

1 AN ACT concerning regulation.

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 16-108.5 as follows:

6 (220 ILCS 5/16-108.5)

7 Sec. 16-108.5. Infrastructure investment and
8 modernization; regulatory reform.

9 (a) (Blank).

10 (b) For purposes of this Section, "participating utility"
11 means an electric utility or a combination utility serving more
12 than 1,000,000 customers in Illinois that voluntarily elects
13 and commits to undertake (i) the infrastructure investment
14 program consisting of the commitments and obligations
15 described in this subsection (b) and (ii) the customer
16 assistance program consisting of the commitments and
17 obligations described in subsection (b-10) of this Section,
18 notwithstanding any other provisions of this Act and without
19 obtaining any approvals from the Commission or any other agency
20 other than as set forth in this Section, regardless of whether
21 any such approval would otherwise be required. "Combination
22 utility" means a utility that, as of January 1, 2011, provided
23 electric service to at least one million retail customers in

1 Illinois and gas service to at least 500,000 retail customers
2 in Illinois. A participating utility shall recover the
3 expenditures made under the infrastructure investment program
4 through the ratemaking process, including, but not limited to,
5 the performance-based formula rate and process set forth in
6 this Section.

7 During the infrastructure investment program's peak
8 program year, a participating utility other than a combination
9 utility shall create 2,000 full-time equivalent jobs in
10 Illinois, and a participating utility that is a combination
11 utility shall create 450 full-time equivalent jobs in Illinois
12 related to the provision of electric service. These jobs shall
13 include direct jobs, contractor positions, and induced jobs,
14 but shall not include any portion of a job commitment, not
15 specifically contingent on an amendatory Act of the 97th
16 General Assembly becoming law, between a participating utility
17 and a labor union that existed on the effective date of this
18 amendatory Act of the 97th General Assembly and that has not
19 yet been fulfilled. A portion of the full-time equivalent jobs
20 created by each participating utility shall include
21 incremental personnel hired subsequent to the effective date of
22 this amendatory Act of the 97th General Assembly. For purposes
23 of this Section, "peak program year" means the consecutive
24 12-month period with the highest number of full-time equivalent
25 jobs that occurs between the beginning of investment year 2 and
26 the end of investment year 4.

1 A participating utility shall meet one of the following
2 commitments, as applicable:

3 (1) Beginning no later than 180 days after a
4 participating utility other than a combination utility
5 files a performance-based formula rate tariff pursuant to
6 subsection (c) of this Section, or, beginning no later than
7 January 1, 2012 if such utility files such
8 performance-based formula rate tariff within 14 days of the
9 effective date of this amendatory Act of the 97th General
10 Assembly, the participating utility shall, except as
11 provided in subsection (b-5):

12 (A) over a 5-year period, invest an estimated
13 \$1,300,000,000 in electric system upgrades,
14 modernization projects, and training facilities,
15 including, but not limited to:

16 (i) distribution infrastructure improvements
17 totaling an estimated \$1,000,000,000, including
18 underground residential distribution cable
19 injection and replacement and mainline cable
20 system refurbishment and replacement projects;

21 (ii) training facility construction or upgrade
22 projects totaling an estimated \$10,000,000,
23 provided that, at a minimum, one such facility
24 shall be located in a municipality having a
25 population of more than 2 million residents and one
26 such facility shall be located in a municipality

1 having a population of more than 150,000 residents
2 but fewer than 170,000 residents; any such new
3 facility located in a municipality having a
4 population of more than 2 million residents must be
5 designed for the purpose of obtaining, and the
6 owner of the facility shall apply for,
7 certification under the United States Green
8 Building Council's Leadership in Energy Efficiency
9 Design Green Building Rating System;

10 (iii) wood pole inspection, treatment, and
11 replacement programs;

12 (iv) an estimated \$200,000,000 for reducing
13 the susceptibility of certain circuits to
14 storm-related damage, including, but not limited
15 to, high winds, thunderstorms, and ice storms;
16 improvements may include, but are not limited to,
17 overhead to underground conversion and other
18 engineered outcomes for circuits; the
19 participating utility shall prioritize the
20 selection of circuits based on each circuit's
21 historical susceptibility to storm-related damage
22 and the ability to provide the greatest customer
23 benefit upon completion of the improvements; to be
24 eligible for improvement, the participating
25 utility's ability to maintain proper tree
26 clearances surrounding the overhead circuit must

1 not have been impeded by third parties; and

2 (B) over a 10-year period, invest an estimated
3 \$1,300,000,000 to upgrade and modernize its
4 transmission and distribution infrastructure and in
5 Smart Grid electric system upgrades, including, but
6 not limited to:

7 (i) additional smart meters;

8 (ii) distribution automation;

9 (iii) associated cyber secure data
10 communication network; and

11 (iv) substation micro-processor relay
12 upgrades.

13 (2) Beginning no later than 180 days after a
14 participating utility that is a combination utility files a
15 performance-based formula rate tariff pursuant to
16 subsection (c) of this Section, or, beginning no later than
17 January 1, 2012 if such utility files such
18 performance-based formula rate tariff within 14 days of the
19 effective date of this amendatory Act of the 97th General
20 Assembly, the participating utility shall, except as
21 provided in subsection (b-5):

22 (A) over a 10-year period, invest an estimated
23 \$265,000,000 in electric system upgrades,
24 modernization projects, and training facilities,
25 including, but not limited to:

26 (i) distribution infrastructure improvements

1 totaling an estimated \$245,000,000, which may
2 include bulk supply substations, transformers,
3 reconductoring, and rebuilding overhead
4 distribution and sub-transmission lines,
5 underground residential distribution cable
6 injection and replacement and mainline cable
7 system refurbishment and replacement projects;

8 (ii) training facility construction or upgrade
9 projects totaling an estimated \$1,000,000; any
10 such new facility must be designed for the purpose
11 of obtaining, and the owner of the facility shall
12 apply for, certification under the United States
13 Green Building Council's Leadership in Energy
14 Efficiency Design Green Building Rating System;
15 and

16 (iii) wood pole inspection, treatment, and
17 replacement programs; and

18 (B) over a 10-year period, invest an estimated
19 \$360,000,000 to upgrade and modernize its transmission
20 and distribution infrastructure and in Smart Grid
21 electric system upgrades, including, but not limited
22 to:

23 (i) additional smart meters;

24 (ii) distribution automation;

25 (iii) associated cyber secure data
26 communication network; and

1 (iv) substation micro-processor relay
2 upgrades.

3 For purposes of this Section, "Smart Grid electric system
4 upgrades" shall have the meaning set forth in subsection (a) of
5 Section 16-108.6 of this Act.

6 The investments in the infrastructure investment program
7 described in this subsection (b) shall be incremental to the
8 participating utility's annual capital investment program, as
9 defined by, for purposes of this subsection (b), the
10 participating utility's average capital spend for calendar
11 years 2008, 2009, and 2010 as reported in the applicable
12 Federal Energy Regulatory Commission (FERC) Form 1; provided
13 that where one or more utilities have merged, the average
14 capital spend shall be determined using the aggregate of the
15 merged utilities' capital spend reported in FERC Form 1 for the
16 years 2008, 2009, and 2010. A participating utility may add
17 reasonable construction ramp-up and ramp-down time to the
18 investment periods specified in this subsection (b). For each
19 such investment period, the ramp-up and ramp-down time shall
20 not exceed a total of 6 months.

