

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 applied to  
7           the Department on January 3, 2013, were approved by the  
8           Department on February 13, 2013 to be a self-directing customer  
9           or exempt customer, and receive natural gas from a utility that  
10           provides gas service to at least 500,000 retail customers in  
11           Illinois and electric service to at least 1,000,000 retail  
12           customers in Illinois shall be considered to be a  
13           self-directing customer or exempt customer, as applicable, for  
14           the current 3-year planning period effective December 1, 2013.

15           (n) The applicability of this Section to customers  
16           described in subsection (m) of this Section is conditioned on  
17           the existence of the SDC program. In no event will any  
18           provision of this Section apply to such customers after January  
19           1, 2020.

20           (Source: P.A. 97-813, eff. 7-13-12; 97-841, eff. 7-20-12;  
21           98-90, eff. 7-15-13; 98-225, eff. 8-9-13; revised 9-9-13.)

22           Section 99. Effective date. This Act takes effect upon  
23           becoming law.