

HB6276



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB6276

Introduced 2/11/2016, by Rep. Martin J. Moylan

SYNOPSIS AS INTRODUCED:

220 ILCS 5/9-229
220 ILCS 5/16-108.5

Amends the Public Utilities Act. Provides that the Commission shall not consider as an expense of any public utility company, for the purpose of determining any rate or charge, any amount expended for attorneys or technical experts to prepare and litigate any proceeding before the Commission. Removes the provision that provides that the performance-based formula rate approved by the Illinois Commerce Commission with respect to certain electric utilities permits the recovery of expenses related to the Commission proceeding. Effective immediately.

LRB099 19335 EGJ 43727 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 Sections 9-229 and 16-108.5 as follows:

6 (220 ILCS 5/9-229)

7 Sec. 9-229. Consideration of attorney and expert
8 compensation as an expense. The Commission shall not consider
9 as an expense of any public utility company, for the purpose of
10 determining any rate or charge, any amount expended for
11 ~~specifically assess the justness and reasonableness of any~~
12 ~~amount expended by a public utility to compensate attorneys or~~
13 technical experts to prepare and litigate any proceeding before
14 the Commission ~~a general rate case filing. This issue shall be~~
15 ~~expressly addressed in the Commission's final order.~~

16 (Source: P.A. 96-33, eff. 7-10-09.)

17 (220 ILCS 5/16-108.5)

18 Sec. 16-108.5. Infrastructure investment and
19 modernization; regulatory reform.

20 (a) (Blank).

21 (b) For purposes of this Section, "participating utility"
22 means an electric utility or a combination utility serving more

1 than 1,000,000 customers in Illinois that voluntarily elects
2 and commits to undertake (i) the infrastructure investment
3 program consisting of the commitments and obligations
4 described in this subsection (b) and (ii) the customer
5 assistance program consisting of the commitments and
6 obligations described in subsection (b-10) of this Section,
7 notwithstanding any other provisions of this Act and without
8 obtaining any approvals from the Commission or any other agency
9 other than as set forth in this Section, regardless of whether
10 any such approval would otherwise be required. "Combination
11 utility" means a utility that, as of January 1, 2011, provided
12 electric service to at least one million retail customers in
13 Illinois and gas service to at least 500,000 retail customers
14 in Illinois. A participating utility shall recover the
15 expenditures made under the infrastructure investment program
16 through the ratemaking process, including, but not limited to,
17 the performance-based formula rate and process set forth in
18 this Section.

19 During the infrastructure investment program's peak
20 program year, a participating utility other than a combination
21 utility shall create 2,000 full-time equivalent jobs in
22 Illinois, and a participating utility that is a combination
23 utility shall create 450 full-time equivalent jobs in Illinois
24 related to the provision of electric service. These jobs shall
25 include direct jobs, contractor positions, and induced jobs,
26 but shall not include any portion of a job commitment, not

1 specifically contingent on an amendatory Act of the 97th
2 General Assembly becoming law, between a participating utility
3 and a labor union that existed on December 30, 2011 (the
4 effective date of Public Act 97-646) ~~this amendatory Act of the~~
5 ~~97th General Assembly~~ and that has not yet been fulfilled. A
6 portion of the full-time equivalent jobs created by each
7 participating utility shall include incremental personnel
8 hired subsequent to December 30, 2011 (the effective date of
9 Public Act 97-646) ~~this amendatory Act of the 97th General~~
10 ~~Assembly~~. For purposes of this Section, "peak program year"
11 means the consecutive 12-month period with the highest number
12 of full-time equivalent jobs that occurs between the beginning
13 of investment year 2 and the end of investment year 4.

14 A participating utility shall meet one of the following
15 commitments, as applicable:

16 (1) Beginning no later than 180 days after a
17 participating utility other than a combination utility
18 files a performance-based formula rate tariff pursuant to
19 subsection (c) of this Section, or, beginning no later than
20 January 1, 2012 if such utility files such
21 performance-based formula rate tariff within 14 days of
22 October 26, 2011 (the effective date of Public Act 97-616)
23 ~~this amendatory Act of the 97th General Assembly~~, the
24 participating utility shall, except as provided in
25 subsection (b-5):

26 (A) over a 5-year period, invest an estimated

1 \$1,300,000,000 in electric system upgrades,
2 modernization projects, and training facilities,
3 including, but not limited to:

4 (i) distribution infrastructure improvements
5 totaling an estimated \$1,000,000,000, including
6 underground residential distribution cable
7 injection and replacement and mainline cable
8 system refurbishment and replacement projects;

9 (ii) training facility construction or upgrade
10 projects totaling an estimated \$10,000,000,
11 provided that, at a minimum, one such facility
12 shall be located in a municipality having a
13 population of more than 2 million residents and one
14 such facility shall be located in a municipality
15 having a population of more than 150,000 residents
16 but fewer than 170,000 residents; any such new
17 facility located in a municipality having a
18 population of more than 2 million residents must be
19 designed for the purpose of obtaining, and the
20 owner of the facility shall apply for,
21 certification under the United States Green
22 Building Council's Leadership in Energy Efficiency
23 Design Green Building Rating System;

24 (iii) wood pole inspection, treatment, and
25 replacement programs;

26 (iv) an estimated \$200,000,000 for reducing

1 the susceptibility of certain circuits to
2 storm-related damage, including, but not limited
3 to, high winds, thunderstorms, and ice storms;
4 improvements may include, but are not limited to,
5 overhead to underground conversion and other
6 engineered outcomes for circuits; the
7 participating utility shall prioritize the
8 selection of circuits based on each circuit's
9 historical susceptibility to storm-related damage
10 and the ability to provide the greatest customer
11 benefit upon completion of the improvements; to be
12 eligible for improvement, the participating
13 utility's ability to maintain proper tree
14 clearances surrounding the overhead circuit must
15 not have been impeded by third parties; and

16 (B) over a 10-year period, invest an estimated
17 \$1,300,000,000 to upgrade and modernize its
18 transmission and distribution infrastructure and in
19 Smart Grid electric system upgrades, including, but
20 not limited to:

- 21 (i) additional smart meters;
22 (ii) distribution automation;
23 (iii) associated cyber secure data
24 communication network; and
25 (iv) substation micro-processor relay
26 upgrades.

