

# SB3436



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

SB3436

Introduced 2/14/2014, by Sen. Don Harmon

#### SYNOPSIS AS INTRODUCED:

220 ILCS 5/8-103

Amends the Public Utilities Act. Provides that energy efficiency and demand-response measures do not apply to self-directed customers. Provides that a self-directed customer is a customer of an electric utility whose total highest 30 minute demand aggregated for all of that customer's facilities within a utility service area was more than 10,000 kilowatts or whose annual aggregated usage is 500,000,000 kilowatt hours or more in this State and who complies with certain provisions. Provides that the criteria for determining qualification as a self-directing customer shall be based on the most recent 12 consecutive billing periods prior to the customer's initial application for designation as a self-directing customer. Provides that the provisions regarding self-directed customers will no longer be applicable after January 1, 2021.

LRB098 18566 RPS 53704 b

A BILL FOR

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 8-103 as follows:

6 (220 ILCS 5/8-103)

7 Sec. 8-103. Energy efficiency and demand-response  
8 measures.

9 (a) It is the policy of the State that electric utilities  
10 are required to use cost-effective energy efficiency and  
11 demand-response measures to reduce delivery load. Requiring  
12 investment in cost-effective energy efficiency and  
13 demand-response measures will reduce direct and indirect costs  
14 to consumers by decreasing environmental impacts and by  
15 avoiding or delaying the need for new generation, transmission,  
16 and distribution infrastructure. It serves the public interest  
17 to allow electric utilities to recover costs for reasonably and  
18 prudently incurred expenses for energy efficiency and  
19 demand-response measures. As used in this Section,  
20 "cost-effective" means that the measures satisfy the total  
21 resource cost test. The low-income measures described in  
22 subsection (f) (4) of this Section shall not be required to meet  
23 the total resource cost test. For purposes of this Section, the

1 terms "energy-efficiency", "demand-response", "electric  
2 utility", and "total resource cost test" shall have the  
3 meanings set forth in the Illinois Power Agency Act. For  
4 purposes of this Section, the amount per kilowatthour means the  
5 total amount paid for electric service expressed on a per  
6 kilowatthour basis. For purposes of this Section, the total  
7 amount paid for electric service includes without limitation  
8 estimated amounts paid for supply, transmission, distribution,  
9 surcharges, and add-on-taxes.

10 (b) Electric utilities shall implement cost-effective  
11 energy efficiency measures to meet the following incremental  
12 annual energy savings goals:

13 (1) 0.2% of energy delivered in the year commencing  
14 June 1, 2008;

15 (2) 0.4% of energy delivered in the year commencing  
16 June 1, 2009;

17 (3) 0.6% of energy delivered in the year commencing  
18 June 1, 2010;

19 (4) 0.8% of energy delivered in the year commencing  
20 June 1, 2011;

21 (5) 1% of energy delivered in the year commencing June  
22 1, 2012;

23 (6) 1.4% of energy delivered in the year commencing  
24 June 1, 2013;

25 (7) 1.8% of energy delivered in the year commencing  
26 June 1, 2014; and

1           (8) 2% of energy delivered in the year commencing June  
2           1, 2015 and each year thereafter.

3           Electric utilities may comply with this subsection (b) by  
4 meeting the annual incremental savings goal in the applicable  
5 year or by showing that the total cumulative annual savings  
6 within a 3-year planning period associated with measures  
7 implemented after May 31, 2014 was equal to the sum of each  
8 annual incremental savings requirement from May 31, 2014  
9 through the end of the applicable year.

10          (c) Electric utilities shall implement cost-effective  
11 demand-response measures to reduce peak demand by 0.1% over the  
12 prior year for eligible retail customers, as defined in Section  
13 16-111.5 of this Act, and for customers that elect hourly  
14 service from the utility pursuant to Section 16-107 of this  
15 Act, provided those customers have not been declared  
16 competitive. This requirement commences June 1, 2008 and  
17 continues for 10 years.

