

SB3176



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3176

Introduced 2/1/2012, by Sen. David Koehler

SYNOPSIS AS INTRODUCED:

220 ILCS 5/8-104

Amends the Public Utilities Act. Provides that customers may apply to the Department of Commerce and Economic Opportunity to be designated as a self-directing customer or exempt customer using natural gas a feedstock from which other products are made on or before the 1st day of December, 2012 (instead of the 1st day of February, 2010). Effective immediately.

LRB097 19651 CEL 64905 b

A BILL FOR

1 AN ACT concerning utilities.

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 Section 8-104 as follows:

6 (220 ILCS 5/8-104)

7 Sec. 8-104. Natural gas energy efficiency programs.

8 (a) It is the policy of the State that natural gas
9 utilities and the Department of Commerce and Economic
10 Opportunity are required to use cost-effective energy
11 efficiency to reduce direct and indirect costs to consumers. It
12 serves the public interest to allow natural gas utilities to
13 recover costs for reasonably and prudently incurred expenses
14 for cost-effective energy efficiency measures.

15 (b) For purposes of this Section, "energy efficiency" means
16 measures that reduce the amount of energy required to achieve a
17 given end use and "cost-effective" means that the measures
18 satisfy the total resource cost test which, for purposes of
19 this Section, means a standard that is met if, for an
20 investment in energy efficiency, the benefit-cost ratio is
21 greater than one. The benefit-cost ratio is the ratio of the
22 net present value of the total benefits of the measures to the
23 net present value of the total costs as calculated over the

1 lifetime of the measures. The total resource cost test compares
2 the sum of avoided natural gas utility costs, representing the
3 benefits that accrue to the system and the participant in the
4 delivery of those efficiency measures, as well as other
5 quantifiable societal benefits, including avoided electric
6 utility costs, to the sum of all incremental costs of end use
7 measures (including both utility and participant
8 contributions), plus costs to administer, deliver, and
9 evaluate each demand-side measure, to quantify the net savings
10 obtained by substituting demand-side measures for supply
11 resources. In calculating avoided costs, reasonable estimates
12 shall be included for financial costs likely to be imposed by
13 future regulation of emissions of greenhouse gases. The
14 low-income programs described in item (4) of subsection (f) of
15 this Section shall not be required to meet the total resource
16 cost test.

17 (c) Natural gas utilities shall implement cost-effective
18 energy efficiency measures to meet at least the following
19 natural gas savings requirements, which shall be based upon the
20 total amount of gas delivered to retail customers, other than
21 the customers described in subsection (m) of this Section,
22 during calendar year 2009 multiplied by the applicable
23 percentage. Natural gas utilities may comply with this Section
24 by meeting the annual incremental savings goal in the
25 applicable year or by showing that total savings associated
26 with measures implemented after May 31, 2011 were equal to the

1 sum of each annual incremental savings requirement from May 31,
2 2011 through the end of the applicable year:

3 (1) 0.2% by May 31, 2012;

4 (2) an additional 0.4% by May 31, 2013, increasing
5 total savings to .6%;

6 (3) an additional 0.6% by May 31, 2014, increasing
7 total savings to 1.2%;

8 (4) an additional 0.8% by May 31, 2015, increasing
9 total savings to 2.0%;

10 (5) an additional 1% by May 31, 2016, increasing total
11 savings to 3.0%;

12 (6) an additional 1.2% by May 31, 2017, increasing
13 total savings to 4.2%;

14 (7) an additional 1.4% by May 31, 2018, increasing
15 total savings to 5.6%;

16 (8) an additional 1.5% by May 31, 2019, increasing
17 total savings to 7.1%; and

18 (9) an additional 1.5% in each 12-month period
19 thereafter.

20 (d) Notwithstanding the requirements of subsection (c) of
21 this Section, a natural gas utility shall limit the amount of
22 energy efficiency implemented in any 3-year reporting period
23 established by subsection (f) of Section 8-104 of this Act, by
24 an amount necessary to limit the estimated average increase in
25 the amounts paid by retail customers in connection with natural
26 gas service to no more than 2% in the applicable 3-year

1 reporting period. The energy savings requirements in
2 subsection (c) of this Section may be reduced by the Commission
3 for the subject plan, if the utility demonstrates by
4 substantial evidence that it is highly unlikely that the
5 requirements could be achieved without exceeding the
6 applicable spending limits in any 3-year reporting period. No
7 later than September 1, 2013, the Commission shall review the
8 limitation on the amount of energy efficiency measures
9 implemented pursuant to this Section and report to the General
10 Assembly, in the report required by subsection (k) of this
11 Section, its findings as to whether that limitation unduly
12 constrains the procurement of energy efficiency measures.

