect
13 for the utility. Following approval of an electric utility's
14 formula rate pursuant to subsection (c) of this Section, the
15 utility shall make a filing with the Commission during each
16 subsequent 3-year period that either proposes revenue-neutral
17 tariff changes or re-files the existing tariffs without change,
18 which shall present the Commission with an opportunity to
19 suspend the tariffs and consider revenue-neutral tariff
20 changes related to rate design.

21 (f) Within 30 days after the filing of a tariff pursuant to
22 subsection (c) of this Section, each participating utility
23 shall develop and file with the Commission a multi-year plan
24 that has the goal of cumulatively improving performance in each
25 of the following categories by 15% over a 10-year period: (1)
26 reliability, (2) safety, (3) providing opportunities for

1 minority-owned and female-owned business enterprises
2 consistent with State and federal law, and (4) customer
3 service. The plan may include financial incentives. If the plan
4 does include financial incentives, then it must also include
5 symmetrical financial penalties and is subject to Commission
6 review and modification following notice and hearing. The
7 Commission shall enter an order in the proceeding within 120
8 days after the plan is filed. If the Commission modifies the
9 plan, then the participating utility may elect to proceed with
10 the plan as modified or to proceed with the plan without
11 financial incentives.

12 On October 1 of each subsequent year, each participating
13 utility shall file a report with the Commission that includes
14 performance under each metric, a discussion of performance
15 under the plan, and any updates to the plan. If the Commission
16 finds in any annual period that the achieved metrics do not
17 show material movement such that the goal is likely to be
18 achieved and then maintained in any or all categories, then the
19 Commission may require the participating utility to devise a
20 corrective action plan, subject to Commission approval and
21 oversight, to bring performance back on track toward reaching
22 and maintaining the 15% goal.

23 (g) Nothing in this Section is intended to legislatively
24 overturn the opinion issued in Commonwealth Edison Co. v. Ill.
25 Commerce Comm'n, Nos. 2-08-0959, 2-08-1037, 2-08-1137,
26 1-08-3008, 1-08-3030, 1-08-3054, 1-08-3313 cons. (Ill. App.

1 Ct. 2d Dist. Sept. 30, 2010) or impact any subsequent review by
2 the Illinois Supreme Court of that opinion.

3 (220 ILCS 5/19-150 new)

4 Sec. 19-150. Infrastructure investment and modernization;
5 regulatory reform.

6 (a) The General Assembly recognizes that for well over a
7 century, Illinois residents and businesses have been
8 well-served by and have benefitted from a comprehensive gas
9 utility system. The General Assembly finds that gas utilities
10 are now entering a new construction cycle that is needed to
11 refurbish, modernize, and expand systems to continue to provide
12 safe, reliable, and affordable service to the State's current
13 and future gas customers in this newly digitized age. In
14 particular, the General Assembly finds that it is the policy of
15 this State that significant investments need to be made over
16 the next decade to modernize and upgrade gas distribution
17 systems in the State. These investments will ensure that the
18 State's gas infrastructure will promote future economic
19 development in the State and that the State's utilities will be
20 able to continue to provide quality gas service to their
21 customers, including innovative technological offerings that
22 will enhance customer experience and choice. These investments
23 will also ensure that the State's gas utility infrastructure
24 continues to be safe and reliable. The introduction of
25 performance metrics will further ensure that safety and

1 reliability and other indicators are not just maintained but
2 improved by more than 15% over the next decade.

3 The General Assembly further recognizes that, in addition
4 to attracting capital and businesses to the State, these
5 investments will create training opportunities for the
6 citizens of this State, all of which will create new employment
7 opportunities for Illinoisans at a time when they are most
8 needed, especially for female-owned and minority-owned
9 business enterprises. The General Assembly further finds that
10 regulatory reform measures that increase predictability,
11 stability, and transparency in the ratemaking process are
12 needed to promote prudent, long-term infrastructure investment
13 and to mutually benefit the State's gas utilities and their
14 customers, regulators and investors.