18          (d) Notwithstanding the requirements of subsections (b)  
19 and (c) of this Section, an electric utility shall reduce the  
20 amount of energy efficiency and demand-response measures  
21 implemented over a 3-year planning period by an amount  
22 necessary to limit the estimated average annual increase in the  
23 amounts paid by retail customers in connection with electric  
24 service due to the cost of those measures to:

25                 (1) in 2008, no more than 0.5% of the amount paid per  
26                 kilowatthour by those customers during the year ending May

1 31, 2007;

2 (2) in 2009, the greater of an additional 0.5% of the  
3 amount paid per kilowatthour by those customers during the  
4 year ending May 31, 2008 or 1% of the amount paid per  
5 kilowatthour by those customers during the year ending May  
6 31, 2007;

7 (3) in 2010, the greater of an additional 0.5% of the  
8 amount paid per kilowatthour by those customers during the  
9 year ending May 31, 2009 or 1.5% of the amount paid per  
10 kilowatthour by those customers during the year ending May  
11 31, 2007;

12 (4) in 2011, the greater of an additional 0.5% of the  
13 amount paid per kilowatthour by those customers during the  
14 year ending May 31, 2010 or 2% of the amount paid per  
15 kilowatthour by those customers during the year ending May  
16 31, 2007; and

17 (5) thereafter, the amount of energy efficiency and  
18 demand-response measures implemented for any single year  
19 shall be reduced by an amount necessary to limit the  
20 estimated average net increase due to the cost of these  
21 measures included in the amounts paid by eligible retail  
22 customers in connection with electric service to no more  
23 than the greater of 2.015% of the amount paid per  
24 kilowatthour by those customers during the year ending May  
25 31, 2007 or the incremental amount per kilowatthour paid  
26 for these measures in 2011.

1           No later than June 30, 2011, the Commission shall review  
2 the limitation on the amount of energy efficiency and  
3 demand-response measures implemented pursuant to this Section  
4 and report to the General Assembly its findings as to whether  
5 that limitation unduly constrains the procurement of energy  
6 efficiency and demand-response measures.

7           (e) Electric utilities shall be responsible for overseeing  
8 the design, development, and filing of energy efficiency and  
9 demand-response plans with the Commission. Electric utilities  
10 shall implement 100% of the demand-response measures in the  
11 plans. Electric utilities shall implement 75% of the energy  
12 efficiency measures approved by the Commission, and may, as  
13 part of that implementation, outsource various aspects of  
14 program development and implementation. The remaining 25% of  
15 those energy efficiency measures approved by the Commission  
16 shall be implemented by the Department of Commerce and Economic  
17 Opportunity, and must be designed in conjunction with the  
18 utility and the filing process. The Department may outsource  
19 development and implementation of energy efficiency measures.  
20 A minimum of 10% of the entire portfolio of cost-effective  
21 energy efficiency measures shall be procured from units of  
22 local government, municipal corporations, school districts,  
23 and community college districts. The Department shall  
24 coordinate the implementation of these measures.

25           The apportionment of the dollars to cover the costs to  
26 implement the Department's share of the portfolio of energy

1 efficiency measures shall be made to the Department once the  
2 Department has executed rebate agreements, grants, or  
3 contracts for energy efficiency measures and provided  
4 supporting documentation for those rebate agreements, grants,  
5 and contracts to the utility. The Department is authorized to  
6 adopt any rules necessary and prescribe procedures in order to  
7 ensure compliance by applicants in carrying out the purposes of  
8 rebate agreements for energy efficiency measures implemented  
9 by the Department made under this Section.

10 The details of the measures implemented by the Department  
11 shall be submitted by the Department to the Commission in  
12 connection with the utility's filing regarding the energy  
13 efficiency and demand-response measures that the utility  
14 implements.

