



1 SENATE RESOLUTION NO. 821

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

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

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

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 Commerce Commission Orders, entered
2 on May 29, 2012 and September 19, 2012, in Commission Docket
3 Nos. 11-0721 and 12-0001, respectively, failed to reflect the
4 statutory directives and the intent of the Illinois General
5 Assembly regarding numerous issues, including, but not limited
6 to, the pension asset, interest rate, and rate base issues
7 described herein; and

8 WHEREAS, Commonwealth Edison Company sought rehearing on a
9 number of wrongly decided issues, including the pension asset,
10 interest rate, and rate base issues described herein, and the
11 Illinois Commerce Commission granted rehearing with respect to
12 only these 3 issues; and

13 WHEREAS, The Illinois Commerce Commission Order on
14 Rehearing, entered on October 3, 2012, in Commission Docket No.
15 11-0721, reversed itself on the pension asset issue only; and

16 WHEREAS, On October 4, 2012, Commonwealth Edison Company
17 filed its Notice of Appeal from the Illinois Commerce
18 Commission's Order in Commission Docket No. 11-0721; and

19 WHEREAS, Ameren Illinois Company sought rehearing on a
20 number of wrongly decided issues, including the interest rate
21 and rate base issues described herein, and the Illinois

1 Commerce Commission denied rehearing on October 17, 2012; and

2 WHEREAS, On October 26, 2012, Ameren Illinois Company filed
3 its Notice of Appeal from the Illinois Commerce Commission's
4 Order in Commission Docket No. 12-0001; and

5 WHEREAS, The revenue deficiencies caused because of the
6 errors in the Illinois Commerce Commission Orders, entered on
7 May 29, 2012 and October 3, 2012 in Commission Docket No.
8 11-0721 and on September 19, 2012 in Commission Docket No.
9 12-0001, may preclude the participating utilities from
10 implementing their infrastructure investment plans, including,
11 but not limited to, their advanced metering infrastructure
12 deployment plans, according to the schedule set forth in
13 subsection (b) of Section 16-108.5, Section 16-108.6, or in any
14 Illinois Commerce Commission order entered thereunder; and

15 WHEREAS, The Illinois Supreme and Appellate Courts have
16 consistently held that, because the administrative agencies
17 are creatures of statute, administrative agencies possess only
18 those powers expressly delegated by law and may not act beyond
19 their statutorily delegated authority; and

20 WHEREAS, The Illinois Supreme and Appellate Courts have
21 consistently held that public policy in Illinois is expressed
22 by the General Assembly, and it is not the province of an

1 administrative agency to inquire into the wisdom and propriety
2 of the legislature's act or to substitute its own judgment for
3 that of the legislature; therefore, be it

4 RESOLVED, BY THE SENATE OF THE NINETY-SEVENTH GENERAL
5 ASSEMBLY OF THE STATE OF ILLINOIS, that we express serious
6 concerns that the Illinois Commerce Commission Orders, entered
7 on May 29, 2012 and October 3, 2012 in Commission Docket No.
8 11-0721 and on September 19, 2012 in Commission Docket No.
9 12-0001, fail to reflect the statutory directives and the
10 intent of the Illinois General Assembly by (1) assessing
11 interest on those amounts to be credited or charged to
12 customers as set forth in subsection (d) of Section 16-108.5 of
13 the Public Utilities Act at an amount that is not based on the
14 utility's weighted average cost of capital; (2) determining
15 rate base and capital structure using an average, rather than
16 the year-end amounts as reflected in FERC Form 1; and (3)
17 departing in numerous other ways from the directives of
18 subsection (c) of Section 16-108.5 of the Public Utilities Act;
19 and be it further

20 RESOLVED, That the Illinois Commerce Commission correctly
21 reversed itself in its Order on Rehearing in Commission Docket
22 No. 11-0721 by allowing Commonwealth Edison Company to earn a
23 debt return on what is commonly referred to as, identified in
24 the FERC Form 1 as, and referred to by the General Assembly as

1 a pension asset in subparagraph (D) of paragraph (4) of
2 subsection (c) of Section 16-108.5 of the Public Utilities Act;
3 and be it further

4 RESOLVED, That we urge the Illinois Commerce Commission to
5 order Commonwealth Edison Company and Ameren Illinois Company
6 to file changes to their performance-based formula rate tariffs
7 that (1) apply an interest rate set at the utility's weighted
8 average cost of capital as described herein; (2) set rate base
9 and capital structure using final year-end values reflected in
10 the FERC Form 1 rather than average numbers; and (3) correct
11 other errors reflected in the Illinois Commerce Commission
12 Orders entered May 29, 2012 and September 19, 2012 in
13 Commission Docket Nos. 11-0721 and 12-0001, respectively, so
14 that the tariffs reflect the statutory directives and the
15 intent of the General Assembly in passing Public Acts 97-616
16 and 97-646 as reaffirmed in this resolution; and be it further

17 RESOLVED, That we urge the Illinois Commerce Commission to
18 enter orders approving such changes no later than December 31,
19 2012; and be it further

20 RESOLVED, That each participating utility should be
21 permitted, without penalty or being subject to any other
22 adverse action, a reasonable time to ensure its infrastructure
23 investment plan, including, but not limited to, its advanced

1 metering infrastructure deployment plan, is in compliance with
2 the schedule set forth in subsection (b) of Section 16-108.5,
3 Section 16-108.6, or in any Illinois Commerce Commission order
4 entered thereunder; and be it further

5 RESOLVED, That suitable copies of this resolution be
6 delivered to the Governor of the State of Illinois and the
7 Chairman and Commissioners of the Illinois Commerce
8 Commission.