

**220 ILCS 5/16-108.18**

Statutes current with legislation through P.A. 103-585 of the 2024 Regular Session of the 103rd General Assembly.

*Illinois Compiled Statutes Annotated > Chapter 220 UTILITIES (§§ 5/1-101 — 99) > Public Utilities Act (Arts. I — 70) > Article XVI. Electric Service Customer Choice and Rate Relief Law of 1997 (§§ 5/16-101 — 16-135)*

**220 ILCS 5/16-108.18 Performance-based ratemaking.**

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(a) The General Assembly finds:

- (1) That improving the alignment of utility customer and company interests is critical to ensuring equity, rapid growth of distributed energy resources, electric vehicles, and other new technologies that substantially change the makeup of the grid and protect Illinois residents and businesses from potential economic and environmental harm from the State's energy systems.
- (2) There is urgency around addressing increasing threats from climate change and assisting communities that have borne disproportionate impacts from climate change, including air pollution, greenhouse gas emissions, and energy burdens. Addressing this problem requires changes to the business model under which utilities in Illinois have traditionally functioned.
- (3) Providing targeted incentives to support change through a new performance-based structure to enhance ratemaking is intended to enable alignment of utility, customer, community, and environmental goals.
- (4) Though Illinois has taken some measures to move utilities to performance-based ratemaking through the establishment of performance incentives and a performance-based formula rate under the Energy Infrastructure Modernization Act, these measures have not been sufficiently transformative in urgently moving electric utilities toward the State's ambitious energy policy goals: protecting a healthy environment and climate, improving public health, and creating quality jobs and economic opportunities, including wealth building, especially in economically disadvantaged communities and communities of color.
- (5) These measures were not developed through a process to understand first what performance measures and penalties would help drive the sought-after behavior by the utilities.
- (6) While the General Assembly has not made a finding that the spending related to the Energy Infrastructure and Modernization Act and its performance metrics was not reasonable, it is important to address concerns that these measures may have resulted in excess utility spending and guaranteed profits without meaningful improvements in customer experience, rate affordability, or equity.

(7) Discussions of performance incentive mechanisms must always take into account the affordability of customer rates and bills for all customers, including low-income customers.

(8) The General Assembly therefore directs the Illinois Commerce Commission to complete a transition that includes a comprehensive performance-based regulation framework for electric utilities serving more than 500,000 customers. The breadth of this framework should revise existing utility regulations to position Illinois electric utilities to effectively and efficiently achieve current and anticipated future energy needs of this State, while ensuring affordability for consumers.

(b) As used in this Section:

“Commission” means the Illinois Commerce Commission.

“Demand response” means measures that decrease peak electricity demand or shift demand from peak to off-peak periods.

“Distributed energy resources” or “DER” means a wide range of technologies that are connected to the grid including those that are located on the customer side of the customer’s electric meter and can provide value to the distribution system, including, but not limited to, distributed generation, energy storage, electric vehicles, and demand response technologies.

“Economically disadvantaged communities” means areas of one or more census tracts where average household income does not exceed 80% of area median income.

“Environmental justice communities” means the definition of that term as used and as may be updated in the long-term renewable resources procurement plan by the Illinois Power Agency and its Program Administrator in the Illinois Solar for All Program.

“Equity investment eligible community” means the geographic areas throughout Illinois which would most benefit from equitable investments by the State designed to combat discrimination. Specifically, the equity investment eligible communities shall be defined as the following areas:

(1) R3 Areas as established pursuant to Section 10-40 of the Cannabis Regulation and Tax Act [410 ILCS 705/10-40], where residents have historically been excluded from economic opportunities, including opportunities in the energy sector; and

(2) Environmental justice communities, as defined by the Illinois Power Agency pursuant to the Illinois Power Agency Act [20 ILCS 3855/1-1 et seq.], where residents have historically been subject to disproportionate burdens of pollution, including pollution from the energy sector.

“Performance incentive mechanism” means an instrument by which utility performance is incentivized, which could include a monetary performance incentive.

“Performance metric” means a manner of measurement for a particular utility activity.

(c) Through coordinated, comprehensive system planning, ratemaking, and performance incentives, the performance-based ratemaking framework should be designed to accomplish the following objectives:

(1) maintain and improve service reliability and safety, including and particularly in environmental justice, low-income and equity investment eligible communities;