1 (2) Beginning no later than 180 days after a
2 participating utility that is a combination utility files a
3 performance-based formula rate tariff pursuant to
4 subsection (c) of this Section, or, beginning no later than
5 January 1, 2012 if such utility files such
6 performance-based formula rate tariff within 14 days of
7 October 26, 2011 (the effective date of Public Act 97-616)
8 ~~this amendatory Act of the 97th General Assembly~~, the
9 participating utility shall, except as provided in
10 subsection (b-5):

11 (A) over a 10-year period, invest an estimated
12 \$265,000,000 in electric system upgrades,
13 modernization projects, and training facilities,
14 including, but not limited to:

15 (i) distribution infrastructure improvements
16 totaling an estimated \$245,000,000, which may
17 include bulk supply substations, transformers,
18 reconductoring, and rebuilding overhead
19 distribution and sub-transmission lines,
20 underground residential distribution cable
21 injection and replacement and mainline cable
22 system refurbishment and replacement projects;

23 (ii) training facility construction or upgrade
24 projects totaling an estimated \$1,000,000; any
25 such new facility must be designed for the purpose
26 of obtaining, and the owner of the facility shall

1 apply for, certification under the United States
2 Green Building Council's Leadership in Energy
3 Efficiency Design Green Building Rating System;
4 and

5 (iii) wood pole inspection, treatment, and
6 replacement programs; and

7 (B) over a 10-year period, invest an estimated
8 \$360,000,000 to upgrade and modernize its transmission
9 and distribution infrastructure and in Smart Grid
10 electric system upgrades, including, but not limited
11 to:

12 (i) additional smart meters;

13 (ii) distribution automation;

14 (iii) associated cyber secure data
15 communication network; and

16 (iv) substation micro-processor relay
17 upgrades.

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

21 The investments in the infrastructure investment program
22 described in this subsection (b) shall be incremental to the
23 participating utility's annual capital investment program, as
24 defined by, for purposes of this subsection (b), the
25 participating utility's average capital spend for calendar
26 years 2008, 2009, and 2010 as reported in the applicable

1 Federal Energy Regulatory Commission (FERC) Form 1; provided
2 that where one or more utilities have merged, the average
3 capital spend shall be determined using the aggregate of the
4 merged utilities' capital spend reported in FERC Form 1 for the
5 years 2008, 2009, and 2010. A participating utility may add
6 reasonable construction ramp-up and ramp-down time to the
7 investment periods specified in this subsection (b). For each
8 such investment period, the ramp-up and ramp-down time shall
9 not exceed a total of 6 months.

10 Within 60 days after filing a tariff under subsection (c)
11 of this Section, a participating utility shall submit to the
12 Commission its plan, including scope, schedule, and staffing,
13 for satisfying its infrastructure investment program
14 commitments pursuant to this subsection (b). The submitted plan
15 shall include a schedule and staffing plan for the next
16 calendar year. The plan shall also include a plan for the
17 creation, operation, and administration of a Smart Grid test
18 bed as described in subsection (c) of Section 16-108.8. The
19 plan need not allocate the work equally over the respective
20 periods, but should allocate material increments throughout
21 such periods commensurate with the work to be undertaken. No
22 later than April 1 of each subsequent year, the utility shall
23 submit to the Commission a report that includes any updates to
24 the plan, a schedule for the next calendar year, the
25 expenditures made for the prior calendar year and cumulatively,
26 and the number of full-time equivalent jobs created for the

1 prior calendar year and cumulatively. If the utility is
2 materially deficient in satisfying a schedule or staffing plan,
3 then the report must also include a corrective action plan to
4 address the deficiency. The fact that the plan, implementation
5 of the plan, or a schedule changes shall not imply the
6 imprudence or unreasonableness of the infrastructure
7 investment program, plan, or schedule. Further, no later than
8 45 days following the last day of the first, second, and third
9 quarters of each year of the plan, a participating utility
10 shall submit to the Commission a verified quarterly report for
11 the prior quarter that includes (i) the total number of
12 full-time equivalent jobs created during the prior quarter,
13 (ii) the total number of employees as of the last day of the
14 prior quarter, (iii) the total number of full-time equivalent
15 hours in each job classification or job title, (iv) the total
16 number of incremental employees and contractors in support of
17 the investments undertaken pursuant to this subsection (b) for
18 the prior quarter, and (v) any other information that the
19 Commission may require by rule.

20 With respect to the participating utility's peak job
21 commitment, if, after considering the utility's corrective
22 action plan and compliance thereunder, the Commission enters an
23 order finding, after notice and hearing, that a participating
24 utility did not satisfy its peak job commitment described in
25 this subsection (b) for reasons that are reasonably within its
26 control, then the Commission shall also determine, after

1 consideration of the evidence, including, but not limited to,
2 evidence submitted by the Department of Commerce and Economic
3 Opportunity and the utility, the deficiency in the number of
4 full-time equivalent jobs during the peak program year due to
5 such failure. The Commission shall notify the Department of any
6 proceeding that is initiated pursuant to this paragraph. For
7 each full-time equivalent job deficiency during the peak
8 program year that the Commission finds as set forth in this
9 paragraph, the participating utility shall, within 30 days
10 after the entry of the Commission's order, pay \$6,000 to a fund
11 for training grants administered under Section 605-800 of the
12 ~~The~~ Department of Commerce and Economic Opportunity Law, which
13 shall not be a recoverable expense.

14 With respect to the participating utility's investment
15 amount commitments, if, after considering the utility's
16 corrective action plan and compliance thereunder, the
17 Commission enters an order finding, after notice and hearing,
18 that a participating utility is not satisfying its investment
19 amount commitments described in this subsection (b), then the
20 utility shall no longer be eligible to annually update the
21 performance-based formula rate tariff pursuant to subsection
22 (d) of this Section. In such event, the then current rates
23 shall remain in effect until such time as new rates are set
24 pursuant to Article IX of this Act, subject to retroactive
25 adjustment, with interest, to reconcile rates charged with
26 actual costs.

1 If the Commission finds that a participating utility is no
2 longer eligible to update the performance-based formula rate
3 tariff pursuant to subsection (d) of this Section, or the
4 performance-based formula rate is otherwise terminated, then
5 the participating utility's voluntary commitments and
6 obligations under this subsection (b) shall immediately
7 terminate, except for the utility's obligation to pay an amount
8 already owed to the fund for training grants pursuant to a
9 Commission order.

10 In meeting the obligations of this subsection (b), to the
11 extent feasible and consistent with State and federal law, the
12 investments under the infrastructure investment program should
13 provide employment opportunities for all segments of the
14 population and workforce, including minority-owned and
15 female-owned business enterprises, and shall not, consistent
16 with State and federal law, discriminate based on race or
17 socioeconomic status.

18 (b-5) Nothing in this Section shall prohibit the Commission
19 from investigating the prudence and reasonableness of the
20 expenditures made under the infrastructure investment program
21 during the annual review required by subsection (d) of this
22 Section and shall, as part of such investigation, determine
23 whether the utility's actual costs under the program are
24 prudent and reasonable. The fact that a participating utility
25 invests more than the minimum amounts specified in subsection
26 (b) of this Section or its plan shall not imply imprudence or

1 unreasonable.