21 Within 60 days after filing a tariff under subsection (c)
22 of this Section, a participating utility shall submit to the
23 Commission its plan, including scope, schedule, and staffing,
24 for satisfying its infrastructure investment program
25 commitments pursuant to this subsection (b). The submitted plan
26 shall include a schedule and staffing plan for the next

1 calendar year. The plan shall also include a plan for the
2 creation, operation, and administration of a Smart Grid test
3 bed as described in subsection (c) of Section 16-108.8. The
4 plan need not allocate the work equally over the respective
5 periods, but should allocate material increments throughout
6 such periods commensurate with the work to be undertaken. No
7 later than April 1 of each subsequent year, the utility shall
8 submit to the Commission a report that includes any updates to
9 the plan, a schedule for the next calendar year, the
10 expenditures made for the prior calendar year and cumulatively,
11 and the number of full-time equivalent jobs created for the
12 prior calendar year and cumulatively. If the utility is
13 materially deficient in satisfying a schedule or staffing plan,
14 then the report must also include a corrective action plan to
15 address the deficiency. The fact that the plan, implementation
16 of the plan, or a schedule changes shall not imply the
17 imprudence or unreasonableness of the infrastructure
18 investment program, plan, or schedule. Further, no later than
19 45 days following the last day of the first, second, and third
20 quarters of each year of the plan, a participating utility
21 shall submit to the Commission a verified quarterly report for
22 the prior quarter that includes (i) the total number of
23 full-time equivalent jobs created during the prior quarter,
24 (ii) the total number of employees as of the last day of the
25 prior quarter, (iii) the total number of full-time equivalent
26 hours in each job classification or job title, (iv) the total

1 number of incremental employees and contractors in support of
2 the investments undertaken pursuant to this subsection (b) for
3 the prior quarter, and (v) any other information that the
4 Commission may require by rule.

5 With respect to the participating utility's peak job
6 commitment, if, after considering the utility's corrective
7 action plan and compliance thereunder, the Commission enters an
8 order finding, after notice and hearing, that a participating
9 utility did not satisfy its peak job commitment described in
10 this subsection (b) for reasons that are reasonably within its
11 control, then the Commission shall also determine, after
12 consideration of the evidence, including, but not limited to,
13 evidence submitted by the Department of Commerce and Economic
14 Opportunity and the utility, the deficiency in the number of
15 full-time equivalent jobs during the peak program year due to
16 such failure. The Commission shall notify the Department of any
17 proceeding that is initiated pursuant to this paragraph. For
18 each full-time equivalent job deficiency during the peak
19 program year that the Commission finds as set forth in this
20 paragraph, the participating utility shall, within 30 days
21 after the entry of the Commission's order, pay \$6,000 to a fund
22 for training grants administered under Section 605-800 of The
23 Department of Commerce and Economic Opportunity Law, which
24 shall not be a recoverable expense.

25 With respect to the participating utility's investment
26 amount commitments, if, after considering the utility's

1 corrective action plan and compliance thereunder, the
2 Commission enters an order finding, after notice and hearing,
3 that a participating utility is not satisfying its investment
4 amount commitments described in this subsection (b), then the
5 utility shall no longer be eligible to annually update the
6 performance-based formula rate tariff pursuant to subsection
7 (d) of this Section. In such event, the then current rates
8 shall remain in effect until such time as new rates are set
9 pursuant to Article IX of this Act, subject to retroactive
10 adjustment, with interest, to reconcile rates charged with
11 actual costs.

12 If the Commission finds that a participating utility is no
13 longer eligible to update the performance-based formula rate
14 tariff pursuant to subsection (d) of this Section, or the
15 performance-based formula rate is otherwise terminated, then
16 the participating utility's voluntary commitments and
17 obligations under this subsection (b) shall immediately
18 terminate, except for the utility's obligation to pay an amount
19 already owed to the fund for training grants pursuant to a
20 Commission order.

21 In meeting the obligations of this subsection (b), to the
22 extent feasible and consistent with State and federal law, the
23 investments under the infrastructure investment program should
24 provide employment opportunities for all segments of the
25 population and workforce, including minority-owned and
26 female-owned business enterprises, and shall not, consistent

1 with State and federal law, discriminate based on race or
2 socioeconomic status.

3 (b-5) Nothing in this Section shall prohibit the Commission
4 from investigating the prudence and reasonableness of the
5 expenditures made under the infrastructure investment program
6 during the annual review required by subsection (d) of this
7 Section and shall, as part of such investigation, determine
8 whether the utility's actual costs under the program are
9 prudent and reasonable. The fact that a participating utility
10 invests more than the minimum amounts specified in subsection
11 (b) of this Section or its plan shall not imply imprudence or
12 unreasonableness.

13 If the participating utility finds that it is implementing
14 its plan for satisfying the infrastructure investment program
15 commitments described in subsection (b) of this Section at a
16 cost below the estimated amounts specified in subsection (b) of
17 this Section, then the utility may file a petition with the
18 Commission requesting that it be permitted to satisfy its
19 commitments by spending less than the estimated amounts
20 specified in subsection (b) of this Section. The Commission
21 shall, after notice and hearing, enter its order approving, or
22 approving as modified, or denying each such petition within 150
23 days after the filing of the petition.

24 In no event, absent General Assembly approval, shall the
25 capital investment costs incurred by a participating utility
26 other than a combination utility in satisfying its

1 infrastructure investment program commitments described in
2 subsection (b) of this Section exceed \$3,000,000,000 or, for a
3 participating utility that is a combination utility,
4 \$720,000,000. If the participating utility's updated cost
5 estimates for satisfying its infrastructure investment program
6 commitments described in subsection (b) of this Section exceed
7 the limitation imposed by this subsection (b-5), then it shall
8 submit a report to the Commission that identifies the increased
9 costs and explains the reason or reasons for the increased
10 costs no later than the year in which the utility estimates it
11 will exceed the limitation. The Commission shall review the
12 report and shall, within 90 days after the participating
13 utility files the report, report to the General Assembly its
14 findings regarding the participating utility's report. If the
15 General Assembly does not amend the limitation imposed by this
16 subsection (b-5), then the utility may modify its plan so as
17 not to exceed the limitation imposed by this subsection (b-5)
18 and may propose corresponding changes to the metrics
19 established pursuant to subparagraphs (5) through (8) of
20 subsection (f) of this Section, and the Commission may modify
21 the metrics and incremental savings goals established pursuant
22 to subsection (f) of this Section accordingly.

23 (b-10) All participating utilities shall make
24 contributions for an energy low-income and support program in
25 accordance with this subsection. Beginning no later than 180
26 days after a participating utility files a performance-based

1 formula rate tariff pursuant to subsection (c) of this Section,
2 or beginning no later than January 1, 2012 if such utility
3 files such performance-based formula rate tariff within 14 days
4 of the effective date of this amendatory Act of the 97th
5 General Assembly, and without obtaining any approvals from the
6 Commission or any other agency other than as set forth in this
7 Section, regardless of whether any such approval would
8 otherwise be required, a participating utility other than a
9 combination utility shall pay \$10,000,000 per year for 5 years
10 and a participating utility that is a combination utility shall
11 pay \$1,000,000 per year for 10 years to the energy low-income
12 and support program, which is intended to fund customer
13 assistance programs with the primary purpose being avoidance of
14 imminent disconnection. Such programs may include:

15 (1) a residential hardship program that may partner
16 with community-based organizations, including senior
17 citizen organizations, and provides grants to low-income
18 residential customers, including low-income senior
19 citizens, who demonstrate a hardship;

20 (2) a program that provides grants and other bill
21 payment concessions to disabled veterans who demonstrate a
22 hardship and members of the armed services or reserve
23 forces of the United States or members of the Illinois
24 National Guard who are on active duty pursuant to an
25 executive order of the President of the United States, an
26 act of the Congress of the United States, or an order of

1 the Governor and who demonstrate a hardship;

2 (3) a budget assistance program that provides tools and
3 education to low-income senior citizens to assist them with
4 obtaining information regarding energy usage and effective
5 means of managing energy costs;

6 (4) a non-residential special hardship program that
7 provides grants to non-residential customers such as small
8 businesses and non-profit organizations that demonstrate a
9 hardship, including those providing services to senior
10 citizen and low-income customers; and

11 (5) a performance-based assistance program that
12 provides grants to encourage residential customers to make
13 on-time payments by matching a portion of the customer's
14 payments or providing credits towards arrearages.