15 (b) For purposes of this Section, "participating utility"
16 means a gas utility that voluntarily elects and commits to
17 undertake the infrastructure investment program consisting of
18 the commitments and obligations described in this subsection
19 (b), notwithstanding any other provisions of this Act and
20 without obtaining any approvals from the Commission or any
21 other agency other than as set forth in this Section,
22 regardless of whether any such approval would otherwise be
23 required, provided further that Illinois gas utilities that are
24 affiliated by virtue of a common parent company may, at such
25 utilities' election, be considered a single gas utility. The
26 utility shall recover the expenditures made under the

1 infrastructure investment program through the ratemaking
2 process, including, but not limited to, the formula rate and
3 process set forth in this Section.

4 During the infrastructure investment program's peak
5 program year, it shall create approximately 400 full-time
6 equivalent jobs, including direct jobs, contractor positions,
7 positions that would otherwise be eliminated, and induced jobs.
8 For purposes of this Section, "peak program year" means the
9 consecutive 12-month period with the highest number of
10 full-time equivalent jobs that occurs between the beginning of
11 investment year 2 and the end of investment year 4. Beginning
12 on the date the initial rates take effect pursuant to
13 subsection (c) of this Section, a participating utility shall
14 invest over a 10-year period at least \$500,000,000.00 in
15 distribution and transmission upgrades, modernization and
16 compliance projects, and training facilities.

17 The investment amounts and job figures set forth in this
18 subsection (b) are applicable to a participating utility that
19 serves 2 million or more customers in Illinois. If a
20 participating utility serves less than 2 million customers in
21 Illinois, then the infrastructure investment program
22 commitments and obligations described in this subsection (b)
23 shall be reduced proportionately, based on the number of
24 customers, for the utility.

25 The investments in the infrastructure investment program
26 described in this subsection (b) shall be incremental to the

1 participating utility's annual capital investment program, as
2 defined by, for purposes of this subsection (b), the
3 participating utility's average capital spend for calendar
4 years 2008, 2009, and 2010 as reported in the applicable
5 Federal Energy Regulatory Commission (FERC) Form 2 or, if the
6 FERC Form 2 was not filed, in the applicable Form 21 ILCC.

7 Within 60 days after filing a tariff under subsection (c)
8 of this Section, a participating utility shall submit to the
9 Commission its plan, including scope, schedule, and staffing,
10 for satisfying its infrastructure investment program
11 commitments pursuant to this subsection (b). The submitted plan
12 shall include a schedule and staffing plan for the current
13 year. The plan need not allocate the work equally over the
14 respective periods, but should allocate material increments
15 throughout these periods commensurate with the work to be
16 undertaken. No later than September 1 of each subsequent year,
17 the utility shall submit to the Commission a report that
18 includes any update to the plan, a schedule for the current
19 year, the expenditures made for the prior year and
20 cumulatively, and the number of full-time equivalent jobs for
21 the prior year and cumulatively. If the utility is materially
22 deficient in satisfying a schedule or staffing plan, then the
23 plan must also include a corrective action plan to address the
24 deficiency. The fact that the plan or a schedule changes shall
25 not imply the imprudence or unreasonableness of the
26 infrastructure investment program, plan, or schedule.

1 If, subsequent to completion of a corrective action plan,
2 the Commission enters an order finding, after notice and
3 hearing, that a participating utility did not satisfy its peak
4 job commitment described in this subsection (b) for reasons
5 that are reasonably within its control, then the Commission
6 shall also determine, after consideration of the evidence,
7 including, but not limited to, evidence submitted by the
8 Department of Commerce and Economic Opportunity and the
9 utility, the reduction in the number of full-time equivalent
10 jobs during the peak program year due to the failure. The
11 Commission shall notify the Department of any proceeding that
12 is initiated pursuant to this paragraph. For each full-time
13 equivalent job deficiency during the peak program year that the
14 Commission finds as set forth in this paragraph, the
15 participating utility shall, within 30 days after the entry of
16 the Commission's order, pay \$1,500 to a fund for training
17 grants administered under Section 605-800 of The Department of
18 Commerce and Economic Opportunity Law.

19 If the Commission finds, after notice and hearing, that a
20 participating utility is not satisfying its investment amount
21 commitments described in this subsection (b), then the utility
22 shall no longer be eligible for a formula rate tariff under
23 subsection (c) of this Section.

24 The fact that a participating utility invests more than the
25 minimum amounts specified in this subsection (b) shall not
26 imply imprudence or unreasonableness.

1 If a participating utility ceases to have in effect a
2 formula rate under subsection (c) of this Section, then the
3 participating utility's voluntary commitments and obligations
4 under this subsection (b) shall immediately terminate, except
5 for the utility's obligation to pay an amount already owed to
6 the fund for training grants pursuant to a Commission order.

