

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 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. "Energy efficiency" also includes measures that
18 reduce the total Btus of electricity and natural gas needed to
19 meet the end use or uses. "Cost-effective" means that the
20 measures satisfy the total resource cost test which, for
21 purposes of this Section, means a standard that is met if, for
22 an investment in energy efficiency, the benefit-cost ratio is
23 greater than one. The benefit-cost ratio is the ratio of the

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

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

1 applicable year or by showing that total cumulative annual
2 savings within a 3-year planning period associated with
3 measures implemented after May 31, 2011 were equal to the sum
4 of each annual incremental savings requirement from May 31,
5 2011 through the end of the applicable year:

6 (1) 0.2% by May 31, 2012;

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

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

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

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

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

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

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

21 (9) an additional 1.5% in each 12-month period
22 thereafter.

23 (d) Notwithstanding the requirements of subsection (c) of
24 this Section, a natural gas utility shall limit the amount of
25 energy efficiency implemented in any 3-year reporting period
26 established by subsection (f) of Section 8-104 of this Act, by

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

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

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

15 The apportionment of the dollars to cover the costs to
16 implement the Department's share of the portfolio of energy
17 efficiency measures shall be made to the Department once the
18 Department has executed rebate agreements, grants, or
19 contracts for energy efficiency measures and provided
20 supporting documentation for those rebate agreements, grants,
21 and contracts to the utility. The Department is authorized to
22 adopt any rules necessary and prescribe procedures in order to
23 ensure compliance by applicants in carrying out the purposes of
24 rebate agreements for energy efficiency measures implemented
25 by the Department made under this Section.

26 The details of the measures implemented by the Department

1 shall be submitted by the Department to the Commission in
2 connection with the utility's filing regarding the energy
3 efficiency measures that the utility implements.

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

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

1 incurred by the Department in the implementation of the
2 measures. Any changes to the costs of energy efficiency
3 measures as a result of plan modifications shall be
4 appropriately reflected in amounts recovered by the utility and
5 turned over to the Department.

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

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

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

24 If the Department is unable to meet performance
25 requirements for the portion of the portfolio implemented by
26 the Department, then the utility and the Department shall

1 jointly submit a modified filing to the Commission explaining
2 the performance shortfall and recommending an appropriate
3 course going forward, including any program modifications that
4 may be appropriate in light of the evaluations conducted under
5 item (8) of subsection (f) of this Section. In this case, the
6 utility obligation to collect the Department's costs and turn
7 over those funds to the Department under this subsection (e)
8 shall continue only if the Commission approves the
9 modifications to the plan proposed by the Department.

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

1 utility may file a revised draft of the plan to address the
2 Commission's concerns satisfactorily. If the utility does not
3 refile with the Commission within 60 days after the
4 disapproval, the utility shall be subject to penalties at a
5 rate of \$100,000 per day until the plan is filed. This process
6 shall continue, and penalties shall accrue, until the utility
7 has successfully filed a portfolio of energy efficiency
8 measures. Penalties shall be deposited into the Energy
9 Efficiency Trust Fund and the cost of any such penalties may
10 not be recovered from ratepayers. In submitting proposed energy
11 efficiency plans and funding levels to meet the savings goals
12 adopted by this Act the utility shall:

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

17 (2) Present specific proposals to implement new
18 building and appliance standards that have been placed into
19 effect.

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

25 (4) Coordinate with the Department to present a
26 portfolio of energy efficiency measures proportionate to

1 the share of total annual utility revenues in Illinois from
2 households at or below 150% of the poverty level. Such
3 programs shall be targeted to households with incomes at or
4 below 80% of area median income.

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

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

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

24 (8) Provide for quarterly status reports tracking
25 implementation of and expenditures for the utility's
26 portfolio of measures and the Department's portfolio of

1 measures, an annual independent review, and a full
2 independent evaluation of the 3-year results of the
3 performance and the cost-effectiveness of the utility's
4 and Department's portfolios of measures and broader net
5 program impacts and, to the extent practical, for
6 adjustment of the measures on a going forward basis as a
7 result of the evaluations. The resources dedicated to
8 evaluation shall not exceed 3% of portfolio resources in
9 any given 3-year period.