15 The payments made by a participating utility pursuant to
16 this subsection (b-10) shall not be a recoverable expense. A
17 participating utility may elect to fund either new or existing
18 customer assistance programs, including, but not limited to,
19 those that are administered by the utility.

20 Programs that use funds that are provided by a
21 participating utility to reduce utility bills may be
22 implemented through tariffs that are filed with and reviewed by
23 the Commission. If a utility elects to file tariffs with the
24 Commission to implement all or a portion of the programs, those
25 tariffs shall, regardless of the date actually filed, be deemed
26 accepted and approved, and shall become effective on the

1 effective date of this amendatory Act of the 97th General
2 Assembly. The participating utilities whose customers benefit
3 from the funds that are disbursed as contemplated in this
4 Section shall file annual reports documenting the disbursement
5 of those funds with the Commission. The Commission has the
6 authority to audit disbursement of the funds to ensure they
7 were disbursed consistently with this Section.

8 If the Commission finds that a participating utility is no
9 longer eligible to update the performance-based formula rate
10 tariff pursuant to subsection (d) of this Section, or the
11 performance-based formula rate is otherwise terminated, then
12 the participating utility's voluntary commitments and
13 obligations under this subsection (b-10) shall immediately
14 terminate.

15 (c) A participating utility may elect to recover its
16 delivery services costs through a performance-based formula
17 rate approved by the Commission, which shall specify the cost
18 components that form the basis of the rate charged to customers
19 with sufficient specificity to operate in a standardized manner
20 and be updated annually with transparent information that
21 reflects the utility's actual costs to be recovered during the
22 applicable rate year, which is the period beginning with the
23 first billing day of January and extending through the last
24 billing day of the following December. In the event the utility
25 recovers a portion of its costs through automatic adjustment
26 clause tariffs on the effective date of this amendatory Act of

1 the 97th General Assembly, the utility may elect to continue to
2 recover these costs through such tariffs, but then these costs
3 shall not be recovered through the performance-based formula
4 rate. In the event the participating utility, prior to the
5 effective date of this amendatory Act of the 97th General
6 Assembly, filed electric delivery services tariffs with the
7 Commission pursuant to Section 9-201 of this Act that are
8 related to the recovery of its electric delivery services costs
9 that are still pending on the effective date of this amendatory
10 Act of the 97th General Assembly, the participating utility
11 shall, at the time it files its performance-based formula rate
12 tariff with the Commission, also file a notice of withdrawal
13 with the Commission to withdraw the electric delivery services
14 tariffs previously filed pursuant to Section 9-201 of this Act.
15 Upon receipt of such notice, the Commission shall dismiss with
16 prejudice any docket that had been initiated to investigate the
17 electric delivery services tariffs filed pursuant to Section
18 9-201 of this Act, and such tariffs and the record related
19 thereto shall not be the subject of any further hearing,
20 investigation, or proceeding of any kind related to rates for
21 electric delivery services.

22 The performance-based formula rate shall be implemented
23 through a tariff filed with the Commission consistent with the
24 provisions of this subsection (c) that shall be applicable to
25 all delivery services customers. The Commission shall initiate
26 and conduct an investigation of the tariff in a manner

1 consistent with the provisions of this subsection (c) and the
2 provisions of Article IX of this Act to the extent they do not
3 conflict with this subsection (c). Except in the case where the
4 Commission finds, after notice and hearing, that a
5 participating utility is not satisfying its investment amount
6 commitments under subsection (b) of this Section, the
7 performance-based formula rate shall remain in effect at the
8 discretion of the utility. The performance-based formula rate
9 approved by the Commission shall do the following:

10 (1) Provide for the recovery of the utility's actual
11 costs of delivery services that are prudently incurred and
12 reasonable in amount consistent with Commission practice
13 and law. The sole fact that a cost differs from that
14 incurred in a prior calendar year or that an investment is
15 different from that made in a prior calendar year shall not
16 imply the imprudence or unreasonableness of that cost or
17 investment.

18 (2) Reflect the utility's actual year-end capital
19 structure for the applicable calendar year, excluding
20 goodwill, subject to a determination of prudence and
21 reasonableness consistent with Commission practice and
22 law.

23 (3) Include a cost of equity, which shall be calculated
24 as the sum of the following:

25 (A) the average for the applicable calendar year of
26 the monthly average yields of 30-year U.S. Treasury

1 bonds published by the Board of Governors of the
2 Federal Reserve System in its weekly H.15 Statistical
3 Release or successor publication; and

4 (B) 580 basis points.

5 At such time as the Board of Governors of the Federal
6 Reserve System ceases to include the monthly average yields
7 of 30-year U.S. Treasury bonds in its weekly H.15
8 Statistical Release or successor publication, the monthly
9 average yields of the U.S. Treasury bonds then having the
10 longest duration published by the Board of Governors in its
11 weekly H.15 Statistical Release or successor publication
12 shall instead be used for purposes of this paragraph (3).

13 (4) Permit and set forth protocols, subject to a
14 determination of prudence and reasonableness consistent
15 with Commission practice and law, for the following:

16 (A) recovery of incentive compensation expense
17 that is based on the achievement of operational
18 metrics, including metrics related to budget controls,
19 outage duration and frequency, safety, customer
20 service, efficiency and productivity, and
21 environmental compliance. Incentive compensation
22 expense that is based on net income or an affiliate's
23 earnings per share shall not be recoverable under the
24 performance-based formula rate;

25 (B) recovery of pension and other post-employment
26 benefits expense, provided that such costs are

1 supported by an actuarial study;

2 (C) recovery of severance costs, provided that if
3 the amount is over \$3,700,000 for a participating
4 utility that is a combination utility or \$10,000,000
5 for a participating utility that serves more than 3
6 million retail customers, then the full amount shall be
7 amortized consistent with subparagraph (F) of this
8 paragraph (4);

9 (D) investment return at a rate equal to the
10 utility's weighted average cost of long-term debt, on
11 the pension assets as, and in the amount, reported in
12 Account 186 (or in such other Account or Accounts as
13 such asset may subsequently be recorded) of the
14 utility's most recently filed FERC Form 1, net of
15 deferred tax benefits;

16 (E) recovery of the expenses related to the
17 Commission proceeding under this subsection (c) to
18 approve this performance-based formula rate and
19 initial rates or to subsequent proceedings related to
20 the formula, provided that the recovery shall be
21 amortized over a 3-year period; recovery of expenses
22 related to the annual Commission proceedings under
23 subsection (d) of this Section to review the inputs to
24 the performance-based formula rate shall be expensed
25 and recovered through the performance-based formula
26 rate;

1 (F) amortization over a 5-year period of the full
2 amount of each charge or credit that exceeds \$3,700,000
3 for a participating utility that is a combination
4 utility or \$10,000,000 for a participating utility
5 that serves more than 3 million retail customers in the
6 applicable calendar year and that relates to a
7 workforce reduction program's severance costs, changes
8 in accounting rules, changes in law, compliance with
9 any Commission-initiated audit, or a single storm or
10 other similar expense, provided that any unamortized
11 balance shall be reflected in rate base. For purposes
12 of this subparagraph (F), changes in law includes any
13 enactment, repeal, or amendment in a law, ordinance,
14 rule, regulation, interpretation, permit, license,
15 consent, or order, including those relating to taxes,
16 accounting, or to environmental matters, or in the
17 interpretation or application thereof by any
18 governmental authority occurring after the effective
19 date of this amendatory Act of the 97th General
20 Assembly;

21 (G) recovery of existing regulatory assets over
22 the periods previously authorized by the Commission;

23 (H) historical weather normalized billing
24 determinants; and

25 (I) allocation methods for common costs.