- (2) decarbonize utility systems at a pace that meets or exceeds State climate goals, while also ensuring the affordability of rates for all customers, including low-income customers;
  - (3) direct electric utilities to make cost-effective investments that support achievement of Illinois' clean energy policies, including, at a minimum, investments designed to integrate distributed energy resources, comply with critical infrastructure protection standards, plans, and industry best practices, and support and take advantage of potential benefits from the electric vehicle charging and other electrification, while mitigating the impacts;
  - (4) choose cost-effective assets and services, whether utility-supplied or through third-party contracting, considering both economic and environmental costs and the effects on utility rates, to deliver high-quality service to customers at least cost;
  - (5) maintain the affordability of electric delivery services for all customers, including low-income customers;
  - (6) maintain and grow a diverse workforce, diverse supplier procurement base and, for relevant programs, diverse approved-vendor pools, including increased opportunities for minority-owned, female-owned, veteran-owned, and disability-owned business enterprises;
  - (7) improve customer service performance and engagement;
  - (8) address the particular burdens faced by consumers in environmental justice and equity investment eligible communities, including shareholder, consumer, and publicly funded bill payment assistance and credit and collection policies, and ensure equitable disconnections, late fees, or arrearages as a result of utility credit and collection practices, which may include consideration of impact by zip code; and
  - (9) implement or otherwise enhance current supplier diversity programs to increase diverse contractor participation in professional services, subcontracting, and prime contracting opportunities with programs that address barriers to access. Supplier diversity programs shall address specific barriers related to RFP and contract access, access to capital, information technology and cyber security access and costs, administrative burdens, and quality control with specific metrics, outcomes, and demographic data reported.
- (d) Multi-Year Rate Plan.**
- (1) If an electric utility had a performance-based formula rate in effect under Section 16-108.5 [220 ILCS 5/16-108.5] as of December 31, 2020, then the utility may file a petition proposing tariffs implementing a 4-year Multi-Year Rate Plan as provided in this Section no later than, January 20, 2023, for delivery service rates to be effective for the billing periods January 1, 2024 through December 31, 2027. The Commission shall issue an order approving or approving as modified the utility's plan no later than December 20, 2023. The term "Multi-Year Rate Plan" refers to a plan establishing the base rates the utility shall charge for each delivery year of the 4-year period to be covered by the plan, which shall be subject to modification only as expressly allowed in this Section.
  - (2) A utility proposing a Multi-Year Rate Plan shall provide a 4-year investment plan and a description of the utility's major planned investments, including, at a minimum, all investments of \$2,000,000 or greater over the plan period for an electric utility that serves more than 3,000,000 retail customers in the State or \$500,000 for an electric utility that serves less than 3,000,000 retail customers in the State but more than 500,000 retail customers in the

State. The 4-year investment plan must be consistent with the Multi-Year Integrated Grid Plan described in Section 16-105.17 of this Act [220 ILCS 5/16-105.17]. The investment plan shall provide sufficiently detailed information, as required by the Commission, including, at a minimum, a description of each investment, the location of the investment, and an explanation of the need for and benefit of such an investment to the extent known.

**(3)** The Multi-Year Rate Plan shall be implemented through a tariff filed with the Commission consistent with the provisions of this paragraph (3) that shall apply to all delivery service customers. The Commission shall initiate and conduct an investigation of the tariff in a manner consistent with the provisions of this paragraph (3) and the provisions of Article IX of this Act [220 ILCS 5/9-101 et seq.], to the extent they do not conflict with this paragraph (3). The Multi-Year Rate Plan approved by the Commission shall do the following:

**(A)** Provide for the recovery of the utility's forecasted rate base, based on the 4-year investment plan and the utility's Integrated Grid Plan. The forecasted rate base must include the utility's planned capital investments, with rates based on average annual plant investment, and investment-related costs, including income tax impacts, depreciation, and ratemaking adjustments and costs that are prudently incurred and reasonable in amount consistent with Commission practice and law. The process used to develop the forecasts must be iterative, rigorous, and lead to forecasts that reasonably represent the utility's investments during the forecasted period and ensure that the investments are projected to be used and useful during the annual investment period and least cost, consistent with the provisions of Articles VIII [220 ILCS 5/8-101 et seq.] and IX of this Act.

**(B)** The cost of equity shall be approved by the Commission consistent with Commission practice and law.

**(C)** The revenue requirement shall reflect the utility's actual capital structure for the applicable calendar year. A year-end capital structure that includes a common equity ratio of up to and including 50% of the total capital structure shall be deemed prudent and reasonable. A higher common equity ratio must be specifically approved by the Commission.

**(E)** Provide for recovery of prudent and reasonable projected operating expenses, giving effect to ratemaking adjustments, consistent with Commission practice and law under Article IX of this Act. Operating expenses for years after the first year of the Multi-Year Rate Plan may be estimated by the use of known and measurable changes, expense reductions associated with planned capital investments as appropriate, and reasonable and appropriate escalators, indices, or other metrics.

**(F)** Amortize the amount of unprotected property-related excess accumulated deferred income taxes in rates as of January 1, 2023 over a period ending December 31, 2027, unless otherwise required to amortize the excess deferred income tax pursuant to Section 16-108.21 of this Act [220 ILCS 5/16-108.21].