15 A utility providing approved energy efficiency and  
16 demand-response measures in the State shall be permitted to  
17 recover costs of those measures through an automatic adjustment  
18 clause tariff filed with and approved by the Commission. The  
19 tariff shall be established outside the context of a general  
20 rate case. Each year the Commission shall initiate a review to  
21 reconcile any amounts collected with the actual costs and to  
22 determine the required adjustment to the annual tariff factor  
23 to match annual expenditures.

24 Each utility shall include, in its recovery of costs, the  
25 costs estimated for both the utility's and the Department's  
26 implementation of energy efficiency and demand-response

1 measures. Costs collected by the utility for measures  
2 implemented by the Department shall be submitted to the  
3 Department pursuant to Section 605-323 of the Civil  
4 Administrative Code of Illinois, shall be deposited into the  
5 Energy Efficiency Portfolio Standards Fund, and shall be used  
6 by the Department solely for the purpose of implementing these  
7 measures. A utility shall not be required to advance any moneys  
8 to the Department but only to forward such funds as it has  
9 collected. The Department shall report to the Commission on an  
10 annual basis regarding the costs actually incurred by the  
11 Department in the implementation of the measures. Any changes  
12 to the costs of energy efficiency measures as a result of plan  
13 modifications shall be appropriately reflected in amounts  
14 recovered by the utility and turned over to the Department.

15 The portfolio of measures, administered by both the  
16 utilities and the Department, shall, in combination, be  
17 designed to achieve the annual savings targets described in  
18 subsections (b) and (c) of this Section, as modified by  
19 subsection (d) of this Section.

20 The utility and the Department shall agree upon a  
21 reasonable portfolio of measures and determine the measurable  
22 corresponding percentage of the savings goals associated with  
23 measures implemented by the utility or Department.

24 No utility shall be assessed a penalty under subsection (f)  
25 of this Section for failure to make a timely filing if that  
26 failure is the result of a lack of agreement with the



1 Department with respect to the allocation of responsibilities  
2 or related costs or target assignments. In that case, the  
3 Department and the utility shall file their respective plans  
4 with the Commission and the Commission shall determine an  
5 appropriate division of measures and programs that meets the  
6 requirements of this Section.

7 If the Department is unable to meet incremental annual  
8 performance goals for the portion of the portfolio implemented  
9 by the Department, then the utility and the Department shall  
10 jointly submit a modified filing to the Commission explaining  
11 the performance shortfall and recommending an appropriate  
12 course going forward, including any program modifications that  
13 may be appropriate in light of the evaluations conducted under  
14 item (7) of subsection (f) of this Section. In this case, the  
15 utility obligation to collect the Department's costs and turn  
16 over those funds to the Department under this subsection (e)  
17 shall continue only if the Commission approves the  
18 modifications to the plan proposed by the Department.

19 (f) No later than November 15, 2007, each electric utility  
20 shall file an energy efficiency and demand-response plan with  
21 the Commission to meet the energy efficiency and  
22 demand-response standards for 2008 through 2010. No later than  
23 October 1, 2010, each electric utility shall file an energy  
24 efficiency and demand-response plan with the Commission to meet  
25 the energy efficiency and demand-response standards for 2011  
26 through 2013. Every 3 years thereafter, each electric utility

1 shall file, no later than September 1, an energy efficiency and  
2 demand-response plan with the Commission. If a utility does not  
3 file such a plan by September 1 of an applicable year, it shall  
4 face a penalty of \$100,000 per day until the plan is filed.  
5 Each utility's plan shall set forth the utility's proposals to  
6 meet the utility's portion of the energy efficiency standards  
7 identified in subsection (b) and the demand-response standards  
8 identified in subsection (c) of this Section as modified by  
9 subsections (d) and (e), taking into account the unique  
10 circumstances of the utility's service territory. The  
11 Commission shall seek public comment on the utility's plan and  
12 shall issue an order approving or disapproving each plan within  
13 5 months after its submission. If the Commission disapproves a  
14 plan, the Commission shall, within 30 days, describe in detail  
15 the reasons for the disapproval and describe a path by which  
16 the utility may file a revised draft of the plan to address the  
17 Commission's concerns satisfactorily. If the utility does not  
18 refile with the Commission within 60 days, the utility shall be  
19 subject to penalties at a rate of \$100,000 per day until the  
20 plan is filed. This process shall continue, and penalties shall  
21 accrue, until the utility has successfully filed a portfolio of  
22 energy efficiency and demand-response measures. Penalties  
23 shall be deposited into the Energy Efficiency Trust Fund. In  
24 submitting proposed energy efficiency and demand-response  
25 plans and funding levels to meet the savings goals adopted by  
26 this Act the utility shall:

1           (1) Demonstrate that its proposed energy efficiency  
2           and demand-response measures will achieve the requirements  
3           that are identified in subsections (b) and (c) of this  
4           Section, as modified by subsections (d) and (e).

5           (2) Present specific proposals to implement new  
6           building and appliance standards that have been placed into  
7           effect.

8           (3) Present estimates of the total amount paid for  
9           electric service expressed on a per kilowatthour basis  
10          associated with the proposed portfolio of measures  
11          designed to meet the requirements that are identified in  
12          subsections (b) and (c) of this Section, as modified by  
13          subsections (d) and (e).

14          (4) Coordinate with the Department to present a  
15          portfolio of energy efficiency measures proportionate to  
16          the share of total annual utility revenues in Illinois from  
17          households at or below 150% of the poverty level. The  
18          energy efficiency programs shall be targeted to households  
19          with incomes at or below 80% of area median income.

20          (5) Demonstrate that its overall portfolio of energy  
21          efficiency and demand-response measures, not including  
22          programs covered by item (4) of this subsection (f), are  
23          cost-effective using the total resource cost test and  
24          represent a diverse cross-section of opportunities for  
25          customers of all rate classes to participate in the  
26          programs.

1           (6) Include a proposed cost-recovery tariff mechanism  
2           to fund the proposed energy efficiency and demand-response  
3           measures and to ensure the recovery of the prudently and  
4           reasonably incurred costs of Commission-approved programs.

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

14          (g) No more than 3% of energy efficiency and  
15          demand-response program revenue may be allocated for  
16          demonstration of breakthrough equipment and devices.

17          (h) This Section does not apply to an electric utility that  
18          on December 31, 2005 provided electric service to fewer than  
19          100,000 customers in Illinois.

20          (i) If, after 2 years, an electric utility fails to meet  
21          the efficiency standard specified in subsection (b) of this  
22          Section, as modified by subsections (d) and (e), it shall make  
23          a contribution to the Low-Income Home Energy Assistance  
24          Program. The combined total liability for failure to meet the  
25          goal shall be \$1,000,000, which shall be assessed as follows: a  
26          large electric utility shall pay \$665,000, and a medium

1 electric utility shall pay \$335,000. If, after 3 years, an  
2 electric utility fails to meet the efficiency standard  
3 specified in subsection (b) of this Section, as modified by  
4 subsections (d) and (e), it shall make a contribution to the  
5 Low-Income Home Energy Assistance Program. The combined total  
6 liability for failure to meet the goal shall be \$1,000,000,  
7 which shall be assessed as follows: a large electric utility  
8 shall pay \$665,000, and a medium electric utility shall pay  
9 \$335,000. In addition, the responsibility for implementing the  
10 energy efficiency measures of the utility making the payment  
11 shall be transferred to the Illinois Power Agency if, after 3  
12 years, or in any subsequent 3-year period, the utility fails to  
13 meet the efficiency standard specified in subsection (b) of  
14 this Section, as modified by subsections (d) and (e). The  
15 Agency shall implement a competitive procurement program to  
16 procure resources necessary to meet the standards specified in  
17 this Section as modified by subsections (d) and (e), with costs  
18 for those resources to be recovered in the same manner as  
19 products purchased through the procurement plan as provided in  
20 Section 16-111.5. The Director shall implement this  
21 requirement in connection with the procurement plan as provided  
22 in Section 16-111.5.