26 (5) Provide that if the participating utility's earned

1 rate of return on common equity related to the provision of
2 delivery services for the prior rate year (calculated using
3 costs and capital structure approved by the Commission as
4 provided in subparagraph (2) of this subsection (c),
5 consistent with this Section, in accordance with
6 Commission rules and orders, including, but not limited to,
7 adjustments for goodwill, and after any Commission-ordered
8 disallowances and taxes) is more than 50 basis points
9 higher than the rate of return on common equity calculated
10 pursuant to paragraph (3) of this subsection (c) (after
11 adjusting for any penalties to the rate of return on common
12 equity applied pursuant to the performance metrics
13 provision of subsection (f) of this Section), then the
14 participating utility shall apply a credit through the
15 performance-based formula rate that reflects an amount
16 equal to the value of that portion of the earned rate of
17 return on common equity that is more than 50 basis points
18 higher than the rate of return on common equity calculated
19 pursuant to paragraph (3) of this subsection (c) (after
20 adjusting for any penalties to the rate of return on common
21 equity applied pursuant to the performance metrics
22 provision of subsection (f) of this Section) for the prior
23 rate year, adjusted for taxes. If the participating
24 utility's earned rate of return on common equity related to
25 the provision of delivery services for the prior rate year
26 (calculated using costs and capital structure approved by

1 the Commission as provided in subparagraph (2) of this
2 subsection (c), consistent with this Section, in
3 accordance with Commission rules and orders, including,
4 but not limited to, adjustments for goodwill, and after any
5 Commission-ordered disallowances and taxes) is more than
6 50 basis points less than the return on common equity
7 calculated pursuant to paragraph (3) of this subsection (c)
8 (after adjusting for any penalties to the rate of return on
9 common equity applied pursuant to the performance metrics
10 provision of subsection (f) of this Section), then the
11 participating utility shall apply a charge through the
12 performance-based formula rate that reflects an amount
13 equal to the value of that portion of the earned rate of
14 return on common equity that is more than 50 basis points
15 less than the rate of return on common equity calculated
16 pursuant to paragraph (3) of this subsection (c) (after
17 adjusting for any penalties to the rate of return on common
18 equity applied pursuant to the performance metrics
19 provision of subsection (f) of this Section) for the prior
20 rate year, adjusted for taxes.

21 (6) Provide for an annual reconciliation, as described
22 in subsection (d) of this Section, with interest, of the
23 revenue requirement reflected in rates for each calendar
24 year, beginning with the calendar year in which the utility
25 files its performance-based formula rate tariff pursuant
26 to subsection (c) of this Section, with what the revenue

1 requirement would have been had the actual cost information
2 for the applicable calendar year been available at the
3 filing date.

4 The utility shall file, together with its tariff, final
5 data based on its most recently filed FERC Form 1, plus
6 projected plant additions and correspondingly updated
7 depreciation reserve and expense for the calendar year in which
8 the tariff and data are filed, that shall populate the
9 performance-based formula rate and set the initial delivery
10 services rates under the formula. For purposes of this Section,
11 "FERC Form 1" means the Annual Report of Major Electric
12 Utilities, Licensees and Others that electric utilities are
13 required to file with the Federal Energy Regulatory Commission
14 under the Federal Power Act, Sections 3, 4(a), 304 and 209,
15 modified as necessary to be consistent with 83 Ill. Admin. Code
16 Part 415 as of May 1, 2011. Nothing in this Section is intended
17 to allow costs that are not otherwise recoverable to be
18 recoverable by virtue of inclusion in FERC Form 1.

19 After the utility files its proposed performance-based
20 formula rate structure and protocols and initial rates, the
21 Commission shall initiate a docket to review the filing. The
22 Commission shall enter an order approving, or approving as
23 modified, the performance-based formula rate, including the
24 initial rates, as just and reasonable within 270 days after the
25 date on which the tariff was filed, or, if the tariff is filed
26 within 14 days after the effective date of this amendatory Act

1 of the 97th General Assembly, then by May 31, 2012. Such review
2 shall be based on the same evidentiary standards, including,
3 but not limited to, those concerning the prudence and
4 reasonableness of the costs incurred by the utility, the
5 Commission applies in a hearing to review a filing for a
6 general increase in rates under Article IX of this Act. The
7 initial rates shall take effect within 30 days after the
8 Commission's order approving the performance-based formula
9 rate tariff.

10 Until such time as the Commission approves a different rate
11 design and cost allocation pursuant to subsection (e) of this
12 Section, rate design and cost allocation across customer
13 classes shall be consistent with the Commission's most recent
14 order regarding the participating utility's request for a
15 general increase in its delivery services rates.

16 Subsequent changes to the performance-based formula rate
17 structure or protocols shall be made as set forth in Section
18 9-201 of this Act, but nothing in this subsection (c) is
19 intended to limit the Commission's authority under Article IX
20 and other provisions of this Act to initiate an investigation
21 of a participating utility's performance-based formula rate
22 tariff, provided that any such changes shall be consistent with
23 paragraphs (1) through (6) of this subsection (c). Any change
24 ordered by the Commission shall be made at the same time new
25 rates take effect following the Commission's next order
26 pursuant to subsection (d) of this Section, provided that the

1 new rates take effect no less than 30 days after the date on
2 which the Commission issues an order adopting the change.

3 A participating utility that files a tariff pursuant to
4 this subsection (c) must submit a one-time \$200,000 filing fee
5 at the time the Chief Clerk of the Commission accepts the
6 filing, which shall be a recoverable expense.

7 In the event the performance-based formula rate is
8 terminated, the then current rates shall remain in effect until
9 such time as new rates are set pursuant to Article IX of this
10 Act, subject to retroactive rate adjustment, with interest, to
11 reconcile rates charged with actual costs. At such time that
12 the performance-based formula rate is terminated, the
13 participating utility's voluntary commitments and obligations
14 under subsection (b) of this Section shall immediately
15 terminate, except for the utility's obligation to pay an amount
16 already owed to the fund for training grants pursuant to a
17 Commission order issued under subsection (b) of this Section.