**(G)** Allow recovery of incentive compensation expense that is based on the achievement of operational metrics, including metrics related to budget controls, outage duration and frequency, safety, customer service, efficiency and productivity, environmental compliance and attainment of affordability and environmental goals, and other goals and metrics

approved by the Commission. Incentive compensation expense that is based on net income or an affiliate's earnings per share shall not be recoverable.

**(H)** To the maximum extent practicable, align the 4-year investment plan and annual capital budgets with the electric utility's Multi-Year Integrated Grid Plan.

**(4)** The Commission shall establish annual rates for each year of the Multi-Year Rate Plan that accurately reflect and are based only upon the utility's reasonable and prudent costs of service over the term of the plan, including the effect of all ratemaking adjustments consistent with Commission practice and law as determined by the Commission, provided that the costs are not being recovered elsewhere in rates. Tariff riders authorized by the Commission may continue outside of a plan authorized under this Section to the extent such costs are not recovered elsewhere in rates. For the first multi-year rate plan, the burden of proof shall be on the electric utility to establish the prudence of investments and expenditures and to establish that such investments consistent with and reasonably necessary to meet the requirements of the utility's first approved Multi-Year Integrated Grid Plan described in Section 16-105.17 of this Act [220 ILCS 5/16-105.17]. For subsequent Multi-Year Rate Plans, the burden of proof shall be on the electric utility to establish the prudence of investments and expenditures and to establish that such investments are consistent with and reasonably necessary to meet the requirements of the utility's most recently approved Multi-Year Integrated Grid Plan described in Section 16-105.17 of this Act. The sole fact that a cost differs from that incurred in a prior period or that an investment is different from that described in the Multi-Year Integrated Grid Plan shall not imply the imprudence or unreasonableness of that cost or investment. The sole fact that an investment is the same or similar to that described in the Multi-Year Integrated Grid Plan shall not imply prudence and reasonableness of that investment.

**(5)** To facilitate public transparency, all materials, data, testimony, and schedules shall be provided to the Commission in an editable, machine-readable electronic format including.doc,.docx,.xls,.xlsx, and similar file formats, but not including.pdf or.exif. Should utilities designate any materials confidential, they shall have an affirmative duty to explain why the particular information is marked confidential. In determining prudence and reasonableness of rates, the Commission shall make its determination based upon the record, including each public comment filed or provided orally at open meetings consistent with the Commission's rules and practices.

**(6)** The Commission may, by order, establish terms, conditions, and procedures for submitting and approving a Multi-Year Rate Plan necessary to implement this Section and ensure that rates remain just and reasonable during the course of the plan, including terms and procedures for rate adjustment.

**(7)** An electric utility that files a tariff pursuant to paragraph (3) of this subsection (e) must submit a one-time \$300,000 filing fee at the time the Chief Clerk of the Commission accepts the filing, which shall be a recoverable expense.

**(8)** An electric utility operating under a Multi-Year Rate Plan shall file a new Multi-Year Rate Plan at least 300 days prior to the end of the initial Multi-Year Rate Plan unless it elects to file a general rate case pursuant to paragraph (9), and every 4 years thereafter, with a rate-effective date of the proposed tariffs such that, after the Commission suspension period, the rates would take effect immediately at the close of the final year of the initial Multi-Year Rate Plan. In

subsequent Multi-Year Rate Plans, as in the initial plans, utilities and stakeholders may propose additional metrics that achieve the outcomes described in paragraph (2) of subsection (f) of this Section.

**(9) Election of Rate Case.**

**(A)** On or before the date prescribed by subparagraph (B) of paragraph (9) of this Section, electric utilities that serve more than 500,000 retail customers in the State shall file either a general rate case under Section 9-201 of this Act [220 ILCS 5/9-201], or a Multi-Year Rate Plan, as set forth in paragraph (1) of this subsection (d).

**(B)** Electric utilities described in subparagraph (A) of paragraph (9) of this Section shall file their initial general rate case or Multi-Year Rate Plan, as applicable, with the Commission no later than January 20, 2023.

**(C)** Notwithstanding which rate filing option an electric utility elects to file on the date prescribed by subparagraph (B) of paragraph (9) of this Section, the electric utility shall be subject to the Multi-year Integrated Plan filing requirements.

**(D)** Following its initial rate filing pursuant to paragraph (2), an electric utility subject to the requirements of this Section shall thereafter be permitted to elect a different rate filing option consistent with any filing intervals established for a general rate case or Multi-Year Rate Plan, as follows:

**(i)** An electric utility that initially elected to file a Multi-Year Rate Plan and thereafter elects to transition to a general rate case may do so upon completion of the 4-year Multi-Year Rate Plan by filing a general rate case at the same time that the utility would have filed its subsequent Multi-Year Rate Plan, as specified in paragraph (8) of this subsection (d). Notwithstanding this election, the annual adjustment of the final year of the Multi-Year Rate Plan shall proceed as specified in paragraph (6) of subsection (f).

**(ii)** An electric utility that initially elected to file a general rate case and thereafter elects to transition to a Multi-Year Rate Plan may do so only at the 4-year filing intervals identified by paragraph (8) of this subsection (d).