2 If the participating utility finds that it is implementing
3 its plan for satisfying the infrastructure investment program
4 commitments described in subsection (b) of this Section at a
5 cost below the estimated amounts specified in subsection (b) of
6 this Section, then the utility may file a petition with the
7 Commission requesting that it be permitted to satisfy its
8 commitments by spending less than the estimated amounts
9 specified in subsection (b) of this Section. The Commission
10 shall, after notice and hearing, enter its order approving, or
11 approving as modified, or denying each such petition within 150
12 days after the filing of the petition.

13 In no event, absent General Assembly approval, shall the
14 capital investment costs incurred by a participating utility
15 other than a combination utility in satisfying its
16 infrastructure investment program commitments described in
17 subsection (b) of this Section exceed \$3,000,000,000 or, for a
18 participating utility that is a combination utility,
19 \$720,000,000. If the participating utility's updated cost
20 estimates for satisfying its infrastructure investment program
21 commitments described in subsection (b) of this Section exceed
22 the limitation imposed by this subsection (b-5), then it shall
23 submit a report to the Commission that identifies the increased
24 costs and explains the reason or reasons for the increased
25 costs no later than the year in which the utility estimates it
26 will exceed the limitation. The Commission shall review the

1 report and shall, within 90 days after the participating
2 utility files the report, report to the General Assembly its
3 findings regarding the participating utility's report. If the
4 General Assembly does not amend the limitation imposed by this
5 subsection (b-5), then the utility may modify its plan so as
6 not to exceed the limitation imposed by this subsection (b-5)
7 and may propose corresponding changes to the metrics
8 established pursuant to subparagraphs (5) through (8) of
9 subsection (f) of this Section, and the Commission may modify
10 the metrics and incremental savings goals established pursuant
11 to subsection (f) of this Section accordingly.

12 (b-10) All participating utilities shall make
13 contributions for an energy low-income and support program in
14 accordance with this subsection. Beginning no later than 180
15 days after a participating utility files a performance-based
16 formula rate tariff pursuant to subsection (c) of this Section,
17 or beginning no later than January 1, 2012 if such utility
18 files such performance-based formula rate tariff within 14 days
19 of December 30, 2011 (the effective date of Public Act 97-646)
20 ~~this amendatory Act of the 97th General Assembly~~, and without
21 obtaining any approvals from the Commission or any other agency
22 other than as set forth in this Section, regardless of whether
23 any such approval would otherwise be required, a participating
24 utility other than a combination utility shall pay \$10,000,000
25 per year for 5 years and a participating utility that is a
26 combination utility shall pay \$1,000,000 per year for 10 years

1 to the energy low-income and support program, which is intended
2 to fund customer assistance programs with the primary purpose
3 being avoidance of imminent disconnection. Such programs may
4 include:

5 (1) a residential hardship program that may partner
6 with community-based organizations, including senior
7 citizen organizations, and provides grants to low-income
8 residential customers, including low-income senior
9 citizens, who demonstrate a hardship;

10 (2) a program that provides grants and other bill
11 payment concessions to veterans with disabilities who
12 demonstrate a hardship and members of the armed services or
13 reserve forces of the United States or members of the
14 Illinois National Guard who are on active duty pursuant to
15 an executive order of the President of the United States,
16 an act of the Congress of the United States, or an order of
17 the Governor and who demonstrate a hardship;

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

22 (4) a non-residential special hardship program that
23 provides grants to non-residential customers such as small
24 businesses and non-profit organizations that demonstrate a
25 hardship, including those providing services to senior
26 citizen and low-income customers; and

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

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

10 Programs that use funds that are provided by a
11 participating utility to reduce utility bills may be
12 implemented through tariffs that are filed with and reviewed by
13 the Commission. If a utility elects to file tariffs with the
14 Commission to implement all or a portion of the programs, those
15 tariffs shall, regardless of the date actually filed, be deemed
16 accepted and approved, and shall become effective on December
17 30, 2011 (the effective date of Public Act 97-646) ~~this~~
18 ~~amendatory Act of the 97th General Assembly~~. The participating
19 utilities whose customers benefit from the funds that are
20 disbursed as contemplated in this Section shall file annual
21 reports documenting the disbursement of those funds with the
22 Commission. The Commission has the authority to audit
23 disbursement of the funds to ensure they were disbursed
24 consistently with this Section.

25 If the Commission finds that a participating utility is no
26 longer eligible to update the performance-based formula rate

1 tariff pursuant to subsection (d) of this Section, or the
2 performance-based formula rate is otherwise terminated, then
3 the participating utility's voluntary commitments and
4 obligations under this subsection (b-10) shall immediately
5 terminate.

6 (c) A participating utility may elect to recover its
7 delivery services costs through a performance-based formula
8 rate approved by the Commission, which shall specify the cost
9 components that form the basis of the rate charged to customers
10 with sufficient specificity to operate in a standardized manner
11 and be updated annually with transparent information that
12 reflects the utility's actual costs to be recovered during the
13 applicable rate year, which is the period beginning with the
14 first billing day of January and extending through the last
15 billing day of the following December. In the event the utility
16 recovers a portion of its costs through automatic adjustment
17 clause tariffs on October 26, 2011 (the effective date of
18 Public Act 97-616) ~~this amendatory Act of the 97th General~~
19 ~~Assembly~~, the utility may elect to continue to recover these
20 costs through such tariffs, but then these costs shall not be
21 recovered through the performance-based formula rate. In the
22 event the participating utility, prior to December 30, 2011
23 ~~(the effective date of Public Act 97-646)~~ ~~this amendatory Act~~
24 ~~of the 97th General Assembly~~, filed electric delivery services
25 tariffs with the Commission pursuant to Section 9-201 of this
26 Act that are related to the recovery of its electric delivery

1 services costs that are still pending on December 30, 2011 (the
2 effective date of Public Act 97-646) ~~this amendatory Act of the~~
3 ~~97th General Assembly~~, the participating utility shall, at the
4 time it files its performance-based formula rate tariff with
5 the Commission, also file a notice of withdrawal with the
6 Commission to withdraw the electric delivery services tariffs
7 previously filed pursuant to Section 9-201 of this Act. Upon
8 receipt of such notice, the Commission shall dismiss with
9 prejudice any docket that had been initiated to investigate the
10 electric delivery services tariffs filed pursuant to Section
11 9-201 of this Act, and such tariffs and the record related
12 thereto shall not be the subject of any further hearing,
13 investigation, or proceeding of any kind related to rates for
14 electric delivery services.