18 (d) Subsequent to the Commission's issuance of an order
19 approving the utility's performance-based formula rate
20 structure and protocols, and initial rates under subsection (c)
21 of this Section, the utility shall file, on or before May 1 of
22 each year, with the Chief Clerk of the Commission its updated
23 cost inputs to the performance-based formula rate for the
24 applicable rate year and the corresponding new charges. Each
25 such filing shall conform to the following requirements and
26 include the following information:

1 (1) The inputs to the performance-based formula rate
2 for the applicable rate year shall be based on final
3 historical data reflected in the utility's most recently
4 filed annual FERC Form 1 plus projected plant additions and
5 correspondingly updated depreciation reserve and expense
6 for the calendar year in which the inputs are filed. The
7 filing shall also include a reconciliation of the revenue
8 requirement that was in effect for the prior rate year (as
9 set by the cost inputs for the prior rate year) with the
10 actual revenue requirement for the prior rate year
11 (determined using a year-end rate base) that uses amounts
12 reflected in the applicable FERC Form 1 that reports the
13 actual costs for the prior rate year. Any over-collection
14 or under-collection indicated by such reconciliation shall
15 be reflected as a credit against, or recovered as an
16 additional charge to, respectively, with interest
17 calculated at a rate equal to the utility's weighted
18 average cost of capital approved by the Commission for the
19 prior rate year, the charges for the applicable rate year.
20 Provided, however, that the first such reconciliation
21 shall be for the calendar year in which the utility files
22 its performance-based formula rate tariff pursuant to
23 subsection (c) of this Section and shall reconcile (i) the
24 revenue requirement or requirements established by the
25 rate order or orders in effect from time to time during
26 such calendar year (weighted, as applicable) with (ii) the

1 revenue requirement determined using a year-end rate base
2 for that calendar year calculated pursuant to the
3 performance-based formula rate using (A) actual costs for
4 that year as reflected in the applicable FERC Form 1, and
5 (B) for the first such reconciliation only, the cost of
6 equity, which shall be calculated as the sum of 590 basis
7 points plus the average for the applicable calendar year of
8 the monthly average yields of 30-year U.S. Treasury bonds
9 published by the Board of Governors of the Federal Reserve
10 System in its weekly H.15 Statistical Release or successor
11 publication. The first such reconciliation is not intended
12 to provide for the recovery of costs previously excluded
13 from rates based on a prior Commission order finding of
14 imprudence or unreasonableness. Each reconciliation shall
15 be certified by the participating utility in the same
16 manner that FERC Form 1 is certified. The filing shall also
17 include the charge or credit, if any, resulting from the
18 calculation required by paragraph (6) of subsection (c) of
19 this Section.

20 Notwithstanding anything that may be to the contrary,
21 the intent of the reconciliation is to ultimately reconcile
22 the revenue requirement reflected in rates for each
23 calendar year, beginning with the calendar year in which
24 the utility files its performance-based formula rate
25 tariff pursuant to subsection (c) of this Section, with
26 what the revenue requirement determined using a year-end

1 rate base for the applicable calendar year would have been
2 had the actual cost information for the applicable calendar
3 year been available at the filing date.

4 (2) The new charges shall take effect beginning on the
5 first billing day of the following January billing period
6 and remain in effect through the last billing day of the
7 next December billing period regardless of whether the
8 Commission enters upon a hearing pursuant to this
9 subsection (d).

10 (3) The filing shall include relevant and necessary
11 data and documentation for the applicable rate year that is
12 consistent with the Commission's rules applicable to a
13 filing for a general increase in rates or any rules adopted
14 by the Commission to implement this Section. Normalization
15 adjustments shall not be required. Notwithstanding any
16 other provision of this Section or Act or any rule or other
17 requirement adopted by the Commission, a participating
18 utility that is a combination utility with more than one
19 rate zone shall not be required to file a separate set of
20 such data and documentation for each rate zone and may
21 combine such data and documentation into a single set of
22 schedules.

23 Within 45 days after the utility files its annual update of
24 cost inputs to the performance-based formula rate, the
25 Commission shall have the authority, either upon complaint or
26 its own initiative, but with reasonable notice, to enter upon a

1 hearing concerning the prudence and reasonableness of the costs
2 incurred by the utility to be recovered during the applicable
3 rate year that are reflected in the inputs to the
4 performance-based formula rate derived from the utility's FERC
5 Form 1. During the course of the hearing, each objection shall
6 be stated with particularity and evidence provided in support
7 thereof, after which the utility shall have the opportunity to
8 rebut the evidence. Discovery shall be allowed consistent with
9 the Commission's Rules of Practice, which Rules shall be
10 enforced by the Commission or the assigned hearing examiner.
11 The Commission shall apply the same evidentiary standards,
12 including, but not limited to, those concerning the prudence
13 and reasonableness of the costs incurred by the utility, in the
14 hearing as it would apply in a hearing to review a filing for a
15 general increase in rates under Article IX of this Act. The
16 Commission shall not, however, have the authority in a
17 proceeding under this subsection (d) to consider or order any
18 changes to the structure or protocols of the performance-based
19 formula rate approved pursuant to subsection (c) of this
20 Section. In a proceeding under this subsection (d), the
21 Commission shall enter its order no later than the earlier of
22 240 days after the utility's filing of its annual update of
23 cost inputs to the performance-based formula rate or December
24 31. The Commission's determinations of the prudence and
25 reasonableness of the costs incurred for the applicable
26 calendar year shall be final upon entry of the Commission's

1 order and shall not be subject to reopening, reexamination, or
2 collateral attack in any other Commission proceeding, case,
3 docket, order, rule or regulation, provided, however, that
4 nothing in this subsection (d) shall prohibit a party from
5 petitioning the Commission to rehear or appeal to the courts
6 the order pursuant to the provisions of this Act.

7 In the event the Commission does not, either upon complaint
8 or its own initiative, enter upon a hearing within 45 days
9 after the utility files the annual update of cost inputs to its
10 performance-based formula rate, then the costs incurred for the
11 applicable calendar year shall be deemed prudent and
12 reasonable, and the filed charges shall not be subject to
13 reopening, reexamination, or collateral attack in any other
14 proceeding, case, docket, order, rule, or regulation.

15 A participating utility's first filing of the updated cost
16 inputs, and any Commission investigation of such inputs
17 pursuant to this subsection (d) shall proceed notwithstanding
18 the fact that the Commission's investigation under subsection
19 (c) of this Section is still pending and notwithstanding any
20 other law, order, rule, or Commission practice to the contrary.

21 (e) Nothing in subsections (c) or (d) of this Section shall
22 prohibit the Commission from investigating, or a participating
23 utility from filing, revenue-neutral tariff changes related to
24 rate design of a performance-based formula rate that has been
25 placed into effect for the utility. Following approval of a
26 participating utility's performance-based formula rate tariff

1 pursuant to subsection (c) of this Section, the utility shall
2 make a filing with the Commission within one year after the
3 effective date of the performance-based formula rate tariff
4 that proposes changes to the tariff to incorporate the findings
5 of any final rate design orders of the Commission applicable to
6 the participating utility and entered subsequent to the
7 Commission's approval of the tariff. The Commission shall,
8 after notice and hearing, enter its order approving, or
9 approving with modification, the proposed changes to the
10 performance-based formula rate tariff within 240 days after the
11 utility's filing. Following such approval, the utility shall
12 make a filing with the Commission during each subsequent 3-year
13 period that either proposes revenue-neutral tariff changes or
14 re-files the existing tariffs without change, which shall
15 present the Commission with an opportunity to suspend the
16 tariffs and consider revenue-neutral tariff changes related to
17 rate design.

18 (f) Within 30 days after the filing of a tariff pursuant to
19 subsection (c) of this Section, each participating utility
20 shall develop and file with the Commission multi-year metrics
21 designed to achieve, ratably (i.e., in equal segments) over a
22 10-year period, improvement over baseline performance values
23 as follows:

24 (1) Twenty percent improvement in the System Average
25 Interruption Frequency Index, using a baseline of the
26 average of the data from 2001 through 2010.

1 (2) Fifteen percent improvement in the system Customer
2 Average Interruption Duration Index, using a baseline of
3 the average of the data from 2001 through 2010.

4 (3) For a participating utility other than a
5 combination utility, 20% improvement in the System Average
6 Interruption Frequency Index for its Southern Region,
7 using a baseline of the average of the data from 2001
8 through 2010. For purposes of this paragraph (3), Southern
9 Region shall have the meaning set forth in the
10 participating utility's most recent report filed pursuant
11 to Section 16-125 of this Act.