7 In meeting the obligations of this subsection (b), to the
8 extent feasible and consistent with State and federal law, the
9 investments under the infrastructure investment program should
10 provide employment opportunities for all segments of the
11 population and workforce, including minority-owned and
12 female-owned business enterprises.

13 (c) A participating utility may elect to recover its costs
14 of service through a formula rate approved by the Commission,
15 which shall specify the cost components that form the basis of
16 the rate charged to customers with sufficient specificity to
17 operate in a standardized manner and be updated annually with
18 transparent information included in the utility's most recent
19 FERC Form 2 or, if the FERC Form 2 was not filed, Form 21 ILCC,
20 that reflects the utility's actual costs for the applicable
21 12-month period. In the event the utility recovers a portion of
22 its costs through automatic adjustment clause tariffs on the
23 effective date of this amendatory Act of the 97th General
24 Assembly, the utility may elect to continue to recover these
25 costs through the tariffs, but then these costs shall not be
26 recovered through the formula rate.

1 The formula rate shall be implemented through a tariff
2 filed with the Commission consistent with the provisions of
3 this subsection (c) that shall be applicable to all of the
4 utility's customers. The Commission shall initiate and conduct
5 an investigation of the tariff in a manner consistent with the
6 provisions of this subsection (c) and the provisions of Article
7 IX of this Act to the extent they do not conflict with this
8 subsection (c). The formula rate shall remain in effect at the
9 discretion of the utility. The formula rate approved by the
10 Commission shall do the following:

11 (1) Provide for the recovery of the utility's actual
12 costs of service for the applicable 12-month period that
13 are prudently incurred and reasonable in amount consistent
14 with Commission practice and law. The fact that a cost
15 differs from that incurred in a prior 12-month period or
16 that an investment is different from that made in a prior
17 12-month period shall not imply the imprudence or
18 unreasonableness of that cost or investment.

19 (2) Reflect the utility's actual capital structure for
20 the applicable 12-month period, excluding goodwill,
21 subject to a determination of prudence and reasonableness
22 consistent with Commission practice and law.

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

25 (A) the average for the applicable 12-month period
26 of the monthly average yields of 30-year U.S. Treasury

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

4 (B) 650 basis points.

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

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

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

25 (B) recovery of pension and other post-employment
26 benefits expense based on actual costs incurred for the

1 applicable 12-month period, provided that these costs
2 are supported by an actuarial study;

3 (C) recovery of severance costs amortized over a
4 period that is consistent with savings resulting from
5 the severance;

6 (D) investment return on pension assets net of
7 deferred tax benefits equal to the utility's long-term
8 debt cost of capital as of the end of the applicable
9 12-month period;

10 (E) recovery of the expenses incurred related to
11 the Commission proceeding under this subsection (c) to
12 approve this formula rate and initial rates or to
13 subsequent proceedings related to the formula,
14 provided that the recovery shall be amortized over a
15 3-year period; recovery of expenses incurred related
16 to the annual Commission proceedings under subsection
17 (d) of this Section to review the inputs to the formula
18 rate shall be recoverable as expenses in the 12-month
19 period incurred;

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

22 (G) historical weather normalized billing
23 determinants; and

24 (H) allocation methods for common costs.

25 The Commission's review and order with respect to these
26 protocols shall otherwise be consistent with Commission

1 practice and law.

2 The utility shall file, together with its tariff, data
3 based on its most recent FERC Form 2 or, if the FERC Form 2 was
4 not filed, Form 21 ILCC, plus projected plant additions and
5 correspondingly updated depreciation reserve and expense for
6 the current 12-month period, that shall populate the formula
7 rate and set the initial rates under the formula. These initial
8 rates shall take effect 30 days after the filing, provided,
9 however, that the initial rates shall be subject to retroactive
10 rate adjustments by the Commission, including, but not limited
11 to, refunds or surcharges, that are designed to incorporate the
12 provisions of the Commission's final order approving the
13 formula rate structure and protocols and to give effect to the
14 initial rates as therein approved such that the refunds or
15 surcharges that are applied for the remainder of the period
16 until the first rate update will take effect under subsection
17 (d), shall enable the utility to recover the same amount of
18 revenues the utility otherwise would have recovered had the
19 Commission-approved initial rates been in effect as of the date
20 the tariff was filed.