15 The performance-based formula rate shall be implemented
16 through a tariff filed with the Commission consistent with the
17 provisions of this subsection (c) that shall be applicable to
18 all delivery services customers. The Commission shall initiate
19 and conduct an investigation of the tariff in a manner
20 consistent with the provisions of this subsection (c) and the
21 provisions of Article IX of this Act to the extent they do not
22 conflict with this subsection (c). Except in the case where the
23 Commission finds, after notice and hearing, that a
24 participating utility is not satisfying its investment amount
25 commitments under subsection (b) of this Section, the
26 performance-based formula rate shall remain in effect at the

1 discretion of the utility. The performance-based formula rate
2 approved by the Commission shall do the following:

3 (1) Provide for the recovery of the utility's actual
4 costs of delivery services that are prudently incurred and
5 reasonable in amount consistent with Commission practice
6 and law. The sole fact that a cost differs from that
7 incurred in a prior calendar year or that an investment is
8 different from that made in a prior calendar year shall not
9 imply the imprudence or unreasonableness of that cost or
10 investment.

11 (2) Reflect the utility's actual year-end capital
12 structure for the applicable calendar year, excluding
13 goodwill, subject to a determination of prudence and
14 reasonableness consistent with Commission practice and
15 law.

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

18 (A) the average for the applicable calendar year of
19 the monthly average yields of 30-year U.S. Treasury
20 bonds published by the Board of Governors of the
21 Federal Reserve System in its weekly H.15 Statistical
22 Release or successor publication; and

23 (B) 580 basis points.

24 At such time as the Board of Governors of the Federal
25 Reserve System ceases to include the monthly average yields
26 of 30-year U.S. Treasury bonds in its weekly H.15

1 Statistical Release or successor publication, the monthly
2 average yields of the U.S. Treasury bonds then having the
3 longest duration published by the Board of Governors in its
4 weekly H.15 Statistical Release or successor publication
5 shall instead be used for purposes of this paragraph (3).

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

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

18 (B) recovery of pension and other post-employment
19 benefits expense, provided that such costs are
20 supported by an actuarial study;

21 (C) recovery of severance costs, provided that if
22 the amount is over \$3,700,000 for a participating
23 utility that is a combination utility or \$10,000,000
24 for a participating utility that serves more than 3
25 million retail customers, then the full amount shall be
26 amortized consistent with subparagraph (F) of this

1 paragraph (4);

2 (D) investment return at a rate equal to the
3 utility's weighted average cost of long-term debt, on
4 the pension assets as, and in the amount, reported in
5 Account 186 (or in such other Account or Accounts as
6 such asset may subsequently be recorded) of the
7 utility's most recently filed FERC Form 1, net of
8 deferred tax benefits;

9 (E) (blank); ~~recovery of the expenses related to~~
10 ~~the Commission proceeding under this subsection (c) to~~
11 ~~approve this performance-based formula rate and~~
12 ~~initial rates or to subsequent proceedings related to~~
13 ~~the formula, provided that the recovery shall be~~
14 ~~amortized over a 3-year period; recovery of expenses~~
15 ~~related to the annual Commission proceedings under~~
16 ~~subsection (d) of this Section to review the inputs to~~
17 ~~the performance based formula rate shall be expensed~~
18 ~~and recovered through the performance based formula~~
19 ~~rate;~~

20 (F) amortization over a 5-year period of the full
21 amount of each charge or credit that exceeds \$3,700,000
22 for a participating utility that is a combination
23 utility or \$10,000,000 for a participating utility
24 that serves more than 3 million retail customers in the
25 applicable calendar year and that relates to a
26 workforce reduction program's severance costs, changes

1 in accounting rules, changes in law, compliance with
2 any Commission-initiated audit, or a single storm or
3 other similar expense, provided that any unamortized
4 balance shall be reflected in rate base. For purposes
5 of this subparagraph (F), changes in law includes any
6 enactment, repeal, or amendment in a law, ordinance,
7 rule, regulation, interpretation, permit, license,
8 consent, or order, including those relating to taxes,
9 accounting, or to environmental matters, or in the
10 interpretation or application thereof by any
11 governmental authority occurring after October 26,
12 2011 (the effective date of Public Act 97-616) ~~this~~
13 ~~amendatory Act of the 97th General Assembly;~~

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

16 (H) historical weather normalized billing
17 determinants; and

18 (I) allocation methods for common costs.

19 (5) Provide that if the participating utility's earned
20 rate of return on common equity related to the provision of
21 delivery services for the prior rate year (calculated using
22 costs and capital structure approved by the Commission as
23 provided in subparagraph (2) of this subsection (c),
24 consistent with this Section, in accordance with
25 Commission rules and orders, including, but not limited to,
26 adjustments for goodwill, and after any Commission-ordered

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

1 (after adjusting for any penalties to the rate of return on
2 common equity applied pursuant to the performance metrics
3 provision of subsection (f) of this Section), then the
4 participating utility shall apply a charge through the
5 performance-based formula rate that reflects an amount
6 equal to the value of that portion of the earned rate of
7 return on common equity that is more than 50 basis points
8 less than the rate of return on common equity calculated
9 pursuant to paragraph (3) of this subsection (c) (after
10 adjusting for any penalties to the rate of return on common
11 equity applied pursuant to the performance metrics
12 provision of subsection (f) of this Section) for the prior
13 rate year, adjusted for taxes.

14 (6) Provide for an annual reconciliation, as described
15 in subsection (d) of this Section, with interest, of the
16 revenue requirement reflected in rates for each calendar
17 year, beginning with the calendar year in which the utility
18 files its performance-based formula rate tariff pursuant
19 to subsection (c) of this Section, with what the revenue
20 requirement would have been had the actual cost information
21 for the applicable calendar year been available at the
22 filing date.

23 The utility shall file, together with its tariff, final
24 data based on its most recently filed FERC Form 1, plus
25 projected plant additions and correspondingly updated
26 depreciation reserve and expense for the calendar year in which

1 the tariff and data are filed, that shall populate the
2 performance-based formula rate and set the initial delivery
3 services rates under the formula. For purposes of this Section,
4 "FERC Form 1" means the Annual Report of Major Electric
5 Utilities, Licensees and Others that electric utilities are
6 required to file with the Federal Energy Regulatory Commission
7 under the Federal Power Act, Sections 3, 4(a), 304 and 209,
8 modified as necessary to be consistent with 83 Ill. Admin. Code
9 Part 415 as of May 1, 2011. Nothing in this Section is intended
10 to allow costs that are not otherwise recoverable to be
11 recoverable by virtue of inclusion in FERC Form 1.