**(10)** The Commission shall approve tariffs establishing rate design for all delivery service customers unless the electric utility makes the election specified in Section 16-105.5, in which case the rate design shall be subject to the provisions of that Section.

**(11)** The Commission shall establish requirements for annual performance evaluation reports to be submitted annually for performance metrics. Such reports shall include, but not be limited to, a description of the utility's performance under each metric and an identification of any extraordinary events that adversely affected the utility's performance.

**(12)** For the first Multi-Year Rate Plan, the Commission shall consolidate its investigation with the proceeding under Section 16-105.17 to establish the Multi-Year Integrated Grid Plan no later than 45 days after plan filing.

**(13)** Where a rate change under a Multi-Year Rate Plan will result in a rate increase, an electric utility may propose a rate phase-in plan that the Commission shall approve with or without modification or deny in its final order approving the new delivery services rates. A

proposed rate phase-in plan under this paragraph (13) must allow the new delivery services rates to be implemented in no more than 2 steps, as follows: in the first step, at least 50% of the approved rate increase must be reflected in rates, and, in the second step, 100% of the rate increase must be reflected in rates. The second step's rates must take effect no later than 12 months after the first step's rates were placed into effect. The portion of the approved rate increase not implemented in the first step shall be recorded on the electric utility's books as a regulatory asset, and shall accrue carrying costs to ensure that the utility does not recover more or less than it otherwise would because of the deferral. This portion shall be recovered, with such carrying costs at the weighted average cost of capital, through a surcharge applied to retail customer bills that (i) begins no later than 12 months after the date on which the second step's rates went into effect and (ii) is applied over a period not to exceed 24 months. Nothing in this paragraph is intended to limit the Commission's authority to mitigate the impact of rates caused by rate plans, or any other instance on a revenue-neutral basis; nor shall it mitigate a utility's ability to make proposals to mitigate the impact of rates. When a deferral, or similar method, is used to mitigate the impact of rates, the utility should be allowed to recover carrying costs.

**(14)** Notwithstanding the provisions of Section (13), the Commission may, on its own initiative, take revenue-neutral measures to relieve the impact of rate increases on customers. Such initiatives may be taken by the Commission in the first Multi-Year Rate Plan, subsequent multi-year plans, or in other instances described in this Act.

**(15)** Whenever during the pendency of a Multi-year Rate Plan, an electric utility subject to this Section becomes aware that, due to circumstances beyond its control, prudent operating practices will require the utility to make adjustments to the Multi-Year Rate Plan, the electric utility may file a petition with the Commission requesting modification of the approved annual revenue requirements included in the Multi-Year Rate Plan. The electric utility must support its request with evidence demonstrating why a modification is necessary, due to circumstances beyond the utility's control, to follow prudent operating practices and must set forth the changes to each annual revenue requirement to be approved, and the basis for any changes in anticipated operating expenses or capital investment levels. The utility shall affirmatively address the impact of the changes on the Multi-Year Integrated Grid Plan and Multi-Year Rate Plan originally submitted and approved by the Commission. Any interested party may file an objection to the changes proposed, or offer alternatives to the utility's proposal, as supported by testimony and evidence. After notice and hearing, the Commission shall issue a final order regarding the electric utility's request no later than 180 days after the filing of the petition.

**(e) Performance incentive mechanisms.**

**(1)** The electric industry is undergoing rapid transformation, including fundamental changes in how electricity is generated, procured, and delivered and how customers are choosing to participate in the supply and delivery of electricity to and from the electric grid. Building upon the State's goals to increase the procurement of electricity from renewable energy resources, including distributed generation and storage devices, the General Assembly finds that electric utilities should make cost-effective investments that support moving forward on Illinois' clean energy policies. It is therefore in the State's interest for the Commission to establish performance incentive mechanisms in order to better tie utility revenues to performance and customer benefits, accelerate progress on Illinois energy and other goals, ensure equity and

affordability of rates for all customers, including low-income customers, and hold utilities publicly accountable.

**(2)** The Commission shall approve, based on the substantial evidence proffered in the proceeding initiated pursuant to this subsection performance metrics that, to the extent practicable and achievable by the electric utility, encourage cost-effective, equitable utility achievement of the outcomes described in this subsection (e) while ensuring no degradation in the significant performance improvement achieved through previously established performance metrics. For each electric utility, the Commission shall approve metrics designed to achieve incremental improvements over baseline performance values and targets, over a performance period of up to 10 years, and no less than 4 years.

**(A)** The Commission shall approve no more than 8 metrics, with at least one metric from each of the categories below, for each electric utility, from subparagraphs (i) through (vi) of this subsection (A). Upon a utility request, the Commission may approve the use of a specific, measurable, and achievable tracking metric described in paragraph (3) of subsection (e) as a performance metric pursuant to paragraph (2) of subsection (e).

