

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 rebate agreements, grants, or
16 contracts for energy efficiency measures and provided
17 supporting documentation for those rebate agreements, grants,
18 and contracts to the utility. The Department is authorized to
19 adopt any rules necessary and prescribe procedures in order to
20 ensure compliance by applicants in carrying out the purposes of
21 rebate agreements for energy efficiency measures implemented
22 by the Department made under this Section.

23 The details of the measures implemented by the Department
24 shall be submitted by the Department to the Commission in
25 connection with the utility's filing regarding the energy
26 efficiency measures that the utility implements.

1 A utility providing approved energy efficiency measures in
2 this State shall be permitted to recover costs of those
3 measures through an automatic adjustment clause tariff filed
4 with and approved by the Commission. The tariff shall be
5 established outside the context of a general rate case and
6 shall be applicable to the utility's customers other than the
7 customers described in subsection (m) of this Section. Each
8 year the Commission shall initiate a review to reconcile any
9 amounts collected with the actual costs and to determine the
10 required adjustment to the annual tariff factor to match annual
11 expenditures.

12 Each utility shall include, in its recovery of costs, the
13 costs estimated for both the utility's and the Department's
14 implementation of energy efficiency measures. Costs collected
15 by the utility for measures implemented by the Department shall
16 be submitted to the Department pursuant to Section 605-323 of
17 the Civil Administrative Code of Illinois, shall be deposited
18 into the Energy Efficiency Portfolio Standards Fund, and shall
19 be used by the Department solely for the purpose of
20 implementing these measures. A utility shall not be required to
21 advance any moneys to the Department but only to forward such
22 funds as it has collected. The Department shall report to the
23 Commission on an annual basis regarding the costs actually
24 incurred by the Department in the implementation of the
25 measures. Any changes to the costs of energy efficiency
26 measures as a result of plan modifications shall be

1 appropriately reflected in amounts recovered by the utility and
2 turned over to the Department.

3 The portfolio of measures, administered by both the
4 utilities and the Department, shall, in combination, be
5 designed to achieve the annual energy savings requirements set
6 forth in subsection (c) of this Section, as modified by
7 subsection (d) of this Section.

8 The utility and the Department shall agree upon a
9 reasonable portfolio of measures and determine the measurable
10 corresponding percentage of the savings goals associated with
11 measures implemented by the Department.

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

21 If the Department is unable to meet performance
22 requirements for the portion of the portfolio implemented by
23 the Department, then the utility and the Department shall
24 jointly submit a modified filing to the Commission explaining
25 the performance shortfall and recommending an appropriate
26 course going forward, including any program modifications that

1 may be appropriate in light of the evaluations conducted under
2 item (8) of subsection (f) of this Section. In this case, the
3 utility obligation to collect the Department's costs and turn
4 over those funds to the Department under this subsection (e)
5 shall continue only if the Commission approves the
6 modifications to the plan proposed by the Department.

7 (f) No later than October 1, 2010, each gas utility shall
8 file an energy efficiency plan with the Commission to meet the
9 energy efficiency standards through May 31, 2014. Every 3 years
10 thereafter, each utility shall file, no later than October 1,
11 an energy efficiency plan with the Commission. If a utility
12 does not file such a plan by October 1 of the applicable year,
13 then it shall face a penalty of \$100,000 per day until the plan
14 is filed. Each utility's plan shall set forth the utility's
15 proposals to meet the utility's portion of the energy
16 efficiency standards identified in subsection (c) of this
17 Section, as modified by subsection (d) of this Section, taking
18 into account the unique circumstances of the utility's service
19 territory. The Commission shall seek public comment on the
20 utility's plan and shall issue an order approving or
21 disapproving each plan. If the Commission disapproves a plan,
22 the Commission shall, within 30 days, describe in detail the
23 reasons for the disapproval and describe a path by which the
24 utility may file a revised draft of the plan to address the
25 Commission's concerns satisfactorily. If the utility does not
26 refile with the Commission within 60 days after the

1 disapproval, the utility shall be subject to penalties at a
2 rate of \$100,000 per day until the plan is filed. This process
3 shall continue, and penalties shall accrue, until the utility
4 has successfully filed a portfolio of energy efficiency
5 measures. Penalties shall be deposited into the Energy
6 Efficiency Trust Fund and the cost of any such penalties may
7 not be recovered from ratepayers. In submitting proposed energy
8 efficiency plans and funding levels to meet the savings goals
9 adopted by this Act the utility shall:

10 (1) Demonstrate that its proposed energy efficiency
11 measures will achieve the requirements that are identified
12 in subsection (c) of this Section, as modified by
13 subsection (d) of this Section.