12 After the utility files its proposed performance-based
13 formula rate structure and protocols and initial rates, the
14 Commission shall initiate a docket to review the filing. The
15 Commission shall enter an order approving, or approving as
16 modified, the performance-based formula rate, including the
17 initial rates, as just and reasonable within 270 days after the
18 date on which the tariff was filed, or, if the tariff is filed
19 within 14 days after October 26, 2011 (the effective date of
20 Public Act 97-616) ~~this amendatory Act of the 97th General~~
21 ~~Assembly~~, then by May 31, 2012. Such review shall be based on
22 the same evidentiary standards, including, but not limited to,
23 those concerning the prudence and reasonableness of the costs
24 incurred by the utility, the Commission applies in a hearing to
25 review a filing for a general increase in rates under Article
26 IX of this Act. The initial rates shall take effect within 30

1 days after the Commission's order approving the
2 performance-based formula rate tariff.

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

9 Subsequent changes to the performance-based formula rate
10 structure or protocols shall be made as set forth in Section
11 9-201 of this Act, but nothing in this subsection (c) is
12 intended to limit the Commission's authority under Article IX
13 and other provisions of this Act to initiate an investigation
14 of a participating utility's performance-based formula rate
15 tariff, provided that any such changes shall be consistent with
16 paragraphs (1) through (6) of this subsection (c). Any change
17 ordered by the Commission shall be made at the same time new
18 rates take effect following the Commission's next order
19 pursuant to subsection (d) of this Section, provided that the
20 new rates take effect no less than 30 days after the date on
21 which the Commission issues an order adopting the change.

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

26 In the event the performance-based formula rate is

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

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

20 (1) The inputs to the performance-based formula rate
21 for the applicable rate year shall be based on final
22 historical data reflected in the utility's most recently
23 filed annual FERC Form 1 plus projected plant additions and
24 correspondingly updated depreciation reserve and expense
25 for the calendar year in which the inputs are filed. The
26 filing shall also include a reconciliation of the revenue

1 requirement that was in effect for the prior rate year (as
2 set by the cost inputs for the prior rate year) with the
3 actual revenue requirement for the prior rate year
4 (determined using a year-end rate base) that uses amounts
5 reflected in the applicable FERC Form 1 that reports the
6 actual costs for the prior rate year. Any over-collection
7 or under-collection indicated by such reconciliation shall
8 be reflected as a credit against, or recovered as an
9 additional charge to, respectively, with interest
10 calculated at a rate equal to the utility's weighted
11 average cost of capital approved by the Commission for the
12 prior rate year, the charges for the applicable rate year.
13 Provided, however, that the first such reconciliation
14 shall be for the calendar year in which the utility files
15 its performance-based formula rate tariff pursuant to
16 subsection (c) of this Section and shall reconcile (i) the
17 revenue requirement or requirements established by the
18 rate order or orders in effect from time to time during
19 such calendar year (weighted, as applicable) with (ii) the
20 revenue requirement determined using a year-end rate base
21 for that calendar year calculated pursuant to the
22 performance-based formula rate using (A) actual costs for
23 that year as reflected in the applicable FERC Form 1, and
24 (B) for the first such reconciliation only, the cost of
25 equity, which shall be calculated as the sum of 590 basis
26 points plus the average for the applicable calendar year of

1 the monthly average yields of 30-year U.S. Treasury bonds
2 published by the Board of Governors of the Federal Reserve
3 System in its weekly H.15 Statistical Release or successor
4 publication. The first such reconciliation is not intended
5 to provide for the recovery of costs previously excluded
6 from rates based on a prior Commission order finding of
7 imprudence or unreasonableness. Each reconciliation shall
8 be certified by the participating utility in the same
9 manner that FERC Form 1 is certified. The filing shall also
10 include the charge or credit, if any, resulting from the
11 calculation required by paragraph (6) of subsection (c) of
12 this Section.

13 Notwithstanding anything that may be to the contrary,
14 the intent of the reconciliation is to ultimately reconcile
15 the revenue requirement reflected in rates for each
16 calendar year, beginning with the calendar year in which
17 the utility files its performance-based formula rate
18 tariff pursuant to subsection (c) of this Section, with
19 what the revenue requirement determined using a year-end
20 rate base for the applicable calendar year would have been
21 had the actual cost information for the applicable calendar
22 year been available at the filing date.

23 (2) The new charges shall take effect beginning on the
24 first billing day of the following January billing period
25 and remain in effect through the last billing day of the
26 next December billing period regardless of whether the

1 Commission enters upon a hearing pursuant to this
2 subsection (d).

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

16 Within 45 days after the utility files its annual update of
17 cost inputs to the performance-based formula rate, the
18 Commission shall have the authority, either upon complaint or
19 its own initiative, but with reasonable notice, to enter upon a
20 hearing concerning the prudence and reasonableness of the costs
21 incurred by the utility to be recovered during the applicable
22 rate year that are reflected in the inputs to the
23 performance-based formula rate derived from the utility's FERC
24 Form 1. During the course of the hearing, each objection shall
25 be stated with particularity and evidence provided in support
26 thereof, after which the utility shall have the opportunity to

1 rebut the evidence. Discovery shall be allowed consistent with
2 the Commission's Rules of Practice, which Rules shall be
3 enforced by the Commission or the assigned hearing examiner.
4 The Commission shall apply the same evidentiary standards,
5 including, but not limited to, those concerning the prudence
6 and reasonableness of the costs incurred by the utility, in the
7 hearing as it would apply in a hearing to review a filing for a
8 general increase in rates under Article IX of this Act. The
9 Commission shall not, however, have the authority in a
10 proceeding under this subsection (d) to consider or order any
11 changes to the structure or protocols of the performance-based
12 formula rate approved pursuant to subsection (c) of this
13 Section. In a proceeding under this subsection (d), the
14 Commission shall enter its order no later than the earlier of
15 240 days after the utility's filing of its annual update of
16 cost inputs to the performance-based formula rate or December
17 31. The Commission's determinations of the prudence and
18 reasonableness of the costs incurred for the applicable
19 calendar year shall be final upon entry of the Commission's
20 order and shall not be subject to reopening, reexamination, or
21 collateral attack in any other Commission proceeding, case,
22 docket, order, rule or regulation, provided, however, that
23 nothing in this subsection (d) shall prohibit a party from
24 petitioning the Commission to rehear or appeal to the courts
25 the order pursuant to the provisions of this Act.

26 In the event the Commission does not, either upon complaint

1 or its own initiative, enter upon a hearing within 45 days
2 after the utility files the annual update of cost inputs to its
3 performance-based formula rate, then the costs incurred for the
4 applicable calendar year shall be deemed prudent and
5 reasonable, and the filed charges shall not be subject to
6 reopening, reexamination, or collateral attack in any other
7 proceeding, case, docket, order, rule, or regulation.

8 A participating utility's first filing of the updated cost
9 inputs, and any Commission investigation of such inputs
10 pursuant to this subsection (d) shall proceed notwithstanding
11 the fact that the Commission's investigation under subsection
12 (c) of this Section is still pending and notwithstanding any
13 other law, order, rule, or Commission practice to the contrary.

