



SR0821SAM001

LRB097 21881 AMC 72252 a

1                                    AMENDMENT TO SENATE RESOLUTION 821

2                    AMENDMENT NO. \_\_\_\_\_. Amend Senate Resolution 821 by replacing  
3 line 2 on page 1 through line 14 on page 5 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  
17 recover their costs through a performance-based formula rate

1 tariff mechanism, which was designed to increase  
2 predictability, stability, and transparency in the ratemaking  
3 process; and

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

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

19 WHEREAS, In so providing, the General Assembly did not, and  
20 did not intend to, overturn or generally depart from Illinois  
21 Commerce Commission practice and law regarding the  
22 establishment of these protocols, including the electric  
23 utility's ability to continue to recover a debt return on its

1 pension assets as the Commission has previously allowed; and

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

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

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

22 WHEREAS, The Energy Infrastructure Modernization Act also

1 provides that the final year-end cost data filed in FERC Form 1  
2 should generally be used to determine rates; and

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

9 WHEREAS, The Illinois Commerce Commission Orders, entered  
10 on May 29, 2012 and September 19, 2012, in Commission Docket  
11 Nos. 11-0721 and 12-0001, respectively, failed to reflect the  
12 statutory directives and the intent of the Illinois General  
13 Assembly regarding numerous issues, including, but not limited  
14 to, the pension asset, interest rate, and rate base issues  
15 described herein; and

16 WHEREAS, Commonwealth Edison Company sought rehearing on a  
17 number of wrongly decided issues, including the pension asset,  
18 interest rate, and rate base issues described herein, and the  
19 Illinois Commerce Commission granted rehearing with respect to  
20 only these 3 issues; and

21 WHEREAS, The Illinois Commerce Commission Order on  
22 Rehearing, entered on October 3, 2012, in Commission Docket No.

1 11-0721, reversed itself on the pension asset issue only; and

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

5 WHEREAS, Ameren Illinois Company sought rehearing on a  
6 number of wrongly decided issues, including the interest rate  
7 and rate base issues described herein, and the Illinois  
8 Commerce Commission denied rehearing on October 17, 2012; and

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

12 WHEREAS, The revenue deficiencies caused because of the  
13 errors in the Illinois Commerce Commission Orders, entered on  
14 May 29, 2012 and October 3, 2012 in Commission Docket No.  
15 11-0721 and on September 19, 2012 in Commission Docket No.  
16 12-0001, may preclude the participating utilities from  
17 implementing their infrastructure investment plans, including,  
18 but not limited to, their advanced metering infrastructure  
19 deployment plans, according to the schedule set forth in  
20 subsection (b) of Section 16-108.5, Section 16-108.6, or in any  
21 Illinois Commerce Commission order entered thereunder; 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 their 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 SENATE OF THE NINETY-SEVENTH GENERAL  
13 ASSEMBLY OF THE STATE OF ILLINOIS, that we express serious  
14 concerns that the Illinois Commerce Commission Orders, entered  
15 on May 29, 2012 and October 3, 2012 in Commission Docket No.  
16 11-0721 and on September 19, 2012 in Commission Docket No.  
17 12-0001, fail to reflect the statutory directives and the  
18 intent of the Illinois General Assembly by (1) assessing  
19 interest on those amounts to be credited or charged to  
20 customers as set forth in subsection (d) of Section 16-108.5 of  
21 the Public Utilities Act at an amount that is not based on the  
22 utility's weighted average cost of capital; (2) determining  
23 rate base and capital structure using an average, rather than  
24 the year-end amounts as reflected in FERC Form 1; and (3)

1 departing in numerous other ways from the directives of  
2 subsection (c) of Section 16-108.5 of the Public Utilities Act;  
3 and be it further

4 RESOLVED, That the Illinois Commerce Commission correctly  
5 reversed itself in its Order on Rehearing in Commission Docket  
6 No. 11-0721 by allowing Commonwealth Edison Company to earn a  
7 debt return on what is commonly referred to as, identified in  
8 the FERC Form 1 as, and referred to by the General Assembly as  
9 a pension asset in subparagraph (D) of paragraph (4) of  
10 subsection (c) of Section 16-108.5 of the Public Utilities Act;  
11 and be it further

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

1           RESOLVED, That we urge the Illinois Commerce Commission to  
2 enter orders approving such changes no later than December 31,  
3 2012; and be it further

4           RESOLVED, That each participating utility should be  
5 permitted, without penalty or being subject to any other  
6 adverse action, a reasonable time to ensure its infrastructure  
7 investment plan, including, but not limited to, its advanced  
8 metering infrastructure deployment plan, is in compliance with  
9 the schedule set forth in subsection (b) of Section 16-108.5,  
10 Section 16-108.6, or in any Illinois Commerce Commission order  
11 entered thereunder; 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."