21 After the utility files its proposed formula rate structure
22 and protocols and initial rates, the Commission shall initiate
23 a docket to review and by order approve, or approve as
24 modified, the formula rate, including the initial rates, as
25 just and reasonable within 180 days after the date on which the
26 tariff was filed, or, if the tariff is filed within 30 days

1 after the effective date of this amendatory Act of the 97th
2 General Assembly, then by December 31, 2011. This review shall
3 be based on the same evidentiary standards, including, but not
4 limited to, those concerning the prudence and reasonableness of
5 the costs incurred by the utility, the Commission applies in a
6 hearing to review a filing for a general increase in rates
7 under Article IX of this Act.

8 Subsequent changes to the formula rate, including changes
9 to the structure or protocols, shall be made as tariff
10 amendments and filed with the Commission as set forth in
11 Section 9-201 of this Act, provided that any such changes shall
12 be consistent with paragraphs (1) through (4) of this
13 subsection (c).

14 After 11 years following the effective date of this
15 amendatory Act of the 97th General Assembly, the Commission may
16 upon petition or its own initiative, but with reasonable
17 notice, enter upon a hearing concerning proposed changes to the
18 formula rate, including those protocols established under
19 paragraph (4) of this subsection (c), provided that there shall
20 be a rebuttable presumption that the protocols are just and
21 reasonable. The proposed changes shall be stated with
22 particularity and accompanied by clear and convincing evidence
23 that the changes are just and reasonable. No such change
24 adopted by the Commission shall be applied to the calculation
25 of the utility's rates until the next calendar year, with the
26 rates to become effective on June 1 of the year following that

1 calendar year, provided that the next calendar year begins no
2 less than 90 days following the date on which the Commission
3 issues an order adopting the change.

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

8 (d) Subsequent to the Commission's issuance of an order
9 approving the utility's formula rate and initial rates under
10 subsection (c) of this Section, the utility shall make an
11 annual informational filing with the Chief Clerk of the
12 Commission setting forth its updated cost inputs to the formula
13 rate for the applicable 12-month period and the corresponding
14 new charges. Consistent with this subsection (d), the utility
15 shall submit information as set forth in the Commission's rules
16 applicable to a filing for a general increase in rates.
17 Specifically, for each such filing, the utility shall comply
18 with the following requirements and include the following
19 information:

20 (1) File on or before May 1, with the new charges to
21 take effect beginning with the June billing period of the
22 current year. These charges shall take effect on the first
23 billing day of the June billing period and remain in effect
24 through the last billing day of the following May billing
25 period regardless of whether the Commission enters upon a
26 hearing pursuant to this subsection (d).

1 (2) The inputs to the formula rate for the applicable
2 12-month period shall be based on historical data from the
3 utility's most recent annual FERC Form 2 or, if the FERC
4 Form 2 was not filed, Form 21 ILCC, plus projected plant
5 additions and correspondingly updated depreciation reserve
6 and expense for the current 12-month period. In addition,
7 the utility shall also present, for the prior applicable
8 12-month period, a reconciliation of the inputs for the
9 prior applicable period (FERC Form 2 or Form 21 ILCC, as
10 applicable, historical data and projected plant additions)
11 with the actual costs incurred in the prior applicable
12 period, and set forth the applicable charge or credit, if
13 any, resulting from the reconciliation that is
14 incorporated in the current formula rate.

15 (3) The utility shall include, together with the filing
16 of the update of cost inputs to the formula rate,
17 supporting data and documentation for the applicable
18 12-month period that is consistent with the Commission's
19 rules applicable to a filing for a general increase in
20 rates and any rules adopted by the Commission to implement
21 this Section.