**(i)** Metrics designed to ensure the utility maintains and improves the high standards of both overall and locational reliability and resiliency, and makes improvements in power quality, including and particularly in environmental justice and equity investment eligible communities.

**(ii)** Peak load reductions attributable to demand response programs.

**(iii)** Supplier diversity expansion, including diverse contractor participation in professional services, subcontracting, and prime contracting opportunities, development of programs that address the barriers to access, aligning demographics of contractors to the demographics in the utility's service territory, establish long-term mentoring relationships that develop and remove barriers to access for diverse and underserved contractors. The utilities shall provide solutions, resources, and tools to address complex barriers of entry related to costly and time-intensive cyber security requirements, increasingly complex information technology requirements, insurance barriers, service provider sign-up process barriers, administrative process barriers, and other barriers that inhibit access to RFPs and contracts. For programs with contracts over \$1,000,000, winning bidders must demonstrate a subcontractor development or mentoring relationship with at least one of their diverse subcontracting partners for a core component of the scope of the project. The mentoring time and cost shall be taken into account in the creation of RFP and shall include a structured and measured plan by the prime contractor to increase the capabilities of the subcontractor in their proposed scope. The metric shall include reporting on all supplier diversity programs by goals, program results, demographics and geography, with separate reporting by category of minority-owned, female-owned, veteran-owned, and disability-owned business enterprise metrics. The report shall include resources and expenses committed to the programs and conversion rates of new diverse utility contractors.

**(iv)** Achieve affordable customer delivery service costs, with particular emphasis on keeping the bills of lower-income households, households in equity investment eligible communities, and household in environmental justice communities within a



manageable portion of their income and adopting credit and collection policies that reduce disconnections for these households specifically and for customers overall to ensure equitable disconnections, late fees, or arrearages as a result of utility credit and collection practices, which may include consideration of impact by zip code.

(v) Metrics designed around the utility's timeliness to customer requests for interconnection in key milestone areas, such as: initial response, supplemental review, and system feasibility study; improved average service reliability index for those customers that have interconnected a distributed renewable energy generation device to the utility's distribution system and are lawfully taking service under an applicable tariff; offering a variety of affordable rate options, including demand response, time of use rates for delivery and supply, real-time pricing rates for supply; comprehensive and predictable net metering, and maximizing the benefits of grid modernization and clean energy for ratepayers; and improving customer access to utility system information according to consumer demand and interest.

(vi) Metrics designed to measure the utility's customer service performance, which may include the average length of time to answer a customer's call by a customer service representative, the abandoned call rate and the relative ranking of the electric utility, by a reputable third-party organization, in customer service satisfaction when compared to other similar electric utilities in the Midwest region.

(B) Performance metrics shall include a description of the metric, a calculation method, a data collection method, annual performance targets, and any incentives or penalties for the utility's achievement of, or failure to achieve, their performance targets, provided that the total amount of potential incentives and penalties shall be symmetrical. Incentives shall be rewards or penalties or both, reflected as basis points added to, or subtracted from, the utility's cost of equity. The metrics and incentives shall apply for the entire time period covered by a Multi-Year Rate Plan. The total for all metrics shall be equal to 40 basis points, however, the Commission may adjust the basis points upward or downward by up to 20 basis points for any given Multi-Year Rate Plan, as appropriate, but in no event may the total exceed 60 basis points or fall below 20 basis points.

(C) Metrics related to reliability shall be implemented to ensure equitable benefits to environmental justice and equity investment eligible communities, as defined in this Act.

(D) The Commission shall approve performance metrics that are reasonably within control of the utility to achieve. The Commission also shall not approve a metric that is solely expected to have the effect of reducing the workforce. Performance metrics should measure outcomes and actual, rather than projected, results where possible. Nothing in this paragraph is intended to require that different electric utilities must be subject to the same metrics, goals, or incentives.

(E) Increases or enhancements to an existing performance goal or target shall be considered in light of other metrics, cost-effectiveness, and other factors the Commission deems appropriate. Performance metrics shall include one year of tracking data collected in a consistent manner, verifiable by an independent evaluator in order to establish a baseline and measure outcomes and actual results against projections where possible.

**(F)** For the purpose of determining reasonable performance metrics and related incentives, the Commission shall develop a methodology to calculate net benefits that includes customer and societal costs and benefits and quantifies the effect on delivery rates. In determining the appropriate level of a performance incentive, the Commission shall consider: the extent to which the amount is likely to encourage the utility to achieve the performance target in the least cost manner; the value of benefits to customers, the grid, public health and safety, and the environment from achievement of the performance target, including in particular benefits to equity investment eligible community; the affordability of customer's electric bills, including low-income customers, the utility's revenue requirement, the promotion of renewable and distributed energy, and other such factors that the Commission deems appropriate. The consideration of these factors shall result in an incentive level that ensures benefits exceed costs for customers.

