



Rep. Karen May

**Filed: 5/13/2011**

09700HB0014ham003

LRB097 05207 ASK 55629 a

1 AMENDMENT TO HOUSE BILL 14

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 14, AS AMENDED, by  
3 replacing everything after the enacting clause with the  
4 following:

5 "Section 5. The Public Utilities Act is amended by changing  
6 Section 9-201 and by adding Sections 9-220.3 and 9-228 as  
7 follows:

8 (220 ILCS 5/9-201) (from Ch. 111 2/3, par. 9-201)

9 Sec. 9-201. (a) Unless the Commission otherwise orders, and  
10 except as otherwise provided in this Section, no change shall  
11 be made by any public utility in any rate or other charge or  
12 classification, or in any rule, regulation, practice or  
13 contract relating to or affecting any rate or other charge,  
14 classification or service, or in any privilege or facility,  
15 except after 45 days' notice to the Commission and to the  
16 public as herein provided. Such notice shall be given by filing

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

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

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

1 customers potentially affected by including a notice and  
2 description of such change, and of Commission procedures for  
3 intervention, in the first bill sent to each such customer  
4 after the filing of the proposed change.

5 (b) Whenever there shall be filed with the Commission any  
6 schedule stating an individual or joint rate or other charge,  
7 classification, contract, practice, rule or regulation, the  
8 Commission shall have power, and it is hereby given authority,  
9 either upon complaint or upon its own initiative without  
10 complaint, at once, and if it so orders, without answer or  
11 other formal pleadings by the interested public utility or  
12 utilities, but upon reasonable notice, to enter upon a hearing  
13 concerning the propriety of such rate or other charge,  
14 classification, contract, practice, rule or regulation, and  
15 pending the hearing and decision thereon, such rate or other  
16 charge, classification, contract, practice, rule or regulation  
17 shall not go into effect. The period of suspension of such rate  
18 or other charge, classification, contract, practice, rule or  
19 regulation shall not extend more than 105 days beyond the time  
20 when such rate or other charge, classification, contract,  
21 practice, rule or regulation would otherwise go into effect  
22 unless the Commission, in its discretion, extends the period of  
23 suspension for a further period of not exceeding 6 months. The  
24 Commission may further extend this suspension period for a  
25 period equivalent to the length of any delay that the  
26 Commission finds to have been caused by the applicant's failure

1 to provide data or information requested by the Commission or  
2 that the Commission ordered the applicant to provide to the  
3 parties.

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

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

25 (c) If the Commission enters upon a hearing concerning the  
26 propriety of any proposed rate or other charge, classification,

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

19 (d) Except where compliance with Section 8-401 of this Act  
20 is of urgent and immediate concern, no representative of a  
21 public utility may discuss with a commissioner, commissioner's  
22 assistant, or hearing examiner in a non-public setting a  
23 planned filing for a general rate increase. If a public utility  
24 makes a filing under this Section, then no substantive  
25 communication by any such person with a commissioner,  
26 commissioner's assistant or hearing examiner concerning the

1 filing is permitted until a notice of hearing has been issued.  
2 After the notice of hearing has been issued, the only  
3 communications by any such person with a commissioner,  
4 commissioner's assistant, or hearing examiner concerning the  
5 filing permitted are communications permitted under Section  
6 10-103 of this Act. If any such communication does occur, then  
7 within 5 days of the docket being initiated all details  
8 relating to the communication shall be placed on the public  
9 record of the proceeding. The record shall include any  
10 materials, whether written, recorded, filmed, or graphic in  
11 nature, produced or reproduced on any media, used in connection  
12 with the communication. The record shall reflect the names of  
13 all persons who transmitted, received, or were otherwise  
14 involved in the communication, the duration of the  
15 communication, and whether the communication occurred in  
16 person or by other means. In the case of an oral communication,  
17 the record shall also reflect the location or locations of all  
18 persons involved in the communication and, if the communication  
19 occurred by telephone, the telephone numbers for the callers  
20 and recipients of the communication. A commissioner,  
21 commissioner's assistant, or hearing examiner who is involved  
22 in any such communication shall be recused from the affected  
23 proceeding. The Commission, or any commissioner or hearing  
24 examiner presiding over the proceeding shall, in the event of a  
25 violation of this Section, take action necessary to ensure that  
26 such violation does not prejudice any party or adversely affect