12 (3.5) For a participating utility other than a
13 combination utility, 20% improvement in the System Average
14 Interruption Frequency Index for its Northeastern Region,
15 using a baseline of the average of the data from 2001
16 through 2010. For purposes of this paragraph (3.5),
17 Northeastern Region shall have the meaning set forth in the
18 participating utility's most recent report filed pursuant
19 to Section 16-125 of this Act.

20 (4) Seventy-five percent improvement in the total
21 number of customers who exceed the service reliability
22 targets as set forth in subparagraphs (A) through (C) of
23 paragraph (4) of subsection (b) of 83 Ill. Admin. Code Part
24 411.140 as of May 1, 2011, using 2010 as the baseline year.

25 (5) Reduction in issuance of estimated electric bills:
26 90% improvement for a participating utility other than a

1 combination utility, and 56% improvement for a
2 participating utility that is a combination utility, using
3 a baseline of the average number of estimated bills for the
4 years 2008 through 2010.

5 (6) Consumption on inactive meters: 90% improvement
6 for a participating utility other than a combination
7 utility, and 56% improvement for a participating utility
8 that is a combination utility, using a baseline of the
9 average unbilled kilowatthours for the years 2009 and 2010.

10 (7) Unaccounted for energy: 50% improvement for a
11 participating utility other than a combination utility
12 using a baseline of the non-technical line loss unaccounted
13 for energy kilowatthours for the year 2009.

14 (8) Uncollectible expense: reduce uncollectible
15 expense by at least \$30,000,000 for a participating utility
16 other than a combination utility and by at least \$3,500,000
17 for a participating utility that is a combination utility,
18 using a baseline of the average uncollectible expense for
19 the years 2008 through 2010.

20 (9) Opportunities for minority-owned and female-owned
21 business enterprises: design a performance metric
22 regarding the creation of opportunities for minority-owned
23 and female-owned business enterprises consistent with
24 State and federal law using a base performance value of the
25 percentage of the participating utility's capital
26 expenditures that were paid to minority-owned and

1 female-owned business enterprises in 2010.

2 The definitions set forth in 83 Ill. Admin. Code Part
3 411.20 as of May 1, 2011 shall be used for purposes of
4 calculating performance under paragraphs (1) through (3.5) of
5 this subsection (f), provided, however, that the participating
6 utility may exclude up to 9 extreme weather event days from
7 such calculation for each year, and provided further that the
8 participating utility shall exclude 9 extreme weather event
9 days when calculating each year of the baseline period to the
10 extent that there are 9 such days in a given year of the
11 baseline period. For purposes of this Section, an extreme
12 weather event day is a 24-hour calendar day (beginning at 12:00
13 a.m. and ending at 11:59 p.m.) during which any weather event
14 (e.g., storm, tornado) caused interruptions for 10,000 or more
15 of the participating utility's customers for 3 hours or more.
16 If there are more than 9 extreme weather event days in a year,
17 then the utility may choose no more than 9 extreme weather
18 event days to exclude, provided that the same extreme weather
19 event days are excluded from each of the calculations performed
20 under paragraphs (1) through (3.5) of this subsection (f).

21 The metrics shall include incremental performance goals
22 for each year of the 10-year period, which shall be designed to
23 demonstrate that the utility is on track to achieve the
24 performance goal in each category at the end of the 10-year
25 period. The utility shall elect when the 10-year period shall
26 commence for the metrics set forth in subparagraphs (1) through

1 (4) and (9) of this subsection (f), provided that it begins no
2 later than 14 months following the date on which the utility
3 begins investing pursuant to subsection (b) of this Section,
4 and when the 10-year period shall commence for the metrics set
5 forth in subparagraphs (5) through (8) of this subsection (f),
6 provided that it begins no later than 14 months following the
7 date on which the Commission enters its order approving the
8 utility's Advanced Metering Infrastructure Deployment Plan
9 pursuant to subsection (c) of Section 16-108.6 of this Act.

10 The metrics and performance goals set forth in
11 subparagraphs (5) through (8) of this subsection (f) are based
12 on the assumptions that the participating utility may fully
13 implement the technology described in subsection (b) of this
14 Section, including utilizing the full functionality of such
15 technology and that there is no requirement for personal
16 on-site notification. If the utility is unable to meet the
17 metrics and performance goals set forth in subparagraphs (5)
18 through (8) of this subsection (f) for such reasons, and the
19 Commission so finds after notice and hearing, then the utility
20 shall be excused from compliance, but only to the limited
21 extent achievement of the affected metrics and performance
22 goals was hindered by the less than full implementation.

23 (f-5) The financial penalties applicable to the metrics
24 described in subparagraphs (1) through (8) of subsection (f) of
25 this Section, as applicable, shall be applied through an
26 adjustment to the participating utility's return on equity of

1 no more than a total of 30 basis points in each of the first 3
2 years, of no more than a total of 34 basis points in each of the
3 3 years thereafter, and of no more than a total of 38 basis
4 points in each of the 4 years thereafter, as follows:

5 (1) With respect to each of the incremental annual
6 performance goals established pursuant to paragraph (1) of
7 subsection (f) of this Section,

8 (A) for each year that a participating utility
9 other than a combination utility does not achieve the
10 annual goal, the participating utility's return on
11 equity shall be reduced as follows: during years 1
12 through 3, by 5 basis points; during years 4 through 6,
13 by 6 basis points; and during years 7 through 10, by 7
14 basis points; and

15 (B) for each year that a participating utility that
16 is a combination utility does not achieve the annual
17 goal, the participating utility's return on equity
18 shall be reduced as follows: during years 1 through 3,
19 by 10 basis points; during years 4 through 6, by 12
20 basis points; and during years 7 through 10, by 14
21 basis points.

22 (2) With respect to each of the incremental annual
23 performance goals established pursuant to paragraph (2) of
24 subsection (f) of this Section, for each year that the
25 participating utility does not achieve each such goal, the
26 participating utility's return on equity shall be reduced

1 as follows: during years 1 through 3, by 5 basis points;
2 during years 4 through 6, by 6 basis points; and during
3 years 7 through 10, by 7 basis points.

4 (3) With respect to each of the incremental annual
5 performance goals established pursuant to paragraphs (3)
6 and (3.5) of subsection (f) of this Section, for each year
7 that a participating utility other than a combination
8 utility does not achieve both such goals, the participating
9 utility's return on equity shall be reduced as follows:
10 during years 1 through 3, by 5 basis points; during years 4
11 through 6, by 6 basis points; and during years 7 through
12 10, by 7 basis points.

13 (4) With respect to each of the incremental annual
14 performance goals established pursuant to paragraph (4) of
15 subsection (f) of this Section, for each year that the
16 participating utility does not achieve each such goal, the
17 participating utility's return on equity shall be reduced
18 as follows: during years 1 through 3, by 5 basis points;
19 during years 4 through 6, by 6 basis points; and during
20 years 7 through 10, by 7 basis points.

21 (5) With respect to each of the incremental annual
22 performance goals established pursuant to subparagraph (5)
23 of subsection (f) of this Section, for each year that the
24 participating utility does not achieve at least 95% of each
25 such goal, the participating utility's return on equity
26 shall be reduced by 5 basis points for each such unachieved

1 goal.

2 (6) With respect to each of the incremental annual
3 performance goals established pursuant to paragraphs (6),
4 (7), and (8) of subsection (f) of this Section, as
5 applicable, which together measure non-operational
6 customer savings and benefits relating to the
7 implementation of the Advanced Metering Infrastructure
8 Deployment Plan, as defined in Section 16-108.6 of this
9 Act, the performance under each such goal shall be
10 calculated in terms of the percentage of the goal achieved.
11 The percentage of goal achieved for each of the goals shall
12 be aggregated, and an average percentage value calculated,
13 for each year of the 10-year period. If the utility does
14 not achieve an average percentage value in a given year of
15 at least 95%, the participating utility's return on equity
16 shall be reduced by 5 basis points.

