



HR1157HAM001

LRB097 21882 CEL 70680 a

1                                    AMENDMENT TO HOUSE RESOLUTION 1157

2                    AMENDMENT NO. \_\_\_\_\_. Amend House Resolution 1157 by replacing  
3 everything after the title with the following:

4                    "WHEREAS, The 97th Illinois General Assembly passed Senate  
5 Bill 1652 and House Bill 3036 with supermajority votes in both  
6 legislative chambers; Senate Bill 1652 became law on October  
7 26, 2011 as Public Act 97-616 and House Bill 3036 became law on  
8 December 30, 2011 as Public Act 97-646; and

9                    WHEREAS, Public Act 97-616, which is commonly referred to  
10 as the Energy Infrastructure Modernization Act, confers  
11 substantial benefits upon the State's electric utility  
12 customers; it established detailed infrastructure investment  
13 plans to modernize and upgrade the State's aging electric grid  
14 in order to ensure the continued provision of safe, reliable,  
15 and affordable service to Illinoisans; participating utilities  
16 that elect to undertake the infrastructure investment plan may

1 recover their costs through a performance-based formula rate  
2 tariff mechanism, which was designed to increase  
3 predictability, stability, and transparency in the ratemaking  
4 process; and

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

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

20 WHEREAS, In so providing, the General Assembly did not, and  
21 did not intend to, overturn or generally depart from Illinois  
22 Commerce Commission practice and law regarding the  
23 establishment of these protocols, including the electric

1 utility's ability to continue to recover a debt return on its  
2 pension assets as the Commission has previously allowed; and

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

8 WHEREAS, The Energy Infrastructure Modernization Act  
9 further provides in subsections (c) and (d) of Section 16-108.5  
10 that those amounts to be credited or charged to customers  
11 following the annual reconciliation process under the  
12 performance-based formula rate shall be "with interest" so the  
13 utility will be made whole for unrecovered amounts that were  
14 prudently and reasonably incurred and customers will be made  
15 whole for amounts they overpaid, if any; and

16 WHEREAS, Such interest is intended to be set at the  
17 utility's weighted average cost of capital, determined in  
18 accordance with the statute, which represents the reasonable  
19 cost and means of financing a utility's investments and  
20 operating costs, so that the utility and customers are made  
21 whole when charges or credits are necessary to reconcile to  
22 actual prudent and reasonable investments and costs; and

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

4           WHEREAS, No statutory authority was given to the Illinois  
5 Commerce Commission to set rate base and capital structure  
6 using average numbers that do not represent final year-end  
7 values reflected in the FERC Form 1, and the Illinois Commerce  
8 Commission's use of such average is contrary to the statute;  
9 and

10           WHEREAS, The Illinois Supreme and Appellate Courts have  
11 consistently held that, because the administrative agencies  
12 are creatures of statute, administrative agencies possess only  
13 those powers expressly delegated by law and may not act beyond  
14 its statutorily delegated authority; and

15           WHEREAS, The Illinois Supreme and Appellate Courts have  
16 consistently held that public policy in Illinois is expressed  
17 by the General Assembly, and it is not the province of an  
18 administrative agency to inquire into the wisdom and propriety  
19 of the legislature's act or to substitute its own judgment for  
20 that of the legislature; therefore, be it

21           RESOLVED, BY THE HOUSE OF REPRESENTATIVES OF THE  
22 NINETY-SEVENTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, that

1 we express serious concerns that the Illinois Commerce  
2 Commission Order, entered on May 29, 2012 in Commission Docket  
3 No. 11-0721, fails to reflect the statutory directives and the  
4 intent of the Illinois General Assembly by: (1) not allowing  
5 Commonwealth Edison Company to earn a debt return on what is  
6 commonly referred to as, identified in the FERC Form 1 as, and  
7 what the General Assembly referred to as a pension asset in  
8 subparagraph (D) of paragraph (4) of subsection (c) of Section  
9 16-108.5; (2) assessing interest on those amounts to be  
10 credited or charged to customers as set forth in subsection (d)  
11 of Section 16-108.5 of the Public Utilities Act at an amount  
12 that is not based on the utility's weighted average cost of  
13 capital; and (3) determining rate base and capital structure  
14 using an average, rather than the year-end amounts as reflected  
15 in FERC Form 1; and be it further

16 RESOLVED, That we urge that the Illinois Commerce  
17 Commission, on rehearing, strongly consider reversing its  
18 conclusions with respect to each of these 3 issues and reach a  
19 decision that reflects the statutory directives and the intent  
20 of the General Assembly in passing Public Acts 97-616 and  
21 97-646 as reaffirmed in this resolution; and be it further

22 RESOLVED, That suitable copies of this resolution be  
23 delivered to the Governor of the State of Illinois and the  
24 Chairman and Commissioners of the Illinois Commerce

1 Commission."