1 the fairness of the proceedings including dismissing the  
2 affected proceeding. Nothing in this subsection (d) is intended  
3 to preclude otherwise allowable updates on issues that may be  
4 indirectly related to a general rate case filing because cost  
5 recovery for the underlying activity may be requested. Such  
6 updates may include, without limitation, issues related to  
7 outages and restoration, credit ratings, security issuances,  
8 reliability, Federal Energy Regulatory Commission matters,  
9 Federal Communications Commission matters, regional  
10 reliability organizations, consumer education, or labor  
11 matters, provided that such updates may not include cost  
12 recovery in a planned rate case.

13 (Source: P.A. 96-33, eff. 7-10-09.)

14 (220 ILCS 5/9-220.3 new)

15 Sec. 9-220.3. Electric utility infrastructure enhancement  
16 cost recovery mechanism.

17 (a) If the Commission finds that substantial investments  
18 are needed to refurbish, rebuild, modernize, expand, or create  
19 systems to maintain or improve upon a utility's ability to  
20 provide safe, reliable, high-quality, and affordable electric  
21 service to the State's current and future utility customers,  
22 then the Commission may encourage such investments by  
23 authorizing utilities to recover such investments, including a  
24 reasonable return on such investments, if they are reasonably  
25 and prudently incurred, through special cost-tracking

1 mechanisms, as further defined in this Section. For purposes of  
2 this Section, systems to maintain or improve upon a utility's  
3 ability to provide safe, reliable, high-quality, and  
4 affordable electric service to the State's current and future  
5 utility customers may include, but need not be limited to,  
6 innovative technologies and infrastructure expected to enhance  
7 customers' control over their energy consumption, better  
8 identify and control outages, and lead to more widespread or  
9 efficient use of distributed generation, renewable energy,  
10 energy efficiency, demand response, and other energy  
11 resources.

12 (b) To be eligible to recover investments pursuant to the  
13 special cost-tracking mechanism, a utility must submit to the  
14 Commission a petition, which must include the following:

15 (1) A description of the utility's plans to refurbish,  
16 rebuild, modernize, expand, or create systems to maintain  
17 or improve upon the utility's ability to provide safe,  
18 reliable, high-quality, and affordable electric service to  
19 the State's current and future utility customers. This plan  
20 description must include estimated investments for each  
21 element of the plan, the changes that would be made to  
22 existing systems, and the new systems that would be  
23 created, an explanation of how such changes and additions  
24 would be used and useful for maintaining or improving upon  
25 a utility's ability to provide safe, reliable,  
26 high-quality, and affordable electric service to the



1       State's current and future utility customers, and a present  
2       value of future revenue requirements study that shows a  
3       cost comparison between each element of the plan and all  
4       reasonable alternatives.

5       (2) A description and quantification, to the extent  
6       possible, of the risks involved both in carrying out the  
7       plan and in not carrying out the plan.

8       (3) The proposed formula or formulas that would be  
9       utilized to compute the rates through which investments  
10       would be recovered, which shall include a true-up provision  
11       from the prior period's under or over collection of costs.

12       (4) The proposed accounting system and protocols that  
13       would be utilized to distinguish between expenses and  
14       investments recovered through existing rate mechanisms and  
15       expenses and investments that would be recovered through  
16       the proposed special cost-tracking mechanism.

17       (5) A report on the expected impact of the utility's  
18       plans on economic development, State and local tax  
19       revenues, and net job creation within Illinois.

20       (6) The proposed reports through which the utility  
21       would keep the Commission informed of progress toward  
22       refurbishing, rebuilding, modernizing, expanding, or  
23       creating systems, as identified in the plans described in  
24       relation to paragraph (1), as well as all material changes  
25       to those plans.

26       (7) Schedules, showing key dates for implementation of

1       the plan, establishment of the special cost-tracking  
2       mechanism, submittal of proposed reports, and the updating  
3       of formulas.

4       (8) Any other information that the utility believes  
5       necessary to establish the appropriateness of its plans and  
6       its proposed special cost-tracking mechanism.

7       (9) Verified statements of qualified experts,  
8       attesting to the veracity of the information contained in  
9       the petition, and to the likelihood of implementing the  
10       plan and the proposed special cost-tracking mechanism  
11       within the time frame specified in the proposed schedules.