17 The financial penalties shall be applied as described in
18 this subsection (f-5) for the 12-month period in which the
19 deficiency occurred through a separate tariff mechanism, which
20 shall be filed by the utility together with its metrics. In the
21 event the formula rate tariff established pursuant to
22 subsection (c) of this Section terminates, the utility's
23 obligations under subsection (f) of this Section and this
24 subsection (f-5) shall also terminate, provided, however, that
25 the tariff mechanism established pursuant to subsection (f) of
26 this Section and this subsection (f-5) shall remain in effect

1 until any penalties due and owing at the time of such
2 termination are applied.

3 The Commission shall, after notice and hearing, enter an
4 order within 120 days after the metrics are filed approving, or
5 approving with modification, a participating utility's tariff
6 or mechanism to satisfy the metrics set forth in subsection (f)
7 of this Section. On June 1 of each subsequent year, each
8 participating utility shall file a report with the Commission
9 that includes, among other things, a description of how the
10 participating utility performed under each metric and an
11 identification of any extraordinary events that adversely
12 impacted the utility's performance. Whenever a participating
13 utility does not satisfy the metrics required pursuant to
14 subsection (f) of this Section, the Commission shall, after
15 notice and hearing, enter an order approving financial
16 penalties in accordance with this subsection (f-5). The
17 Commission-approved financial penalties shall be applied
18 beginning with the next rate year. Nothing in this Section
19 shall authorize the Commission to reduce or otherwise obviate
20 the imposition of financial penalties for failing to achieve
21 one or more of the metrics established pursuant to subparagraph
22 (1) through (4) of subsection (f) of this Section.

23 (g) On or before July 31, 2014, each participating utility
24 shall file a report with the Commission that sets forth the
25 average annual increase in the average amount paid per
26 kilowatthour for residential eligible retail customers,

1 exclusive of the effects of energy efficiency programs,
2 comparing the 12-month period ending May 31, 2012; the 12-month
3 period ending May 31, 2013; and the 12-month period ending May
4 31, 2014. For a participating utility that is a combination
5 utility with more than one rate zone, the weighted average
6 aggregate increase shall be provided. The report shall be filed
7 together with a statement from an independent auditor attesting
8 to the accuracy of the report. The cost of the independent
9 auditor shall be borne by the participating utility and shall
10 not be a recoverable expense. "The average amount paid per
11 kilowatthour" shall be based on the participating utility's
12 tariffed rates actually in effect and shall not be calculated
13 using any hypothetical rate or adjustments to actual charges
14 (other than as specified for energy efficiency) as an input.

15 In the event that the average annual increase exceeds 2.5%
16 as calculated pursuant to this subsection (g), then Sections
17 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of this Act, other
18 than this subsection, shall be inoperative as they relate to
19 the utility and its service area as of the date of the report
20 due to be submitted pursuant to this subsection and the utility
21 shall no longer be eligible to annually update the
22 performance-based formula rate tariff pursuant to subsection
23 (d) of this Section. In such event, the then current rates
24 shall remain in effect until such time as new rates are set
25 pursuant to Article IX of this Act, subject to retroactive
26 adjustment, with interest, to reconcile rates charged with

1 actual costs, and the participating utility's voluntary
2 commitments and obligations under subsection (b) of this
3 Section shall immediately terminate, except for the utility's
4 obligation to pay an amount already owed to the fund for
5 training grants pursuant to a Commission order issued under
6 subsection (b) of this Section.

7 In the event that the average annual increase is 2.5% or
8 less as calculated pursuant to this subsection (g), then the
9 performance-based formula rate shall remain in effect as set
10 forth in this Section.

11 For purposes of this Section, the amount per kilowatthour
12 means the total amount paid for electric service expressed on a
13 per kilowatthour basis, and the total amount paid for electric
14 service includes without limitation amounts paid for supply,
15 transmission, distribution, surcharges, and add-on taxes
16 exclusive of any increases in taxes or new taxes imposed after
17 the effective date of this amendatory Act of the 97th General
18 Assembly. For purposes of this Section, "eligible retail
19 customers" shall have the meaning set forth in Section 16-111.5
20 of this Act.

21 The fact that this Section becomes inoperative as set forth
22 in this subsection shall not be construed to mean that the
23 Commission may reexamine or otherwise reopen prudence or
24 reasonableness determinations already made.

25 (h) Sections 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of
26 this Act, other than this subsection, are inoperative after

1 December 31, 2019 ~~2017~~ for every participating utility, after
2 which time a participating utility shall no longer be eligible
3 to annually update the performance-based formula rate tariff
4 pursuant to subsection (d) of this Section. At such time, the
5 then current rates shall remain in effect until such time as
6 new rates are set pursuant to Article IX of this Act, subject
7 to retroactive adjustment, with interest, to reconcile rates
8 charged with actual costs.

9 By December 31, 2017, the Commission shall prepare and file
10 with the General Assembly a report on the infrastructure
11 program and the performance-based formula rate. The report
12 shall include the change in the average amount per kilowatthour
13 paid by residential customers between June 1, 2011 and May 31,
14 2017. If the change in the total average rate paid exceeds 2.5%
15 compounded annually, the Commission shall include in the report
16 an analysis that shows the portion of the change due to the
17 delivery services component and the portion of the change due
18 to the supply component of the rate. The report shall include
19 separate sections for each participating utility.

20 In the event Sections 16-108.5, 16-108.6, 16-108.7, and
21 16-108.8 of this Act do not become inoperative after December
22 31, 2019 ~~2017~~, then these Sections are inoperative after
23 December 31, 2022 for every participating utility, after which
24 time a participating utility shall no longer be eligible to
25 annually update the performance-based formula rate tariff
26 pursuant to subsection (d) of this Section. At such time, the

1 then current rates shall remain in effect until such time as
2 new rates are set pursuant to Article IX of this Act, subject
3 to retroactive adjustment, with interest, to reconcile rates
4 charged with actual costs.

5 The fact that this Section becomes inoperative as set forth
6 in this subsection shall not be construed to mean that the
7 Commission may reexamine or otherwise reopen prudence or
8 reasonableness determinations already made.

9 (i) While a participating utility may use, develop, and
10 maintain broadband systems and the delivery of broadband
11 services, voice-over-internet-protocol services,
12 telecommunications services, and cable and video programming
13 services for use in providing delivery services and Smart Grid
14 functionality or application to its retail customers,
15 including, but not limited to, the installation,
16 implementation and maintenance of Smart Grid electric system
17 upgrades as defined in Section 16-108.6 of this Act, a
18 participating utility is prohibited from offering to its retail
19 customers broadband services or the delivery of broadband
20 services, voice-over-internet-protocol services,
21 telecommunications services, or cable or video programming
22 services, unless they are part of a service directly related to
23 delivery services or Smart Grid functionality or applications
24 as defined in Section 16-108.6 of this Act, and from recovering
25 the costs of such offerings from retail customers.

26 (j) Nothing in this Section is intended to legislatively

1 overturn the opinion issued in Commonwealth Edison Co. v. Ill.
2 Commerce Comm'n, Nos. 2-08-0959, 2-08-1037, 2-08-1137,
3 1-08-3008, 1-08-3030, 1-08-3054, 1-08-3313 cons. (Ill. App.
4 Ct. 2d Dist. Sept. 30, 2010). This amendatory Act of the 97th
5 General Assembly shall not be construed as creating a contract
6 between the General Assembly and the participating utility, and
7 shall not establish a property right in the participating
8 utility.