**(G)** Achievement of performance metrics are based on the assumptions that the utility will adopt or implement the technology and equipment, and make the investments to the extent reasonably necessary to achieve the goal. If the electric utility is unable to meet the performance metrics as a result of extraordinary circumstances outside of its control, including but not limited to government-declared emergencies, then the utility shall be permitted to file a petition with the Commission requesting that the utility be excused from compliance with the applicable performance goal or goals and the associated financial incentives and penalties. The burden of proof shall be on the utility, consistent with Article IX, and the utility's petition shall be supported by substantial evidence. The Commission shall, after notice and hearing, enter its order approving or denying, in whole or in part, the utility's petition based on the extent to which the utility demonstrated that its achievement of the affected metrics and performance goals was hindered by extraordinary circumstances outside of the utility's control.

**(3)** The Commission shall approve reasonable and appropriate tracking metrics to collect and monitor data for the purpose of measuring and reporting utility performance and for establishing future performance metrics. These additional tracking metrics shall include at least one metric from each of the following categories of performance:

**(A)** Minimize emissions of greenhouse gases and other air pollutants that harm human health, particularly in environmental justice and equity investment eligible communities, through minimizing total emissions by accelerating electrification of transportation, buildings and industries where such electrification results in net reductions, across all fuels and over the life of electrification measures, of greenhouse gases and other pollutants, taking into consideration the fuel mix used to produce electricity at the relevant hour and the effect of accelerating electrification on electricity delivery services rates, supply prices and peak demand, provided the revenues the utility receives from accelerating electrification of transportation, buildings and industries exceed the costs.

**(B)** Enhance the grid's flexibility to adapt to increased deployment of nondispatchable resources, improve the ability and performance of the grid on load balancing, and offer a variety of rate plans to match consumer consumption patterns and lower consumer bills for electricity delivery and supply.

(C) Ensure rates reflect cost savings attributable to grid modernization and utilize distributed energy resources that allow the utility to defer or forgo traditional grid investments that would otherwise be required to provide safe and reliable service.

(D) Metrics designed to create and sustain full-time-equivalent jobs and opportunities for all segments of the population and workforce, including minority-owned businesses, women-owned businesses, veteran-owned businesses, and businesses owned by a person or persons with a disability, and that do not, consistent with State and federal law, discriminate based on race or socioeconomic status as a result of this amendatory Act of the 102nd General Assembly.

(E) Maximize and prioritize the allocation of grid planning benefits to environmental justice and economically disadvantaged customers and communities, such that all metrics provide equitable benefits across the utility's service territory and maintain and improve utility customers' access to uninterrupted utility services.

(4) The Commission may establish new tracking and performance metrics in future Multi-Year Rate Plans to further measure achievement of the outcomes set forth in paragraph (2) of subsection (f) of this Section and the other goals and requirements of this Section.

(5) The Commission shall also evaluate metrics that were established in prior Multi-Year Rate Plans to determine if there has been an unanticipated material change in circumstances such that adjustments are required to improve the likelihood of the outcomes described in paragraph (2) of subsection (f). For metrics that were established in prior Multi-Year Rate Plan proceedings and that the Commission elects to continue, the design of these metrics, including the goals of tracking metrics and the targets and incentive levels and structures of performance metrics, may be adjusted pursuant to the requirements in this Section. The Commission may also change, adjust or phase out tracking and performance metrics that were established in prior Multi-Year Rate Plan proceedings if these metrics no longer meet the requirements of this Section or if they are rendered obsolete by the changing needs and technology of an evolving grid. Additionally, performance metrics that no longer require an incentive to create improved utility performance may become tracking metrics in a Multi-Year Rate Plan proceeding.

(6) The Commission shall initiate a workshop process no later than August 1, 2021, or 15 days after the effective date of this amendatory Act of the 102nd General Assembly, whichever is later, for the purpose of facilitating the development of metrics for each utility. The workshop shall be coordinated by the staff of the Commission, or a facilitator retained by staff, and shall be organized and facilitated in a manner that encourages representation from diverse stakeholders and ensures equitable opportunities for participation, without requiring formal intervention or representation by an attorney. Working with staff of the Commission the facilitator may conduct a combination of workshops specific to a utility or applicable to multiple utilities where content and stakeholders are substantially similar. The workshop process shall conclude no later than October 31, 2021. Following the workshop, the staff of the Commission, or the facilitator retained by the Staff, shall prepare and submit a report to the Commission that identifies the participants in the process, the metrics proposed during the process, any material issues that remained unresolved at the conclusions of such process, and any recommendations for workshop process improvements. Any workshop participant may file comments and reply comments in response to the Staff report.