12       (c) The Commission shall issue an order with respect to a  
13       special cost-tracking mechanism pursuant to this Section no  
14       more than 330 days following receipt of a petition filed  
15       pursuant to subsection (b) of this Section. The Commission  
16       shall enter an order approving a utility's proposed special  
17       cost-tracking mechanism, with or without modifications, as  
18       well as an implementation schedule, if it finds that:

19       (1) The utility's plans to refurbish, rebuild,  
20       modernize, expand, or create systems are feasible,  
21       necessary to maintain or improve upon the utility's ability  
22       to provide safe, reliable, high-quality, and affordable  
23       electric service to the State's current and future utility  
24       customers, and are the least-cost means of achieving those  
25       results.

26       (2) The benefits of the utility's plan, in terms of its

1 ability to maintain or improve upon a utility's ability to  
2 provide safe, reliable, high-quality, and affordable  
3 electric service to the State's current and future utility  
4 customers are likely to exceed the plan's costs or the  
5 risks involved in not carrying out the plan exceed those of  
6 carrying out the plan.

7 (3) The special cost-tracking mechanism adopted in the  
8 order, including any formulas, accounting systems, or  
9 rates of return, or reconciliation procedures embedded  
10 within the mechanism:

11 (A) includes only capitalized infrastructure  
12 investments;

13 (B) includes a rate of return on common equity that  
14 evaluates the relative risk of cost recovery through  
15 the cost-tracking mechanism in comparison to the risk  
16 of recovery through base rates;

17 (C) includes provisions for an annual  
18 reconciliation of amounts collected from a surcharge  
19 pursuant to this special cost-tracking mechanism with  
20 the actual, prudently incurred, and just and  
21 reasonable costs recoverable for each annual period  
22 during which the surcharge was in effect;

23 (D) includes an offset for savings that are  
24 realized as a result of the infrastructure investment  
25 program for the relevant period;

26 (E) includes provisions for an annual internal

1           audit that includes, but is not limited to, a  
2           determination of whether the costs recovered through  
3           this special cost-tracking mechanism are recovered  
4           through other approved tariffs, whether the surcharge  
5           is properly billed to customers in the correct time  
6           periods, whether the applicable costs and revenues are  
7           properly identified and recorded;

8           (F) is expected to provide an adequate incentive  
9           for the utility to carry out its plans to refurbish,  
10           rebuild, modernize, expand, or create systems  
11           necessary to maintain or improve upon the utility's  
12           ability to provide safe, reliable, high-quality, and  
13           affordable electric service to the State's current and  
14           future utility customers;

15           (G) is to be applied to all delivery service  
16           customers of the utility; and

17           (H) is otherwise just and reasonable, and in the  
18           interests of both the utility and the utility's  
19           customers.

20           (4) It is likely that the plan and the special  
21           cost-tracking mechanism adopted in the order can be  
22           implemented in a manner consistent with the implementation  
23           schedule adopted by the order.

24           (5) The surcharge that results from the implementation  
25           of a special cost-tracking mechanism established pursuant  
26           to this Section shall appear as a separate line item on the

1       customer bill.

2       The Commission's order approving a special cost-tracking  
3 mechanism and its implementation schedule, may further include  
4 requirements for periodic reporting related to the utility's  
5 plans or the special cost-tracking mechanism adopted in the  
6 order.

7       If the Commission is unable to make all of the findings  
8 specified in paragraphs (1) through (5) of this subsection (c),  
9 then the Commission shall enter an order denying the utility's  
10 request to establish a special cost-tracking mechanism  
11 pursuant to this Section, and such order shall be considered to  
12 be a final order of the Commission subject to petitions for  
13 rehearing and appellate procedures.

14       (d) Following the date of an order approving a special  
15 cost-tracking mechanism for a utility, a utility shall have 14  
16 days to notify the Commission in writing whether it will accept  
17 any modifications so identified in the order or whether it has  
18 elected not to proceed with the special cost-tracking  
19 mechanism. If the utility notifies the Commission that it will  
20 accept such modifications, then the Commission shall issue an  
21 amended order, without further hearing, within 14 days  
22 following such notification, approving the program as  
23 modified, and such order shall be considered to be a final  
24 order of the Commission subject to petitions for rehearing and  
25 appellate procedures.