23 For purposes of this Section, (i) a "large electric  
24 utility" is an electric utility that, on December 31, 2005,  
25 served more than 2,000,000 electric customers in Illinois; (ii)  
26 a "medium electric utility" is an electric utility that, on

1 December 31, 2005, served 2,000,000 or fewer but more than  
2 100,000 electric customers in Illinois; and (iii) Illinois  
3 electric utilities that are affiliated by virtue of a common  
4 parent company are considered a single electric utility.

5 (j) If, after 3 years, or any subsequent 3-year period, the  
6 Department fails to implement the Department's share of energy  
7 efficiency measures required by the standards in subsection  
8 (b), then the Illinois Power Agency may assume responsibility  
9 for and control of the Department's share of the required  
10 energy efficiency measures. The Agency shall implement a  
11 competitive procurement program to procure resources necessary  
12 to meet the standards specified in this Section, with the costs  
13 of these resources to be recovered in the same manner as  
14 provided for the Department in this Section.

15 (k) No electric utility shall be deemed to have failed to  
16 meet the energy efficiency standards to the extent any such  
17 failure is due to a failure of the Department or the Agency.

18 (l) Subsections (a) through (k) of this Section do not  
19 apply to any customer of an electric utility whose total  
20 highest 30 minute demand aggregated for all of such customer's  
21 facilities within a utility service area was more than 10,000  
22 kilowatts or whose annual aggregated usage is 500,000,000  
23 kilowatt hours or more in this State and that complies with the  
24 provisions of paragraph (1) of this subsection (l). These  
25 criteria for determining qualification as a self-directing  
26 customer ("SDC") shall be based on the most recent 12

1 consecutive billing periods prior to the customer's initial  
2 application for designation as a SDC.

3 (1) Customers described in this subsection (1) shall  
4 apply to the Department, on a form approved by the  
5 Department on or before October 1, 2014, to be designated  
6 as a SDC on or before February 1, 2015. Thereafter, an  
7 application may be made not less than 6 months before the  
8 filing date of the electric utility energy efficiency and  
9 demand-response plan described in subsection (f) of this  
10 Section; however, a new customer that commences taking  
11 service from an electric utility after February 1, 2015 may  
12 apply to become a SDC up to 30 days after beginning  
13 service. The application shall contain the following:

14 (A) the customer's certification that, at the time  
15 of its application, it qualifies to be a SDC described  
16 in this subsection (1);

17 (B) the customer's certification that it has  
18 established or shall establish, by the beginning of the  
19 utility's 3-year planning period commencing subsequent  
20 to the application, and shall maintain for accounting  
21 purposes an energy efficiency reserve account and that  
22 the customer shall accrue funds in the account to be  
23 held for the purpose of funding, in whole or in part,  
24 energy efficiency measures of the customer's choosing,  
25 which may include, but are not limited to, projects  
26 involving combined heat and power systems that use the

1 same energy source both for the generation of  
2 electrical or mechanical power and the production of  
3 steam or another form of useful thermal energy or the  
4 use of combustible gas produced from biomass or both;

5 (C) the customer's certification that annual  
6 funding levels for the energy efficiency reserve  
7 account shall be equal to 2% of the customer's cost of  
8 electricity, composed of the customer's commodity cost  
9 and the delivery service charges paid to the electric  
10 utility;

11 (D) in the case of customers who use one or more  
12 electric arc furnaces with an annual usage of greater  
13 than 50% of the customer's total annual electricity  
14 usage, the required annual funding levels described in  
15 subparagraph (C) of paragraph (1) of this subsection  
16 (1) shall be based on the electricity usage not  
17 directly used by the electric arc furnaces;