13 (e) Natural gas utilities shall be responsible for
14 overseeing the design, development, and filing of their
15 efficiency plans with the Commission. The utility shall utilize
16 75% of the available funding associated with energy efficiency
17 programs approved by the Commission, and may outsource various
18 aspects of program development and implementation. The
19 remaining 25% of available funding shall be used by the
20 Department of Commerce and Economic Opportunity to implement
21 energy efficiency measures that achieve no less than 20% of the
22 requirements of subsection (c) of this Section. Such measures
23 shall be designed in conjunction with the utility and approved
24 by the Commission. The Department may outsource development and
25 implementation of energy efficiency measures. A minimum of 10%
26 of the entire portfolio of cost-effective energy efficiency

1 measures shall be procured from local government, municipal
2 corporations, school districts, and community college
3 districts. Five percent of the entire portfolio of
4 cost-effective energy efficiency measures may be granted to
5 local government and municipal corporations for market
6 transformation initiatives. The Department shall coordinate
7 the implementation of these measures and shall integrate
8 delivery of natural gas efficiency programs with electric
9 efficiency programs delivered pursuant to Section 8-103 of this
10 Act, unless the Department can show that integration is not
11 feasible.

12 The apportionment of the dollars to cover the costs to
13 implement the Department's share of the portfolio of energy
14 efficiency measures shall be made to the Department once the
15 Department has executed grants or contracts for energy
16 efficiency measures and provided supporting documentation for
17 those grants and the contracts to the utility.

18 The details of the measures implemented by the Department
19 shall be submitted by the Department to the Commission in
20 connection with the utility's filing regarding the energy
21 efficiency measures that the utility implements.

22 A utility providing approved energy efficiency measures in
23 this State shall be permitted to recover costs of those
24 measures through an automatic adjustment clause tariff filed
25 with and approved by the Commission. The tariff shall be
26 established outside the context of a general rate case and

1 shall be applicable to the utility's customers other than the
2 customers described in subsection (m) of this Section. Each
3 year the Commission shall initiate a review to reconcile any
4 amounts collected with the actual costs and to determine the
5 required adjustment to the annual tariff factor to match annual
6 expenditures.

7 Each utility shall include, in its recovery of costs, the
8 costs estimated for both the utility's and the Department's
9 implementation of energy efficiency measures. Costs collected
10 by the utility for measures implemented by the Department shall
11 be submitted to the Department pursuant to Section 605-323 of
12 the Civil Administrative Code of Illinois and shall be used by
13 the Department solely for the purpose of implementing these
14 measures. A utility shall not be required to advance any moneys
15 to the Department but only to forward such funds as it has
16 collected. The Department shall report to the Commission on an
17 annual basis regarding the costs actually incurred by the
18 Department in the implementation of the measures. Any changes
19 to the costs of energy efficiency measures as a result of plan
20 modifications shall be appropriately reflected in amounts
21 recovered by the utility and turned over to the Department.

22 The portfolio of measures, administered by both the
23 utilities and the Department, shall, in combination, be
24 designed to achieve the annual energy savings requirements set
25 forth in subsection (c) of this Section, as modified by
26 subsection (d) of this Section.

1 The utility and the Department shall agree upon a
2 reasonable portfolio of measures and determine the measurable
3 corresponding percentage of the savings goals associated with
4 measures implemented by the Department.

5 No utility shall be assessed a penalty under subsection (f)
6 of this Section for failure to make a timely filing if that
7 failure is the result of a lack of agreement with the
8 Department with respect to the allocation of responsibilities
9 or related costs or target assignments. In that case, the
10 Department and the utility shall file their respective plans
11 with the Commission and the Commission shall determine an
12 appropriate division of measures and programs that meets the
13 requirements of this Section.

14 If the Department is unable to meet performance
15 requirements for the portion of the portfolio implemented by
16 the Department, then the utility and the Department shall
17 jointly submit a modified filing to the Commission explaining
18 the performance shortfall and recommending an appropriate
19 course going forward, including any program modifications that
20 may be appropriate in light of the evaluations conducted under
21 item (8) of subsection (f) of this Section. In this case, the
22 utility obligation to collect the Department's costs and turn
23 over those funds to the Department under this subsection (e)
24 shall continue only if the Commission approves the
25 modifications to the plan proposed by the Department.