14 (e) Nothing in subsections (c) or (d) of this Section shall
15 prohibit the Commission from investigating, or a participating
16 utility from filing, revenue-neutral tariff changes related to
17 rate design of a performance-based formula rate that has been
18 placed into effect for the utility. Following approval of a
19 participating utility's performance-based formula rate tariff
20 pursuant to subsection (c) of this Section, the utility shall
21 make a filing with the Commission within one year after the
22 effective date of the performance-based formula rate tariff
23 that proposes changes to the tariff to incorporate the findings
24 of any final rate design orders of the Commission applicable to
25 the participating utility and entered subsequent to the
26 Commission's approval of the tariff. The Commission shall,

1 after notice and hearing, enter its order approving, or
2 approving with modification, the proposed changes to the
3 performance-based formula rate tariff within 240 days after the
4 utility's filing. Following such approval, the utility shall
5 make a filing with the Commission during each subsequent 3-year
6 period that either proposes revenue-neutral tariff changes or
7 re-files the existing tariffs without change, which shall
8 present the Commission with an opportunity to suspend the
9 tariffs and consider revenue-neutral tariff changes related to
10 rate design.

11 (f) Within 30 days after the filing of a tariff pursuant to
12 subsection (c) of this Section, each participating utility
13 shall develop and file with the Commission multi-year metrics
14 designed to achieve, ratably (i.e., in equal segments) over a
15 10-year period, improvement over baseline performance values
16 as follows:

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

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

23 (3) For a participating utility other than a
24 combination utility, 20% improvement in the System Average
25 Interruption Frequency Index for its Southern Region,
26 using a baseline of the average of the data from 2001

1 through 2010. For purposes of this paragraph (3), Southern
2 Region shall have the meaning set forth in the
3 participating utility's most recent report filed pursuant
4 to Section 16-125 of this Act.

5 (3.5) For a participating utility other than a
6 combination utility, 20% improvement in the System Average
7 Interruption Frequency Index for its Northeastern Region,
8 using a baseline of the average of the data from 2001
9 through 2010. For purposes of this paragraph (3.5),
10 Northeastern Region shall have the meaning set forth in the
11 participating utility's most recent report filed pursuant
12 to Section 16-125 of this Act.

13 (4) Seventy-five percent improvement in the total
14 number of customers who exceed the service reliability
15 targets as set forth in subparagraphs (A) through (C) of
16 paragraph (4) of subsection (b) of 83 Ill. Admin. Code Part
17 411.140 as of May 1, 2011, using 2010 as the baseline year.

18 (5) Reduction in issuance of estimated electric bills:
19 90% improvement for a participating utility other than a
20 combination utility, and 56% improvement for a
21 participating utility that is a combination utility, using
22 a baseline of the average number of estimated bills for the
23 years 2008 through 2010.

24 (6) Consumption on inactive meters: 90% improvement
25 for a participating utility other than a combination
26 utility, and 56% improvement for a participating utility

1 that is a combination utility, using a baseline of the
2 average unbilled kilowatthours for the years 2009 and 2010.

3 (7) Unaccounted for energy: 50% improvement for a
4 participating utility other than a combination utility
5 using a baseline of the non-technical line loss unaccounted
6 for energy kilowatthours for the year 2009.

7 (8) Uncollectible expense: reduce uncollectible
8 expense by at least \$30,000,000 for a participating utility
9 other than a combination utility and by at least \$3,500,000
10 for a participating utility that is a combination utility,
11 using a baseline of the average uncollectible expense for
12 the years 2008 through 2010.

13 (9) Opportunities for minority-owned and female-owned
14 business enterprises: design a performance metric
15 regarding the creation of opportunities for minority-owned
16 and female-owned business enterprises consistent with
17 State and federal law using a base performance value of the
18 percentage of the participating utility's capital
19 expenditures that were paid to minority-owned and
20 female-owned business enterprises in 2010.

21 The definitions set forth in 83 Ill. Admin. Code Part
22 411.20 as of May 1, 2011 shall be used for purposes of
23 calculating performance under paragraphs (1) through (3.5) of
24 this subsection (f), provided, however, that the participating
25 utility may exclude up to 9 extreme weather event days from
26 such calculation for each year, and provided further that the

1 participating utility shall exclude 9 extreme weather event
2 days when calculating each year of the baseline period to the
3 extent that there are 9 such days in a given year of the
4 baseline period. For purposes of this Section, an extreme
5 weather event day is a 24-hour calendar day (beginning at 12:00
6 a.m. and ending at 11:59 p.m.) during which any weather event
7 (e.g., storm, tornado) caused interruptions for 10,000 or more
8 of the participating utility's customers for 3 hours or more.
9 If there are more than 9 extreme weather event days in a year,
10 then the utility may choose no more than 9 extreme weather
11 event days to exclude, provided that the same extreme weather
12 event days are excluded from each of the calculations performed
13 under paragraphs (1) through (3.5) of this subsection (f).

14 The metrics shall include incremental performance goals
15 for each year of the 10-year period, which shall be designed to
16 demonstrate that the utility is on track to achieve the
17 performance goal in each category at the end of the 10-year
18 period. The utility shall elect when the 10-year period shall
19 commence for the metrics set forth in subparagraphs (1) through
20 (4) and (9) of this subsection (f), provided that it begins no
21 later than 14 months following the date on which the utility
22 begins investing pursuant to subsection (b) of this Section,
23 and when the 10-year period shall commence for the metrics set
24 forth in subparagraphs (5) through (8) of this subsection (f),
25 provided that it begins no later than 14 months following the
26 date on which the Commission enters its order approving the

1 utility's Advanced Metering Infrastructure Deployment Plan
2 pursuant to subsection (c) of Section 16-108.6 of this Act.

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

16 (f-5) The financial penalties applicable to the metrics
17 described in subparagraphs (1) through (8) of subsection (f) of
18 this Section, as applicable, shall be applied through an
19 adjustment to the participating utility's return on equity of
20 no more than a total of 30 basis points in each of the first 3
21 years, of no more than a total of 34 basis points in each of the
22 3 years thereafter, and of no more than a total of 38 basis
23 points in each of the 4 years thereafter, as follows:

24 (1) With respect to each of the incremental annual
25 performance goals established pursuant to paragraph (1) of
26 subsection (f) of this Section,

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

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

15 (2) With respect to each of the incremental annual
16 performance goals established pursuant to paragraph (2) of
17 subsection (f) of this Section, for each year that the
18 participating utility does not achieve each such goal, the
19 participating utility's return on equity shall be reduced
20 as follows: during years 1 through 3, by 5 basis points;
21 during years 4 through 6, by 6 basis points; and during
22 years 7 through 10, by 7 basis points.

