



HR1157 Enrolled

LRB097 21882 CEL 70578 r

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HOUSE RESOLUTION 1157

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WHEREAS, The 97th Illinois General Assembly passed Senate Bill 1652 and House Bill 3036 with supermajority votes in both legislative chambers; Senate Bill 1652 became law on October 26, 2011 as Public Act 97-616 and House Bill 3036 became law on December 30, 2011 as Public Act 97-646; and

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WHEREAS, Public Act 97-616, which is commonly referred to as the Energy Infrastructure Modernization Act, confers substantial benefits upon the State's electric utility customers; it established detailed infrastructure investment plans to modernize and upgrade the State's aging electric grid in order to ensure the continued provision of safe, reliable, and affordable service to Illinoisans; participating utilities that elect to undertake the infrastructure investment plan may recover their costs through a performance-based formula rate tariff mechanism, which was designed to increase predictability, stability, and transparency in the ratemaking process; and

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WHEREAS, Public Act 97-646 was enacted as "trailer legislation" to Public Act 97-616 with the intent to amend the Energy Infrastructure Modernization Act to provide additional benefits to customers; and

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1 WHEREAS, To make this investment possible, the
2 performance-based formula rate tariff must, among other
3 things, establish and set forth certain protocols providing
4 that participating utilities recover the costs of service and
5 these investments, including, but not limited to, allowing for
6 the recovery of an "investment return on pension assets net of
7 deferred tax benefits equal to the utility's long-term debt
8 cost of capital as of the end of the applicable calendar year",
9 which is set forth in subparagraph (D) of paragraph (4) of
10 subsection (c) of Section 16-108.5 of the Public Utilities Act;
11 and

12 WHEREAS, In so providing, the General Assembly did not, and
13 did not intend to, overturn or generally depart from Illinois
14 Commerce Commission practice and law regarding the
15 establishment of these protocols, including the electric
16 utility's ability to continue to recover a debt return on its
17 pension assets as the Commission has previously allowed; and

18 WHEREAS, No statutory authority was given to the Illinois
19 Commerce Commission to deny recovery of a debt return on what
20 is commonly referred to as, what is reported in the Federal
21 Energy Regulatory Commission Form 1 (FERC Form 1) as, and what
22 the General Assembly regarded to be a pension asset; and

23 WHEREAS, The Energy Infrastructure Modernization Act

1 further provides in subsections (c) and (d) of Section 16-108.5
2 that those amounts to be credited or charged to customers
3 following the annual reconciliation process under the
4 performance-based formula rate shall be "with interest" so the
5 utility will be made whole for unrecovered amounts that were
6 prudently and reasonably incurred and customers will be made
7 whole for amounts they overpaid, if any; and

8 WHEREAS, Such interest is intended to be set at the
9 utility's weighted average cost of capital, determined in
10 accordance with the statute, which represents the reasonable
11 cost and means of financing a utility's investments and
12 operating costs, so that the utility and customers are made
13 whole when charges or credits are necessary to reconcile to
14 actual prudent and reasonable investments and costs; and

15 WHEREAS, The Energy Infrastructure Modernization Act also
16 provides that the final year-end cost data filed in FERC Form 1
17 should generally be used to determine rates; and

18 WHEREAS, No statutory authority was given to the Illinois
19 Commerce Commission to set rate base and capital structure
20 using average numbers that do not represent final year-end
21 values reflected in the FERC Form 1, and the Illinois Commerce
22 Commission's use of such average is contrary to the statute;
23 and

1 WHEREAS, The Illinois Supreme and Appellate Courts have
2 consistently held that, because the administrative agencies
3 are creatures of statute, administrative agencies possess only
4 those powers expressly delegated by law and may not act beyond
5 its statutorily delegated authority; and

6 WHEREAS, The Illinois Supreme and Appellate Courts have
7 consistently held that public policy in Illinois is expressed
8 by the General Assembly, and it is not the province of an
9 administrative agency to inquire into the wisdom and propriety
10 of the legislature's act or to substitute its own judgment for
11 that of the legislature; therefore, be it

12 RESOLVED, BY THE HOUSE OF REPRESENTATIVES OF THE
13 NINETY-SEVENTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, that
14 we express serious concerns that the Illinois Commerce
15 Commission Order, entered on May 29, 2012 in Commission Docket
16 No. 11-0721, fails to reflect the statutory directives and the
17 intent of the Illinois General Assembly by: (1) not allowing
18 Commonwealth Edison Company to earn a debt return on what is
19 commonly referred to as, identified in the FERC Form 1 as, and
20 what the General Assembly referred to as a pension asset in
21 subparagraph (D) of paragraph (4) of subsection (c) of Section
22 16-108.5; (2) assessing interest on those amounts to be
23 credited or charged to customers as set forth in subsection (d)

1 of Section 16-108.5 of the Public Utilities Act at an amount
2 that is not based on the utility's weighted average cost of
3 capital; and (3) determining rate base and capital structure
4 using an average, rather than the year-end amounts as reflected
5 in FERC Form 1; and be it further

6 RESOLVED, That we urge that the Illinois Commerce
7 Commission, on rehearing, strongly consider reversing its
8 conclusions with respect to each of these 3 issues and reach a
9 decision that reflects the statutory directives and the intent
10 of the General Assembly in passing Public Acts 97-616 and
11 97-646 as reaffirmed in this resolution; and be it further

12 RESOLVED, That suitable copies of this resolution be
13 delivered to the Governor of the State of Illinois and the
14 Chairman and Commissioners of the Illinois Commerce
15 Commission.