26 (f) No later than October 1, 2010, each gas utility shall

1 file an energy efficiency plan with the Commission to meet the
2 energy efficiency standards through May 31, 2014. Every 3 years
3 thereafter, each utility shall file, no later than October 1,
4 an energy efficiency plan with the Commission. If a utility
5 does not file such a plan by October 1 of the applicable year,
6 then it shall face a penalty of \$100,000 per day until the plan
7 is filed. Each utility's plan shall set forth the utility's
8 proposals to meet the utility's portion of the energy
9 efficiency standards identified in subsection (c) of this
10 Section, as modified by subsection (d) of this Section, taking
11 into account the unique circumstances of the utility's service
12 territory. The Commission shall seek public comment on the
13 utility's plan and shall issue an order approving or
14 disapproving each plan. If the Commission disapproves a plan,
15 the Commission shall, within 30 days, describe in detail the
16 reasons for the disapproval and describe a path by which the
17 utility may file a revised draft of the plan to address the
18 Commission's concerns satisfactorily. If the utility does not
19 refile with the Commission within 60 days after the
20 disapproval, the utility shall be subject to penalties at a
21 rate of \$100,000 per day until the plan is filed. This process
22 shall continue, and penalties shall accrue, until the utility
23 has successfully filed a portfolio of energy efficiency
24 measures. Penalties shall be deposited into the Energy
25 Efficiency Trust Fund and the cost of any such penalties may
26 not be recovered from ratepayers. In submitting proposed energy

1 efficiency plans and funding levels to meet the savings goals
2 adopted by this Act the utility shall:

3 (1) Demonstrate that its proposed energy efficiency
4 measures will achieve the requirements that are identified
5 in subsection (c) of this Section, as modified by
6 subsection (d) of this Section.

7 (2) Present specific proposals to implement new
8 building and appliance standards that have been placed into
9 effect.

10 (3) Present estimates of the total amount paid for gas
11 service expressed on a per therm basis associated with the
12 proposed portfolio of measures designed to meet the
13 requirements that are identified in subsection (c) of this
14 Section, as modified by subsection (d) of this Section.

15 (4) Coordinate with the Department to present a
16 portfolio of energy efficiency measures proportionate to
17 the share of total annual utility revenues in Illinois from
18 households at or below 150% of the poverty level. Such
19 programs shall be targeted to households with incomes at or
20 below 80% of area median income.

21 (5) Demonstrate that its overall portfolio of energy
22 efficiency measures, not including programs covered by
23 item (4) of this subsection (f), are cost-effective using
24 the total resource cost test and represent a diverse cross
25 section of opportunities for customers of all rate classes
26 to participate in the programs.

1 (6) Demonstrate that a gas utility affiliated with an
2 electric utility that is required to comply with Section
3 8-103 of this Act has integrated gas and electric
4 efficiency measures into a single program that reduces
5 program or participant costs and appropriately allocates
6 costs to gas and electric ratepayers. The Department shall
7 integrate all gas and electric programs it delivers in any
8 such utilities' service territories, unless the Department
9 can show that integration is not feasible or appropriate.

10 (7) Include a proposed cost recovery tariff mechanism
11 to fund the proposed energy efficiency measures and to
12 ensure the recovery of the prudently and reasonably
13 incurred costs of Commission-approved programs.

14 (8) Provide for quarterly status reports tracking
15 implementation of and expenditures for the utility's
16 portfolio of measures and the Department's portfolio of
17 measures, an annual independent review, and a full
18 independent evaluation of the 3-year results of the
19 performance and the cost-effectiveness of the utility's
20 and Department's portfolios of measures and broader net
21 program impacts and, to the extent practical, for
22 adjustment of the measures on a going forward basis as a
23 result of the evaluations. The resources dedicated to
24 evaluation shall not exceed 3% of portfolio resources in
25 any given 3-year period.

26 (g) No more than 3% of expenditures on energy efficiency

1 measures may be allocated for demonstration of breakthrough
2 equipment and devices.

3 (h) Illinois natural gas utilities that are affiliated by
4 virtue of a common parent company may, at the utilities'
5 request, be considered a single natural gas utility for
6 purposes of complying with this Section.