23 (3) With respect to each of the incremental annual
24 performance goals established pursuant to paragraphs (3)
25 and (3.5) of subsection (f) of this Section, for each year
26 that a participating utility other than a combination

1 utility does not achieve both such goals, the participating
2 utility's return on equity shall be reduced as follows:
3 during years 1 through 3, by 5 basis points; during years 4
4 through 6, by 6 basis points; and during years 7 through
5 10, by 7 basis points.

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

14 (5) With respect to each of the incremental annual
15 performance goals established pursuant to subparagraph (5)
16 of subsection (f) of this Section, for each year that the
17 participating utility does not achieve at least 95% of each
18 such goal, the participating utility's return on equity
19 shall be reduced by 5 basis points for each such unachieved
20 goal.

21 (6) With respect to each of the incremental annual
22 performance goals established pursuant to paragraphs (6),
23 (7), and (8) of subsection (f) of this Section, as
24 applicable, which together measure non-operational
25 customer savings and benefits relating to the
26 implementation of the Advanced Metering Infrastructure

1 Deployment Plan, as defined in Section 16-108.6 of this
2 Act, the performance under each such goal shall be
3 calculated in terms of the percentage of the goal achieved.
4 The percentage of goal achieved for each of the goals shall
5 be aggregated, and an average percentage value calculated,
6 for each year of the 10-year period. If the utility does
7 not achieve an average percentage value in a given year of
8 at least 95%, the participating utility's return on equity
9 shall be reduced by 5 basis points.

10 The financial penalties shall be applied as described in
11 this subsection (f-5) for the 12-month period in which the
12 deficiency occurred through a separate tariff mechanism, which
13 shall be filed by the utility together with its metrics. In the
14 event the formula rate tariff established pursuant to
15 subsection (c) of this Section terminates, the utility's
16 obligations under subsection (f) of this Section and this
17 subsection (f-5) shall also terminate, provided, however, that
18 the tariff mechanism established pursuant to subsection (f) of
19 this Section and this subsection (f-5) shall remain in effect
20 until any penalties due and owing at the time of such
21 termination are applied.

22 The Commission shall, after notice and hearing, enter an
23 order within 120 days after the metrics are filed approving, or
24 approving with modification, a participating utility's tariff
25 or mechanism to satisfy the metrics set forth in subsection (f)
26 of this Section. On June 1 of each subsequent year, each

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

16 (g) On or before July 31, 2014, each participating utility
17 shall file a report with the Commission that sets forth the
18 average annual increase in the average amount paid per
19 kilowatthour for residential eligible retail customers,
20 exclusive of the effects of energy efficiency programs,
21 comparing the 12-month period ending May 31, 2012; the 12-month
22 period ending May 31, 2013; and the 12-month period ending May
23 31, 2014. For a participating utility that is a combination
24 utility with more than one rate zone, the weighted average
25 aggregate increase shall be provided. The report shall be filed
26 together with a statement from an independent auditor attesting

1 to the accuracy of the report. The cost of the independent
2 auditor shall be borne by the participating utility and shall
3 not be a recoverable expense. "The average amount paid per
4 kilowatthour" shall be based on the participating utility's
5 tariffed rates actually in effect and shall not be calculated
6 using any hypothetical rate or adjustments to actual charges
7 (other than as specified for energy efficiency) as an input.

8 In the event that the average annual increase exceeds 2.5%
9 as calculated pursuant to this subsection (g), then Sections
10 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of this Act, other
11 than this subsection, shall be inoperative as they relate to
12 the utility and its service area as of the date of the report
13 due to be submitted pursuant to this subsection and the utility
14 shall no longer be eligible to annually update the
15 performance-based formula rate tariff pursuant to subsection
16 (d) of this Section. In such event, the then current rates
17 shall remain in effect until such time as new rates are set
18 pursuant to Article IX of this Act, subject to retroactive
19 adjustment, with interest, to reconcile rates charged with
20 actual costs, and the participating utility's voluntary
21 commitments and obligations under subsection (b) of this
22 Section shall immediately terminate, except for the utility's
23 obligation to pay an amount already owed to the fund for
24 training grants pursuant to a Commission order issued under
25 subsection (b) of this Section.

26 In the event that the average annual increase is 2.5% or

1 less as calculated pursuant to this subsection (g), then the
2 performance-based formula rate shall remain in effect as set
3 forth in this Section.

4 For purposes of this Section, the amount per kilowatthour
5 means the total amount paid for electric service expressed on a
6 per kilowatthour basis, and the total amount paid for electric
7 service includes without limitation amounts paid for supply,
8 transmission, distribution, surcharges, and add-on taxes
9 exclusive of any increases in taxes or new taxes imposed after
10 October 26, 2011 (the effective date of Public Act 97-616) ~~this~~
11 ~~amendatory Act of the 97th General Assembly~~. For purposes of
12 this Section, "eligible retail customers" shall have the
13 meaning set forth in Section 16-111.5 of this Act.

14 The fact that this Section becomes inoperative as set forth
15 in this subsection shall not be construed to mean that the
16 Commission may reexamine or otherwise reopen prudence or
17 reasonableness determinations already made.

18 (h) Sections 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of
19 this Act, other than this subsection, are inoperative after
20 December 31, 2019 for every participating utility, after which
21 time a participating utility shall no longer be eligible to
22 annually update the performance-based formula rate tariff
23 pursuant to subsection (d) of this Section. At such time, the
24 then current rates shall remain in effect until such time as
25 new rates are set pursuant to Article IX of this Act, subject
26 to retroactive adjustment, with interest, to reconcile rates

1 charged with actual costs.

2 By December 31, 2017, the Commission shall prepare and file
3 with the General Assembly a report on the infrastructure
4 program and the performance-based formula rate. The report
5 shall include the change in the average amount per kilowatthour
6 paid by residential customers between June 1, 2011 and May 31,
7 2017. If the change in the total average rate paid exceeds 2.5%
8 compounded annually, the Commission shall include in the report
9 an analysis that shows the portion of the change due to the
10 delivery services component and the portion of the change due
11 to the supply component of the rate. The report shall include
12 separate sections for each participating utility.

13 In the event Sections 16-108.5, 16-108.6, 16-108.7, and
14 16-108.8 of this Act do not become inoperative after December
15 31, 2019, then these Sections are inoperative after December
16 31, 2022 for every participating utility, after which time a
17 participating utility shall no longer be eligible to annually
18 update the performance-based formula rate tariff pursuant to
19 subsection (d) of this Section. At such time, the then current
20 rates shall remain in effect until such time as new rates are
21 set pursuant to Article IX of this Act, subject to retroactive
22 adjustment, with interest, to reconcile rates charged with
23 actual costs.