22 Within 45 days after the utility files its annual update of
23 cost inputs to the formula rate, the Commission shall have the
24 authority, either upon complaint or its own initiative, but
25 with reasonable notice, to enter upon a hearing concerning the
26 prudence and reasonableness of the costs incurred by the

1 utility during the applicable 12-month period that are
2 reflected in the inputs to the formula rate derived from the
3 utility's FERC Form 2 or Form 21 ILCC, as applicable. The
4 complaining party or Commission, to the extent it is acting on
5 its own initiative, shall state each objection with
6 particularity and provide substantial evidence in support
7 thereof, after which the utility shall have the opportunity to
8 rebut the evidence. The Commission shall apply the same
9 evidentiary standards, including, but not limited to, those
10 concerning the prudence and reasonableness of the costs
11 incurred by the utility, in the hearing as it would apply in a
12 hearing to review a filing for a general increase in rates
13 under Article IX of this Act. The Commission shall not,
14 however, have the authority in a proceeding under this
15 subsection (d) to consider or order any changes to the
16 structure or protocols of the formula rate approved pursuant to
17 subsection (c) of this Section. In a proceeding under this
18 subsection (d), the Commission shall enter its order no later
19 than 180 days after the utility's filing of its annual update
20 of cost inputs to the formula rate, provided that the
21 Commission may, in its discretion, extend the period for a
22 further period not to exceed 75 days. If, in the order, the
23 Commission approves an adjustment to the inputs of the formula
24 rate, then the adjustment, whether in the form of a charge or
25 credit, with interest, shall be applied prospectively through
26 the formula rate. The Commission's determinations of the

1 prudence and reasonableness of the costs incurred for the
2 applicable 12-month period shall be final upon entry of the
3 Commission's order and shall not be subject to reopening,
4 reexamination, or collateral attack in any other proceeding,
5 case, docket, order, rule, or regulation, provided, however,
6 that nothing in this subsection (d) shall prohibit a party from
7 petitioning the Commission to rehear or appeal to the courts
8 the order pursuant to the provisions this Act.

9 In the event the Commission does not, either upon complaint
10 or its own initiative, enter upon a hearing within 45 days
11 after the utility files the annual update of cost inputs to its
12 formula rate, then the costs incurred for the applicable
13 12-month period shall be deemed prudent and reasonable, and the
14 filed charges shall not be subject to reopening, reexamination,
15 or collateral attack in any other proceeding, case, docket,
16 order, rule, or regulation.

17 (e) Nothing in subsections (c) or (d) of this Section shall
18 prohibit the Commission from investigating, or a gas utility
19 from filing, revenue-neutral tariff changes related to rate
20 design of a formula rate that has been placed into effect for
21 the utility. Following approval of a gas utility's formula rate
22 pursuant to subsection (c) of this Section, the utility shall
23 make a filing with the Commission during each subsequent 3-year
24 period that either proposes revenue-neutral tariff changes or
25 re-files the existing tariffs without change, which shall
26 present the Commission with an opportunity to suspend these

1 tariffs and consider revenue-neutral tariff changes related to
2 rate design.

3 (f) Within 30 days after the filing of a tariff pursuant to
4 subsection (c) of this Section, each participating utility
5 shall develop and file with the Commission a multi-year plan
6 that has the goal of cumulatively improving performance in each
7 of the following categories by 15% over a 10-year period: (1)
8 reliability, (2) safety, (3) providing opportunities for
9 minority-owned and female-owned business enterprises
10 consistent with State and federal law, and (4) customer
11 service. The plan may include financial incentives. If the plan
12 does include financial incentives, then it must also include
13 symmetrical financial penalties and is subject to Commission
14 review and modification following notice and hearing. The
15 Commission shall enter an order in the proceeding within 120
16 days after the plan is filed. If the Commission modifies the
17 plan, then the participating utility may elect to proceed with
18 the plan as modified or to proceed with the plan without
19 financial incentives.

20 On October 1 of each subsequent year, each participating
21 utility shall file a report with the Commission that includes
22 performance under each metric, a discussion of performance
23 under the plan, and any updates to the plan. If the Commission
24 finds in any annual period that the achieved metrics do not
25 show material movement such that the goal is likely to be
26 achieved and then maintained in any or all categories, then the

1 Commission may require the participating utility to devise a
2 corrective action plan, subject to Commission approval and
3 oversight, to bring performance back on track toward reaching
4 and maintaining the 15% goal.

5 (g) Nothing in this Section is intended to legislatively
6 overturn the opinion issued in Commonwealth Edison Co. v. Ill.
7 Commerce Comm'n, Nos. 2-08-0959, 2-08-1037, 2-08-1137,
8 1-08-3008, 1-08-3030, 1-08-3054, 1-08-3313 cons. (Ill. App.
9 Ct. 2d Dist. Sept. 30, 2010) or impact any subsequent review by
10 the Illinois Supreme Court of that opinion.

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