7 (i) If, after 3 years, a gas utility fails to meet the
8 efficiency standard specified in subsection (c) of this Section
9 as modified by subsection (d), then it shall make a
10 contribution to the Low-Income Home Energy Assistance Program.
11 The total liability for failure to meet the goal shall be
12 assessed as follows:

13 (1) a large gas utility shall pay \$600,000;

14 (2) a medium gas utility shall pay \$400,000; and

15 (3) a small gas utility shall pay \$200,000.

16 For purposes of this Section, (i) a "large gas utility" is
17 a gas utility that on December 31, 2008, served more than
18 1,500,000 gas customers in Illinois; (ii) a "medium gas
19 utility" is a gas utility that on December 31, 2008, served
20 fewer than 1,500,000, but more than 500,000 gas customers in
21 Illinois; and (iii) a "small gas utility" is a gas utility that
22 on December 31, 2008, served fewer than 500,000 and more than
23 100,000 gas customers in Illinois. The costs of this
24 contribution may not be recovered from ratepayers.

25 If a gas utility fails to meet the efficiency standard
26 specified in subsection (c) of this Section, as modified by

1 subsection (d) of this Section, in any 2 consecutive 3-year
2 planning periods, then the responsibility for implementing the
3 utility's energy efficiency measures shall be transferred to an
4 independent program administrator selected by the Commission.
5 Reasonable and prudent costs incurred by the independent
6 program administrator to meet the efficiency standard
7 specified in subsection (c) of this Section, as modified by
8 subsection (d) of this Section, may be recovered from the
9 customers of the affected gas utilities, other than customers
10 described in subsection (m) of this Section. The utility shall
11 provide the independent program administrator with all
12 information and assistance necessary to perform the program
13 administrator's duties including but not limited to customer,
14 account, and energy usage data, and shall allow the program
15 administrator to include inserts in customer bills. The utility
16 may recover reasonable costs associated with any such
17 assistance.

18 (j) No utility shall be deemed to have failed to meet the
19 energy efficiency standards to the extent any such failure is
20 due to a failure of the Department.

21 (k) Not later than January 1, 2012, the Commission shall
22 develop and solicit public comment on a plan to foster
23 statewide coordination and consistency between statutorily
24 mandated natural gas and electric energy efficiency programs to
25 reduce program or participant costs or to improve program
26 performance. Not later than September 1, 2013, the Commission

1 shall issue a report to the General Assembly containing its
2 findings and recommendations.

3 (l) This Section does not apply to a gas utility that on
4 January 1, 2009, provided gas service to fewer than 100,000
5 customers in Illinois.

6 (m) Subsections (a) through (k) of this Section do not
7 apply to customers of a natural gas utility that have a North
8 American Industry Classification System code number that is
9 22111 or any such code number beginning with the digits 31, 32,
10 or 33 and (i) annual usage in the aggregate of 4 million therms
11 or more within the service territory of the affected gas
12 utility or with aggregate usage of 8 million therms or more in
13 this State and complying with the provisions of item (l) of
14 this subsection (m); or (ii) using natural gas as feedstock and
15 meeting the usage requirements described in item (i) of this
16 subsection (m), to the extent such annual feedstock usage is
17 greater than ~~that~~ 60% of the customer's total annual usage of
18 natural gas.

19 (1) Customers described in this subsection (m) of this
20 Section shall apply, on a form approved on or before
21 October 1, 2009 by the Department, to the Department to be
22 designated as a self-directing customer ("SDC") or as an
23 exempt customer using natural gas as a feedstock from which
24 other products are made, including, but not limited to,
25 feedstock for a hydrogen plant, on or before the 1st day of
26 December, 2012 ~~February, 2010~~. Thereafter, application may

1 be made not less than 6 months before the filing date of
2 the gas utility energy efficiency plan described in
3 subsection (f) of this Section; however, a new customer
4 that commences taking service from a natural gas utility
5 after February 1, 2010 may apply to become a SDC or exempt
6 customer up to 30 days after beginning service. Such
7 application shall contain the following:

8 (A) the customer's certification that, at the time
9 of its application, it qualifies to be a SDC or exempt
10 customer described in this subsection (m) of this
11 Section;

12 (B) in the case of a SDC, the customer's
13 certification that it has established or will
14 establish by the beginning of the utility's 3-year
15 planning period commencing subsequent to the
16 application, and will maintain for accounting
17 purposes, an energy efficiency reserve account and
18 that the customer will accrue funds in said account to
19 be held for the purpose of funding, in whole or in
20 part, energy efficiency measures of the customer's
21 choosing, which may include, but are not limited to,
22 projects involving combined heat and power systems
23 that use the same energy source both for the generation
24 of electrical or mechanical power and the production of
25 steam or another form of useful thermal energy or the
26 use of combustible gas produced from biomass, or both;