26       (e) Upon 45 days' notice, a utility that is employing a

1 special cost-tracking mechanism pursuant to this Section may  
2 cancel or suspend the mechanism, without the approval of the  
3 Commission.

4 (f) If a utility is recovering costs through a special  
5 cost-tracking mechanism, approved pursuant to this Section,  
6 after a period of 3 years after the effective date of the  
7 mechanism, then the Commission may, on its own motion (1)  
8 initiate a proceeding to consider whether the utility is  
9 achieving the goals of its original plan, or any subsequently  
10 modified plans, to refurbish, rebuild, modernize, expand, or  
11 create systems to maintain or improve upon the utility's  
12 ability to provide safe, reliable, high-quality, and  
13 affordable electric service to the State's current and future  
14 utility customers or (2) initiate a proceeding to consider  
15 whether subsequently modified plans continue to be in the best  
16 interest of the State's current and future utility customers.  
17 If the Commission enters an order, following a hearing process,  
18 finding that the utility's plans are no longer effective in  
19 achieving their goals, or are no longer in the best interest of  
20 the State's current and future utility customers, then the  
21 Commission may direct the utility to take one of the following  
22 actions, at the choice of the utility:

23 (1) The utility may prepare and file with the  
24 Commission, within a period of 12 months after the date of  
25 the Commission's order, a general rate case pursuant to  
26 Section 9-201. When the rates pursuant to that filing go

1 into effect, the utility's special cost-tracking mechanism  
2 pursuant to this Section shall be cancelled.

3 (2) The utility may request Commission approval to  
4 cancel its special cost-tracking mechanism, within a  
5 period of not more than 45 days from the date of the  
6 Commission's order.

7 (g) There shall be a rebuttable presumption that any actual  
8 expenditures and investments identified within special  
9 cost-tracking mechanisms approved pursuant to this Section  
10 were prudently incurred by the utility. However, if the  
11 Commission enters an order, following a hearing process,  
12 pursuant to subsection (f) of this Section, finding that the  
13 utility's plans are no longer effective in achieving their  
14 goals, or are no longer in the best interest of the State's  
15 current and future utility customers, and the utility's special  
16 cost-tracking mechanism is subsequently cancelled or  
17 suspended, then the rebuttable presumption otherwise afforded  
18 by this subsection (g) shall not apply to costs that have not  
19 already been found prudent by the Commission in an annual  
20 reconciliation proceeding pursuant to subparagraph (D) of  
21 paragraph (3) of subsection (c) of this Section.

22 (h) The Commission may adopt rules to implement the  
23 provisions of this Section.

24 (220 ILCS 5/9-228 new)

25 Sec. 9-228. Recovery of various costs through rates. In

1 any rate requested by any gas, electric, water, or sewer  
2 utility company under the provisions of this Act, the following  
3 costs shall be considered recoverable through rates if the  
4 Commission determines that the costs are prudent, just,  
5 reasonable, and consistent with Commission practice and law:

6 (1) incentive compensation expense that is based on the  
7 achievement of operational metrics, including metrics  
8 related to outage duration and frequency, safety, customer  
9 service, efficiency and productivity, and environmental  
10 compliance, but not metrics based on net income or an  
11 affiliate's earnings per share;

12 (2) pension and other post-employment benefits expense  
13 based on actual costs incurred for the applicable calendar  
14 year, provided that such costs are supported by an  
15 actuarial study;

16 (3) an investment return on the unamortized  
17 discretionary pension contributions net of deferred tax  
18 benefits equal to the utility's long-term debt cost  
19 component of the applicable Commission-approved cost of  
20 capital; however, in no case shall the cost associated with  
21 the allowed investment return be greater than the benefit  
22 ratepayers receive from the discretionary pension  
23 contribution;

24 (4) severance costs amortized over a period that is  
25 consistent with savings resulting from the severance;

26 (5) regulatory assets previously approved by the



1       Commission;

2           (6) costs related to a Commission proceeding to approve  
3       a mechanism under Section 9-244 or 9-220.3 of this Act,  
4       amortized over a 3-year period; and

5           (7) costs related to annual reconciliation Commission  
6       proceedings of mechanisms approved under Section 9-244 and  
7       9-220.3 of this Act.

8       Section 99. Effective date. This Act takes effect upon  
9       becoming law."