18 (E) the customer's certification that the required  
19 reserve account balance shall be capped at 3 years'  
20 worth of accruals and that the customer may, at its  
21 option, make further deposits to the account to the  
22 extent such a deposit would increase the reserve  
23 account balance above the designated cap level;

24 (F) the customer's certification that by October 1  
25 of each year, beginning no sooner than October 1, 2016,  
26 the customer shall report to the Department, for the



1 12-month period ending May 31 of the same year,  
2 information on all deposits and reductions, if any, to  
3 the reserve account during the reporting year; reserve  
4 account balances by month; a description of energy  
5 efficiency measures undertaken by the customer and  
6 paid for in whole or in part with funds from the  
7 reserve account; and an estimate of the energy saved or  
8 to be saved by the measure and that the report shall  
9 include a verification, by an officer or plant manager  
10 of the customer or by a registered professional  
11 engineer or certified, energy-efficiency trade  
12 professional, that the funds withdrawn from the  
13 reserve account were used for the energy efficiency  
14 measures;

15 (G) in the case of a customer with one or more  
16 electric arc furnaces that meet the criteria described  
17 in subparagraph (D) of paragraph (1) of this subsection  
18 (1), the customer's certification of the level of  
19 electricity usage for powering its electric arc  
20 furnaces in a typical year and that it shall provide  
21 information establishing this level, upon request of  
22 the Department;

23 (H) the customer's certification that it has  
24 provided the electric utility or utilities serving the  
25 customer with a copy of the application as filed with  
26 the Department;

1           (I) the customer's certification of the electric  
2           utility or utilities serving the customer in this  
3           State, including the electric utility accounts that  
4           are the subject of the application; and

5           (J) the customer's verification, signed by a plant  
6           manager or an authorized corporate officer, attesting  
7           to the truthfulness and accuracy of the information  
8           contained in the application.

9           (2) The Department shall review the application to  
10          determine that it contains the information described in  
11          subparagraphs (A) through (J) of paragraph (1) of this  
12          subsection (1), as applicable. The review shall be  
13          completed within 30 days after the date the application is  
14          filed with the Department. Absent a determination by the  
15          Department within the 30-day period, the applicant shall be  
16          considered to be a customer for all subsequent 3-year  
17          planning periods, as of the date of filing the application  
18          described in this subsection (1). If the Department  
19          determines that the application does not contain the  
20          applicable information described in subparagraphs (A)  
21          through (J) of paragraph (1) of this subsection (1), it  
22          shall notify the customer, in writing, of its determination  
23          that the application does not contain the required  
24          information and identify the information that is missing,  
25          and the customer shall provide the missing information  
26          within 15 working days after the date of receipt of the

1 Department's notification.

2 (3) The Department shall have the right to audit the  
3 information provided in the customer's application and its  
4 annual reports to ensure continued compliance with the  
5 requirements of this subsection (1). Based on the audit, if  
6 the Department determines the customer is no longer in  
7 compliance with the requirements of subparagraphs (A)  
8 through (J) of paragraph (1) of this subsection (1), as  
9 applicable, the Department shall notify the customer in  
10 writing of the noncompliance. The customer shall have 30  
11 days to establish its compliance and, failing to do so, may  
12 have its status as a SDC or exempt customer revoked by the  
13 Department. The Department shall treat all information  
14 provided by any customer seeking SDC status or exemption  
15 from the provisions of this Section as strictly  
16 confidential.

17 (4) Upon request or on its own motion, the Commission  
18 may open an investigation, no more than once every 3 years  
19 and not before October 1, 2017, to evaluate the  
20 effectiveness of the self-directing program described in  
21 this subsection (1).

22 (m) The applicability of this Section to customers  
23 described in subsection (1) of this Section is conditioned on  
24 the existence of the SDC program. In no event shall any  
25 provision of this Section apply to such customers after January  
26 1, 2021.

1 (Source: P.A. 97-616, eff. 10-26-11; 97-841, eff. 7-20-12;  
2 98-90, eff. 7-15-13.)