1 (C) in the case of a SDC, the customer's
2 certification that annual funding levels for the
3 energy efficiency reserve account will be equal to 2%
4 of the customer's cost of natural gas, composed of the
5 customer's commodity cost and the delivery service
6 charges paid to the gas utility, or \$150,000, whichever
7 is less;

8 (D) in the case of a SDC, the customer's
9 certification that the required reserve account
10 balance will be capped at 3 years' worth of accruals
11 and that the customer may, at its option, make further
12 deposits to the account to the extent such deposit
13 would increase the reserve account balance above the
14 designated cap level;

15 (E) in the case of a SDC, the customer's
16 certification that by October 1 of each year, beginning
17 no sooner than October 1, 2012, the customer will
18 report to the Department information, for the 12-month
19 period ending May 31 of the same year, on all deposits
20 and reductions, if any, to the reserve account during
21 the reporting year, and to the extent deposits to the
22 reserve account in any year are in an amount less than
23 \$150,000, the basis for such reduced deposits; reserve
24 account balances by month; a description of energy
25 efficiency measures undertaken by the customer and
26 paid for in whole or in part with funds from the

1 reserve account; an estimate of the energy saved, or to
2 be saved, by the measure; and that the report shall
3 include a verification by an officer or plant manager
4 of the customer or by a registered professional
5 engineer or certified energy efficiency trade
6 professional that the funds withdrawn from the reserve
7 account were used for the energy efficiency measures;

8 (F) in the case of an exempt customer, the
9 customer's certification of the level of gas usage as
10 feedstock in the customer's operation in a typical year
11 and that it will provide information establishing this
12 level, upon request of the Department;

13 (G) in the case of either an exempt customer or a
14 SDC, the customer's certification that it has provided
15 the gas utility or utilities serving the customer with
16 a copy of the application as filed with the Department;

17 (H) in the case of either an exempt customer or a
18 SDC, certification of the natural gas utility or
19 utilities serving the customer in Illinois including
20 the natural gas utility accounts that are the subject
21 of the application; and

22 (I) in the case of either an exempt customer or a
23 SDC, a verification signed by a plant manager or an
24 authorized corporate officer attesting to the
25 truthfulness and accuracy of the information contained
26 in the application.

1 (2) The Department shall review the application to
2 determine that it contains the information described in
3 provisions (A) through (I) of item (1) of this subsection
4 (m), as applicable. The review shall be completed within 30
5 days after the date the application is filed with the
6 Department. Absent a determination by the Department
7 within the 30-day period, the applicant shall be considered
8 to be a SDC or exempt customer, as applicable, for all
9 subsequent 3-year planning periods, as of the date of
10 filing the application described in this subsection (m). If
11 the Department determines that the application does not
12 contain the applicable information described in provisions
13 (A) through (I) of item (1) of this subsection (m), it
14 shall notify the customer, in writing, of its determination
15 that the application does not contain the required
16 information and identify the information that is missing,
17 and the customer shall provide the missing information
18 within 15 working days after the date of receipt of the
19 Department's notification.

20 (3) The Department shall have the right to audit the
21 information provided in the customer's application and
22 annual reports to ensure continued compliance with the
23 requirements of this subsection. Based on the audit, if the
24 Department determines the customer is no longer in
25 compliance with the requirements of items (A) through (I)
26 of item (1) of this subsection (m), as applicable, the

1 Department shall notify the customer in writing of the
2 noncompliance. The customer shall have 30 days to establish
3 its compliance, and failing to do so, may have its status
4 as a SDC or exempt customer revoked by the Department. The
5 Department shall treat all information provided by any
6 customer seeking SDC status or exemption from the
7 provisions of this Section as strictly confidential.

8 (4) Upon request, or on its own motion, the Commission
9 may open an investigation, no more than once every 3 years
10 and not before October 1, 2014, to evaluate the
11 effectiveness of the self-directing program described in
12 this subsection (m).

13 (n) The applicability of this Section to customers
14 described in subsection (m) of this Section is conditioned on
15 the existence of the SDC program. In no event will any
16 provision of this Section apply to such customers after January
17 1, 2020.

18 (Source: P.A. 96-33, eff. 7-10-09; revised 11-18-11.)

19 Section 99. Effective date. This Act takes effect upon
20 becoming law.