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

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

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

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

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

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

26 For purposes of this Section, (i) a "large gas utility" is

1 a gas utility that on December 31, 2008, served more than
2 1,500,000 gas customers in Illinois; (ii) a "medium gas
3 utility" is a gas utility that on December 31, 2008, served
4 fewer than 1,500,000, but more than 500,000 gas customers in
5 Illinois; and (iii) a "small gas utility" is a gas utility that
6 on December 31, 2008, served fewer than 500,000 and more than
7 100,000 gas customers in Illinois. The costs of this
8 contribution may not be recovered from ratepayers.

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

1 assistance.

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

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

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

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

1 greater than 60% of the customer's total annual usage of
2 natural gas.

3 (1) Customers described in this subsection (m) of this
4 Section shall apply, on a form approved on or before
5 October 1, 2009 by the Department, to the Department to be
6 designated as a self-directing customer ("SDC") or as an
7 exempt customer using natural gas as a feedstock from which
8 other products are made, including, but not limited to,
9 feedstock for a hydrogen plant, on or before the 1st day of
10 February, 2010. Thereafter, application may be made not
11 less than 6 months before the filing date of the gas
12 utility energy efficiency plan described in subsection (f)
13 of this Section; however, a new customer that commences
14 taking service from a natural gas utility after February 1,
15 2010 may apply to become a SDC or exempt customer up to 30
16 days after beginning service. ~~Customers described in this~~
17 ~~subsection (m) that have not already been approved by the~~
18 ~~Department may apply to be designated a self directing~~
19 ~~customer or exempt customer, on a form approved by the~~
20 ~~Department, between September 1, 2013 and September 30,~~
21 ~~2013. Customer applications that are approved by the~~
22 ~~Department under this amendatory Act of the 98th General~~
23 ~~Assembly shall be considered to be a self-directing~~
24 ~~customer or exempt customer, as applicable, for the current~~
25 ~~3-year planning period effective December 1, 2013.~~ Such
26 application shall contain the following:

1 (A) the customer's certification that, at the time
2 of its application, it qualifies to be a SDC or exempt
3 customer described in this subsection (m) of this
4 Section;

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

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

1 (D) in the case of a SDC, the customer's
2 certification that the required reserve account
3 balance will be capped at 3 years' worth of accruals
4 and that the customer may, at its option, make further
5 deposits to the account to the extent such deposit
6 would increase the reserve account balance above the
7 designated cap level;

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

1 (F) in the case of an exempt customer, the
2 customer's certification of the level of gas usage as
3 feedstock in the customer's operation in a typical year
4 and that it will provide information establishing this
5 level, upon request of the Department;

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

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

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

20 (2) The Department shall review the application to
21 determine that it contains the information described in
22 provisions (A) through (I) of item (1) of this subsection
23 (m), as applicable. The review shall be completed within 30
24 days after the date the application is filed with the
25 Department. Absent a determination by the Department
26 within the 30-day period, the applicant shall be considered

1 to be a SDC or exempt customer, as applicable, for all
2 subsequent 3-year planning periods, as of the date of
3 filing the application described in this subsection (m). If
4 the Department determines that the application does not
5 contain the applicable information described in provisions
6 (A) through (I) of item (1) of this subsection (m), it
7 shall notify the customer, in writing, of its determination
8 that the application does not contain the required
9 information and identify the information that is missing,
10 and the customer shall provide the missing information
11 within 15 working days after the date of receipt of the
12 Department's notification.

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

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

6 Customers described in this subsection (m) that were
7 approved by the Department in February 2013 shall be considered
8 to be a self-directing customer or exempt customer, as
9 applicable, for the current 3-year planning period effective
10 December 1, 2013.

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

16 (Source: P.A. 97-813, eff. 7-13-12; 97-841, eff. 7-20-12;
17 98-90, eff. 7-15-13; 98-225, eff. 8-9-13; revised 9-9-13.)

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