9 (k) The changes made in subsections (c) and (d) of this
10 Section by this amendatory Act of the 98th General Assembly are
11 intended to be a restatement and clarification of existing law,
12 and intended to give binding effect to the provisions of House
13 Resolution 1157 adopted by the House of Representatives of the
14 97th General Assembly and Senate Resolution 821 adopted by the
15 Senate of the 97th General Assembly that are reflected in
16 paragraph (3) of this subsection. In addition, this amendatory
17 Act of the 98th General Assembly preempts and supersedes any
18 final Commission orders entered in Docket Nos. 11-0721,
19 12-0001, 12-0293, and 12-0321 to the extent inconsistent with
20 the amendatory language added to subsections (c) and (d).

21 (1) No earlier than 5 business days after the effective
22 date of this amendatory Act of the 98th General Assembly,
23 each participating utility shall file any tariff changes
24 necessary to implement the amendatory language set forth in
25 subsections (c) and (d) of this Section by this amendatory
26 Act of the 98th General Assembly and a revised revenue

1 requirement under the participating utility's
2 performance-based formula rate. The Commission shall enter
3 a final order approving such tariff changes and revised
4 revenue requirement within 21 days after the participating
5 utility's filing.

6 (2) Notwithstanding anything that may be to the
7 contrary, a participating utility may file a tariff to
8 retroactively recover its previously unrecovered actual
9 costs of delivery service that are no longer subject to
10 recovery through a reconciliation adjustment under
11 subsection (d) of this Section. This retroactive recovery
12 shall include any derivative adjustments resulting from
13 the changes to subsections (c) and (d) of this Section by
14 this amendatory Act of the 98th General Assembly. Such
15 tariff shall allow the utility to assess, on current
16 customer bills over a period of 12 monthly billing periods,
17 a charge or credit related to those unrecovered costs with
18 interest at the utility's weighted average cost of capital
19 during the period in which those costs were unrecovered. A
20 participating utility may file a tariff that implements a
21 retroactive charge or credit as described in this paragraph
22 for amounts not otherwise included in the tariff filing
23 provided for in paragraph (1) of this subsection (k). The
24 Commission shall enter a final order approving such tariff
25 within 21 days after the participating utility's filing.

26 (3) The tariff changes described in paragraphs (1) and

1 (2) of this subsection (k) shall relate only to, and be
2 consistent with, the following provisions of this
3 amendatory Act of the 98th General Assembly: paragraph (2)
4 of subsection (c) regarding year-end capital structure,
5 subparagraph (D) of paragraph (4) of subsection (c)
6 regarding pension assets, and subsection (d) regarding the
7 reconciliation components related to year-end rate base
8 and interest calculated at a rate equal to the utility's
9 weighted average cost of capital.

10 (4) Nothing in this subsection is intended to effect a
11 dismissal of or otherwise affect an appeal from any final
12 Commission orders entered in Docket Nos. 11-0721, 12-0001,
13 12-0293, and 12-0321 other than to the extent of the
14 amendatory language contained in subsections (c) and (d) of
15 this amendatory Act of the 98th General Assembly.

16 (1) Each participating utility shall be deemed to have been
17 in full compliance with all requirements of subsection (b) of
18 this Section, subsection (c) of this Section, Section 16-108.6
19 of this Act, and all Commission orders entered pursuant to
20 Sections 16-108.5 and 16-108.6 of this Act, up to and including
21 the effective date of this amendatory Act of the 98th General
22 Assembly. The Commission shall not undertake any investigation
23 of such compliance and no penalty shall be assessed or adverse
24 action taken against a participating utility for noncompliance
25 with Commission orders associated with subsection (b) of this
26 Section, subsection (c) of this Section, and Section 16-108.6

1 of this Act prior to such date. Each participating utility
2 other than a combination utility shall be permitted, without
3 penalty, a period of 12 months after such effective date to
4 take actions required to ensure its infrastructure investment
5 program is in compliance with subsection (b) of this Section
6 and with Section 16-108.6 of this Act. Provided further:

7 (1) if this amendatory Act of the 98th General Assembly
8 takes effect on or before June 15, 2013, the following
9 subparagraphs shall apply to a participating utility other
10 than a combination utility:

11 (A) if the Commission has initiated a proceeding
12 pursuant to subsection (e) of Section 16-108.6 of this
13 Act that is pending as of the effective date of this
14 amendatory Act of the 98th General Assembly, then the
15 order entered in such proceeding shall, after notice
16 and hearing, accelerate the commencement of the meter
17 deployment schedule approved in the final Commission
18 order on rehearing entered in Docket No. 12-0298;

19 (B) if the Commission has entered an order pursuant
20 to subsection (e) of Section 16-108.6 of this Act prior
21 to the effective date of this amendatory Act of the
22 98th General Assembly that does not accelerate the
23 commencement of the meter deployment schedule approved
24 in the final Commission order on rehearing entered in
25 Docket No. 12-0298, then the utility shall file with
26 the Commission, within 45 days after such effective

1 date, a plan for accelerating the commencement of the
2 utility's meter deployment schedule approved in the
3 final Commission order on rehearing entered in Docket
4 No. 12-0298; the Commission shall reopen the
5 proceeding in which it entered its order pursuant to
6 subsection (e) of Section 16-108.6 of this Act and
7 shall, after notice and hearing, enter an amendatory
8 order that approves or approves as modified such
9 accelerated plan within 90 days after the utility's
10 filing; or

11 (C) if the Commission has not initiated a
12 proceeding pursuant to subsection (e) of Section
13 16-108.6 of this Act prior to the effective date of
14 this amendatory Act of the 98th General Assembly, then
15 the utility shall file with the Commission, within 45
16 days after such effective date, a plan for accelerating
17 the commencement of the utility's meter deployment
18 schedule approved in the final Commission order on
19 rehearing entered in Docket No. 12-0298 and the
20 Commission shall, after notice and hearing, approve or
21 approve as modified such plan within 90 days after the
22 utility's filing;

23 (2) if this amendatory Act of the 98th General Assembly
24 takes effect after June 15, 2013, then each participating
25 utility other than a combination utility shall file with
26 the Commission, within 45 days after such effective date, a

1 plan for accelerating the commencement of the utility's
2 meter deployment schedule approved in the final Commission
3 order on rehearing entered in Docket No. 12-0298; the
4 Commission shall reopen the most recent proceeding in which
5 it entered an order pursuant to subsection (e) of Section
6 16-108.6 of this Act and within 90 days after the utility's
7 filing shall, after notice and hearing, enter an amendatory
8 order that approves or approves as modified such
9 accelerated plan, provided that if there was no such prior
10 proceeding the Commission shall open a new proceeding and
11 within 90 days after the utility's filing shall, after
12 notice and hearing, enter an order that approves or
13 approves as modified such accelerated plan.

14 Any schedule for meter deployment approved by the
15 Commission pursuant to subparagraphs (1) or (2) of this
16 subsection (1) shall take into consideration procurement times
17 for meters and other equipment and operational issues. Nothing
18 in this amendatory Act of the 98th General Assembly shall
19 shorten or extend the end dates for the 5-year or 10-year
20 periods set forth in subsection (b) of this Section or Section
21 16-108.6 of this Act. Nothing in this subsection is intended to
22 address whether a participating utility has, or has not,
23 satisfied any or all of the metrics and performance goals
24 established pursuant to subsection (f) of this Section.

25 (m) The provisions of this amendatory Act of the 98th
26 General Assembly are severable under Section 1.31 of the

1 Statute on Statutes.

2 (Source: P.A. 97-616, eff. 10-26-11; 97-646, eff. 12-30-11;
3 98-15, eff. 5-22-13.)

4 Section 99. Effective date. This Act takes effect on June
5 1, 2015.