24 The fact that this Section becomes inoperative as set forth
25 in this subsection shall not be construed to mean that the
26 Commission may reexamine or otherwise reopen prudence or

1 reasonably determinations already made.

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

19 (j) Nothing in this Section is intended to legislatively
20 overturn the opinion issued in Commonwealth Edison Co. v. Ill.
21 Commerce Comm'n, Nos. 2-08-0959, 2-08-1037, 2-08-1137,
22 1-08-3008, 1-08-3030, 1-08-3054, 1-08-3313 cons. (Ill. App.
23 Ct. 2d Dist. Sept. 30, 2010). Public Act 97-616 ~~This amendatory~~
24 ~~Act of the 97th General Assembly~~ shall not be construed as
25 creating a contract between the General Assembly and the
26 participating utility, and shall not establish a property right

1 in the participating utility.

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

15 (1) No earlier than 5 business days after May 22, 2013
16 (the effective date of Public Act 98-15) ~~this amendatory~~
17 ~~Act of the 98th General Assembly~~, each participating
18 utility shall file any tariff changes necessary to
19 implement the amendatory language set forth in subsections
20 (c) and (d) of this Section by Public Act 98-15 ~~this~~
21 ~~amendatory Act of the 98th General Assembly~~ and a revised
22 revenue requirement under the participating utility's
23 performance-based formula rate. The Commission shall enter
24 a final order approving such tariff changes and revised
25 revenue requirement within 21 days after the participating
26 utility's filing.

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

22 (3) The tariff changes described in paragraphs (1) and
23 (2) of this subsection (k) shall relate only to, and be
24 consistent with, the following provisions of Public Act
25 98-15 ~~this amendatory Act of the 98th General Assembly~~:
26 paragraph (2) of subsection (c) regarding year-end capital

1 structure, subparagraph (D) of paragraph (4) of subsection
2 (c) regarding pension assets, and subsection (d) regarding
3 the reconciliation components related to year-end rate
4 base and interest calculated at a rate equal to the
5 utility's weighted average cost of capital.

6 (4) Nothing in this subsection is intended to effect a
7 dismissal of or otherwise affect an appeal from any final
8 Commission orders entered in Docket Nos. 11-0721, 12-0001,
9 12-0293, and 12-0321 other than to the extent of the
10 amendatory language contained in subsections (c) and (d) of
11 this Section of Public Act 98-15 ~~this amendatory Act of the~~
12 ~~98th General Assembly.~~

13 (1) Each participating utility shall be deemed to have been
14 in full compliance with all requirements of subsection (b) of
15 this Section, subsection (c) of this Section, Section 16-108.6
16 of this Act, and all Commission orders entered pursuant to
17 Sections 16-108.5 and 16-108.6 of this Act, up to and including
18 May 22, 2013 (the effective date of Public Act 98-15) ~~this~~
19 ~~amendatory Act of the 98th General Assembly.~~ The Commission
20 shall not undertake any investigation of such compliance and no
21 penalty shall be assessed or adverse action taken against a
22 participating utility for noncompliance with Commission orders
23 associated with subsection (b) of this Section, subsection (c)
24 of this Section, and Section 16-108.6 of this Act prior to such
25 date. Each participating utility other than a combination
26 utility shall be permitted, without penalty, a period of 12

1 months after such effective date to take actions required to
2 ensure its infrastructure investment program is in compliance
3 with subsection (b) of this Section and with Section 16-108.6
4 of this Act. Provided further: ~~(1) if this amendatory Act of~~
5 ~~the 98th General Assembly takes effect on or before June 15,~~
6 ~~2013,~~ the following subparagraphs shall apply to a
7 participating utility other than a combination utility:

8 (A) if the Commission has initiated a proceeding
9 pursuant to subsection (e) of Section 16-108.6 of this Act
10 that is pending as of May 22, 2013 (the effective date of
11 Public Act 98-15) ~~this amendatory Act of the 98th General~~
12 ~~Assembly,~~ then the order entered in such proceeding shall,
13 after notice and hearing, accelerate the commencement of
14 the meter deployment schedule approved in the final
15 Commission order on rehearing entered in Docket No.
16 12-0298;

17 (B) if the Commission has entered an order pursuant to
18 subsection (e) of Section 16-108.6 of this Act prior to May
19 22, 2013 (the effective date of Public Act 98-15) ~~this~~
20 ~~amendatory Act of the 98th General Assembly~~ that does not
21 accelerate the commencement of the meter deployment
22 schedule approved in the final Commission order on
23 rehearing entered in Docket No. 12-0298, then the utility
24 shall file with the Commission, within 45 days after such
25 effective date, a plan for accelerating the commencement of
26 the utility's meter deployment schedule approved in the

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

8 (C) if the Commission has not initiated a proceeding
9 pursuant to subsection (e) of Section 16-108.6 of this Act
10 prior to May 22, 2013 (the effective date of Public Act
11 98-15) ~~this amendatory Act of the 98th General Assembly,~~
12 then the utility shall file with the Commission, within 45
13 days after such effective date, a plan for accelerating the
14 commencement of the utility's meter deployment schedule
15 approved in the final Commission order on rehearing entered
16 in Docket No. 12-0298 and the Commission shall, after
17 notice and hearing, approve or approve as modified such
18 plan within 90 days after the utility's filing~~.~~.

19 ~~(2) if this amendatory Act of the 98th General Assembly~~
20 ~~takes effect after June 15, 2013, then each participating~~
21 ~~utility other than a combination utility shall file with~~
22 ~~the Commission, within 45 days after such effective date, a~~
23 ~~plan for accelerating the commencement of the utility's~~
24 ~~meter deployment schedule approved in the final Commission~~
25 ~~order on rehearing entered in Docket No. 12-0298; the~~
26 ~~Commission shall reopen the most recent proceeding in which~~

1 ~~it entered an order pursuant to subsection (c) of Section~~
2 ~~16-108.6 of this Act and within 90 days after the utility's~~
3 ~~filing shall, after notice and hearing, enter an amendatory~~
4 ~~order that approves or approves as modified such~~
5 ~~accelerated plan, provided that if there was no such prior~~
6 ~~proceeding the Commission shall open a new proceeding and~~
7 ~~within 90 days after the utility's filing shall, after~~
8 ~~notice and hearing, enter an order that approves or~~
9 ~~approves as modified such accelerated plan.~~

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

21 (m) The provisions of Public Act 98-15 ~~this amendatory Act~~
22 ~~of the 98th General Assembly~~ are severable under Section 1.31
23 of the Statute on Statutes.

24 (Source: P.A. 98-15, eff. 5-22-13; 98-1175, eff. 6-1-15;
25 99-143, eff. 7-27-15; revised 10-21-15.)

26 Section 99. Effective date. This Act takes effect upon

1 becoming law.