14 (2) Present specific proposals to implement new
15 building and appliance standards that have been placed into
16 effect.

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

22 (4) Coordinate with the Department to present a
23 portfolio of energy efficiency measures proportionate to
24 the share of total annual utility revenues in Illinois from
25 households at or below 150% of the poverty level. Such
26 programs shall be targeted to households with incomes at or

1 below 80% of area median income.

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

8 (6) Demonstrate that a gas utility affiliated with an
9 electric utility that is required to comply with Section
10 8-103 of this Act has integrated gas and electric
11 efficiency measures into a single program that reduces
12 program or participant costs and appropriately allocates
13 costs to gas and electric ratepayers. The Department shall
14 integrate all gas and electric programs it delivers in any
15 such utilities' service territories, unless the Department
16 can show that integration is not feasible or appropriate.

17 (7) Include a proposed cost recovery tariff mechanism
18 to fund the proposed energy efficiency measures and to
19 ensure the recovery of the prudently and reasonably
20 incurred costs of Commission-approved programs.

21 (8) Provide for quarterly status reports tracking
22 implementation of and expenditures for the utility's
23 portfolio of measures and the Department's portfolio of
24 measures, an annual independent review, and a full
25 independent evaluation of the 3-year results of the
26 performance and the cost-effectiveness of the utility's

1 and Department's portfolios of measures and broader net
2 program impacts and, to the extent practical, for
3 adjustment of the measures on a going forward basis as a
4 result of the evaluations. The resources dedicated to
5 evaluation shall not exceed 3% of portfolio resources in
6 any given 3-year period.

7 (g) No more than 3% of expenditures on energy efficiency
8 measures may be allocated for demonstration of breakthrough
9 equipment and devices.

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

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

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

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

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

23 For purposes of this Section, (i) a "large gas utility" is
24 a gas utility that on December 31, 2008, served more than
25 1,500,000 gas customers in Illinois; (ii) a "medium gas
26 utility" is a gas utility that on December 31, 2008, served

1 fewer than 1,500,000, but more than 500,000 gas customers in
2 Illinois; and (iii) a "small gas utility" is a gas utility that
3 on December 31, 2008, served fewer than 500,000 and more than
4 100,000 gas customers in Illinois. The costs of this
5 contribution may not be recovered from ratepayers.

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

25 (j) No utility shall be deemed to have failed to meet the
26 energy efficiency standards to the extent any such failure is

1 due to a failure of the Department.

2 (k) Not later than January 1, 2012, the Commission shall
3 develop and solicit public comment on a plan to foster
4 statewide coordination and consistency between statutorily
5 mandated natural gas and electric energy efficiency programs to
6 reduce program or participant costs or to improve program
7 performance. Not later than September 1, 2013, the Commission
8 shall issue a report to the General Assembly containing its
9 findings and recommendations.

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

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

26 (1) Customers described in this subsection (m) of this

1 Section shall apply, on a form approved on or before
2 October 1, 2009 by the Department, to the Department to be
3 designated as a self-directing customer ("SDC") or as an
4 exempt customer using natural gas as a feedstock from which
5 other products are made, including, but not limited to,
6 feedstock for a hydrogen plant, on or before the 1st day of
7 February, 2010. Thereafter, application may be made not
8 less than 6 months before the filing date of the gas
9 utility energy efficiency plan described in subsection (f)
10 of this Section; however, a new customer that commences
11 taking service from a natural gas utility after February 1,
12 2010 may apply to become a SDC or exempt customer up to 30
13 days after beginning service. Customers described in this
14 subsection (m) that have not already been approved by the
15 Department may apply to be designated a self-directing
16 customer or exempt customer, on a form approved by the
17 Department, between September 1, 2013 and September 30,
18 2013. Customer applications that are approved by the
19 Department under this amendatory Act of the 98th General
20 Assembly shall be considered to be a self-directing
21 customer or exempt customer, as applicable, for the current
22 3-year planning period effective December 1, 2013. Such
23 application shall contain the following:

24 (A) the customer's certification that, at the time
25 of its application, it qualifies to be a SDC or exempt
26 customer described in this subsection (m) of this

1 Section;

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

17 (C) in the case of a SDC, the customer's
18 certification that annual funding levels for the
19 energy efficiency reserve account will be equal to 2%
20 of the customer's cost of natural gas, composed of the
21 customer's commodity cost and the delivery service
22 charges paid to the gas utility, or \$150,000, whichever
23 is less;

24 (D) in the case of a SDC, the customer's
25 certification that the required reserve account
26 balance will be capped at 3 years' worth of accruals

1 and that the customer may, at its option, make further
2 deposits to the account to the extent such deposit
3 would increase the reserve account balance above the
4 designated cap level;

5 (E) in the case of a SDC, the customer's
6 certification that by October 1 of each year, beginning
7 no sooner than October 1, 2012, the customer will
8 report to the Department information, for the 12-month
9 period ending May 31 of the same year, on all deposits
10 and reductions, if any, to the reserve account during
11 the reporting year, and to the extent deposits to the
12 reserve account in any year are in an amount less than
13 \$150,000, the basis for such reduced deposits; reserve
14 account balances by month; a description of energy
15 efficiency measures undertaken by the customer and
16 paid for in whole or in part with funds from the
17 reserve account; an estimate of the energy saved, or to
18 be saved, by the measure; and that the report shall
19 include a verification by an officer or plant manager
20 of the customer or by a registered professional
21 engineer or certified energy efficiency trade
22 professional that the funds withdrawn from the reserve
23 account were used for the energy efficiency measures;

24 (F) in the case of an exempt customer, the
25 customer's certification of the level of gas usage as
26 feedstock in the customer's operation in a typical year

1 and that it will provide information establishing this
2 level, upon request of the Department;

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

7 (H) in the case of either an exempt customer or a
8 SDC, certification of the natural gas utility or
9 utilities serving the customer in Illinois including
10 the natural gas utility accounts that are the subject
11 of the application; and

12 (I) in the case of either an exempt customer or a
13 SDC, a verification signed by a plant manager or an
14 authorized corporate officer attesting to the
15 truthfulness and accuracy of the information contained
16 in the application.

17 (2) The Department shall review the application to
18 determine that it contains the information described in
19 provisions (A) through (I) of item (1) of this subsection
20 (m), as applicable. The review shall be completed within 30
21 days after the date the application is filed with the
22 Department. Absent a determination by the Department
23 within the 30-day period, the applicant shall be considered
24 to be a SDC or exempt customer, as applicable, for all
25 subsequent 3-year planning periods, as of the date of
26 filing the application described in this subsection (m). If

1 the Department determines that the application does not
2 contain the applicable information described in provisions
3 (A) through (I) of item (1) of this subsection (m), it
4 shall notify the customer, in writing, of its determination
5 that the application does not contain the required
6 information and identify the information that is missing,
7 and the customer shall provide the missing information
8 within 15 working days after the date of receipt of the
9 Department's notification.

10 (3) The Department shall have the right to audit the
11 information provided in the customer's application and
12 annual reports to ensure continued compliance with the
13 requirements of this subsection. Based on the audit, if the
14 Department determines the customer is no longer in
15 compliance with the requirements of items (A) through (I)
16 of item (1) of this subsection (m), as applicable, the
17 Department shall notify the customer in writing of the
18 noncompliance. The customer shall have 30 days to establish
19 its compliance, and failing to do so, may have its status
20 as a SDC or exempt customer revoked by the Department. The
21 Department shall treat all information provided by any
22 customer seeking SDC status or exemption from the
23 provisions of this Section as strictly confidential.

24 (4) Upon request, or on its own motion, the Commission
25 may open an investigation, no more than once every 3 years
26 and not before October 1, 2014, to evaluate the

1 effectiveness of the self-directing program described in
2 this subsection (m).

3 (n) The applicability of this Section to customers
4 described in subsection (m) of this Section is conditioned on
5 the existence of the SDC program. In no event will any
6 provision of this Section apply to such customers after January
7 1, 2020.

8 (Source: P.A. 96-33, eff. 7-10-09; 97-813, eff. 7-13-12;
9 97-841, eff. 7-20-12.)

10 Section 99. Effective date. This Act takes effect upon
11 becoming law.