**(A)** No later than January, 20, 2022, each electric utility that intends to file a petition pursuant to subsection (b) of this Section shall file a petition with the Commission seeking approval of its performance metrics, which shall include for each metric, at a minimum, (i) a detailed description, (ii) the calculation of the baseline, (iii) the performance period and overall performance goal, provided that the performance period shall not commence prior to January 1, 2024, (iv) each annual performance goal, (v) the performance adjustment, which shall be a symmetrical basis point increase or decrease to the utility's cost of equity based on the extent to which the utility achieved the annual performance goal, and (vi) the new or modified tariff mechanism that will apply the performance adjustments. The Commission shall issue its order approving, or approving with modification, the utility's proposed performance metrics no later than September 30, 2022.

**(B)** No later than August 1, 2025, the Commission shall initiate a workshop process that conforms to the workshop purpose and requirements of this paragraph (6) of this Section to the extent they do not conflict. The workshop process shall conclude no later than October 31, 2025, and the staff of the Commission, or the facilitator retained by the Staff, shall prepare and submit a report consistent with the requirements described in this paragraph (6) of this Section. No later than January 20, 2026, each electric utility subject to the requirements of this Section shall file a petition that reflects, and is consistent with, the components required in this paragraph (6) of this Section, and the Commission shall issue its order approving, or approving with modification, the utility's proposed performance metrics no later than September 30, 2026.

**(f)** On May 1 of each year, following the approval of the first Multi-Year Rate Plan and its initial year, the Commission shall open an annual performance evaluation proceeding to evaluate the utilities' performance on their metric targets during the year just completed, as well as the appropriate Annual Adjustment as defined in paragraph (6). The Commission shall determine the performance and annual adjustments to be applied through a surcharge in the following calendar year.

**(1)** On February 15 of each year, prior to the annual performance evaluation proceeding, each utility shall file a performance evaluation report with the Commission that includes a description of and all data supporting how the utility performed under each performance metric and an identification of any extraordinary events that adversely impacted the utility's performance.

**(2)** The metrics approved under this Section are based on the assumptions that the utility may fully implement the technology and equipment, and make the investments, required to achieve the metrics and performance goals. If the utility is unable to meet the metrics and performance goals because it was hindered by unanticipated technology or equipment implementation delays, government-declared emergencies, or other investment impediments, then the utility shall be permitted to file a petition with the Commission on or before the date that its report is due pursuant to paragraph (1) of this subsection (f) requesting that the utility be excused from compliance with the applicable performance goal or goals. The burden of proof shall be on the utility, consistent with Article IX, and the utility's petition shall be supported by substantial evidence. No later than 90 days after the utility files its petition, the Commission shall, after notice and hearing, enter its order approving or denying, in whole or in part, the utility's petition based on the extent to which the utility demonstrated that its achievement of the

affected metrics and performance goals was hindered by unanticipated technology or equipment implementation delays, or other investment impediments, that were reasonably outside of the utility's control.

(3) The electric utility shall provide for an annual independent evaluation of its performance on metrics. The independent evaluator shall review the utility's assumptions, baselines, targets, calculation methodologies, and other relevant information, especially ensuring that the utility's data for establishing baselines matches actual performance, and shall provide a report to the Commission in each annual performance evaluation describing the results. The independent evaluator shall present this report as evidence as a nonparty participant and shall not be represented by the utility's legal counsel. The independent evaluator shall be hired through a competitive bidding process with approval of the contract by the Commission.

The Commission shall consider the report of the independent evaluator in determining the utility's achievement of performance targets. Discrepancies between the utility's assumptions, baselines, targets, or calculations and those of the independent evaluator shall be closely scrutinized by the Commission. If the Commission finds that the utility's reported data for any metric or metrics significantly and incorrectly deviates from the data reported by the independent evaluator, then the Commission shall order the utility to revise its data collection and calculation process within 60 days, with specifications where appropriate.

(4) The Commission shall, after notice and hearing in the annual performance evaluation proceeding, enter an order approving the utility's performance adjustment based on its achievement of or failure to achieve its performance targets no later than December 20 each year. The Commission-approved penalties or incentives shall be applied beginning with the next calendar year.

(5) In order to promote the transparency of utility investments during the effective period of a multi-year rate plan, inform the Commission's investigation and adjustment of rates in the annual adjustment process, and to facilitate the participation of stakeholders in the annual adjustment process, an electric utility with an effective Multi-Year Rate Plan shall, within 90 days of the close of each quarter during the Multi-Year Rate Plan period, submit to the Commission a report that summarizes the additions to utility plant that were placed into service during the prior quarter, which for purposes of the report shall be the most recently closed fiscal quarter. The report shall also summarize the utility plant the electric utility projects it will place into service through the end of the calendar year in which the report is filed. The projections, estimates, plans, and forward-looking information that are provided in the reports pursuant to this paragraph (5) are for planning purposes and are intended to be illustrative of the investments that the utility proposes to make as of the time of submittal. Nothing in this paragraph (5) precludes, or is intended to limit, a utility's ability to modify and update its projections, estimates, plans, and forward-looking information previously submitted in order to reflect stakeholder input or other new or updated information and analysis, including, but not limited to, changes in specific investment needs, customer electric use patterns, customer applications and preferences, and commercially available equipment and technologies, however the utility shall explain any changes or deviations between the projected investments from the quarterly reports and actual investments in the annual report. The reports submitted pursuant to this subsection are intended to be flexible planning tools, and are expected to evolve as new information becomes available. Within 7 days of receiving a quarterly report,

the Commission shall timely make such report available to the public by posting it on the Commission's website. Each quarterly report shall include the following detail:

- (A) The total dollar value of the additions to utility plant placed in service during the prior quarter;
  - (B) A list of the major investment categories the electric utility used to manage its routine standing operational activities during the prior quarter including the total dollar amount for the work reflected in each investment category in which utility plant in service is equal to or greater than \$2,000,000 for an electric utility that serves more than 3,000,000 customers in the State or \$500,000 for an electric utility that serves less than 3,000,000 customers but more than 500,000 customers in the State as of the last day of the quarterly reporting period, as well as a summary description of each investment category;
  - (C) A list of the projects which the electric utility has identified by a unique investment tracking number for utility plant placed in service during the prior quarter for utility plant placed in service with a total dollar value as of the last day of the quarterly reporting period that is equal to or greater than \$2,000,000 for an electric utility that serves more than 3,000,000 customers in the State or \$500,000 for an electric utility that serves less than 3,000,000 retail customers but more than 500,000 retail customers in the State, as well as a summary of each project;
  - (D) The estimated total dollar value of the additions to utility plant projected to be placed in service through the end of the calendar year in which the report is filed;
  - (E) A list of the major investment categories the electric utility used to manage its routine standing operational activities with utility plant projected to be placed in service through the end of the calendar year in which the report is filed, including the total dollar amount for the work reflected in each investment category in which utility plant in service is projected to be equal to or greater than \$2,000,000 for an electric utility that serves more than 3,000,000 customers in the State or \$500,000 for an electric utility that serves less than 3,000,000 retail customers but more than 500,000 retail customers in the State, as well as a summary description of each investment category; and
  - (F) A list of the projects for which the electric utility has identified by a unique investment tracking number for utility plant projected to be placed in service through the end of the calendar year in which the report is filed with an estimated dollar value that is equal to or greater than \$2,000,000 for an electric utility that serves more than 3,000,000 customers in the State or \$500,000 for an electric utility that serves less than 3,000,000 retail customers but more than 500,000 retail customers in the State, as well as a summary description of each project.
- (6) As part of the Annual Performance Adjustment, the electric utility shall submit evidence sufficient to support a determination of its actual revenue requirement for the applicable calendar year, consistent with the provisions of paragraphs (d) and (f) of this subsection. The electric utility shall bear the burden of demonstrating that its costs were prudent and reasonable, subject to the provisions of paragraph (4) of this subsection (f). The Commission's review of the electric utility's annual adjustment shall be based on the same evidentiary standards, including, but not limited to, those concerning the prudence and reasonableness of the known and measurable costs forecasted to be incurred by the utility, and the used and

usefulness of the actual plant investment pursuant to Section 9-211 of this Act [220 ILCS 5/9-211], that the Commission applies in a proceeding to review a filing for changes in rates pursuant to Section 9-201 of this Act [220 ILCS 5/9-201]. The Commission shall determine the prudence and reasonableness of the actual costs incurred by the utility during the applicable calendar year, as well as determine the original cost of plant in service as of the end of the applicable calendar year. The Commission shall then determine the Annual Adjustment, which shall mean the amount by which, the electric utility's actual revenue requirement for the applicable year of the Multi-Year Rate Plan either exceeded, or was exceeded by, the revenue requirement approved by the Commission for such calendar year, plus carrying costs calculated at the weighted average cost of capital approved for the Multi-Year Rate Plan.

The Commission's determination of the electric utility's actual revenue requirement for the applicable calendar year shall be based on:

**(A)** the Commission-approved used and useful, prudent and reasonable actual costs for the applicable calendar year, which shall be determined pursuant to the following criteria:

**(i)** The overall level of actual costs incurred during the calendar year, provided that the Commission may not allow recovery of actual costs that are more than 105% of the approved revenue requirement calculated as provided in item (ii) of this subparagraph (A), except to the extent the Commission approves a modification of the Multi-Year Rate Plan to permit such recovery.

**(ii)** The calculation of 105% of the revenue requirement required by this subparagraph (A) shall exclude the revenue requirement impacts of the following volatile and fluctuating variables that occurred during the year: (i) storms and weather-related events for which the utility provides sufficient evidence to demonstrate that such expenses were not foreseeable and not in control of the utility; (ii) new business; (iii) changes in interest rates; (iv) changes in taxes; (v) facility relocations; (vi) changes in pension or post-retirement benefits costs due to fluctuations in interest rates, market returns or actuarial assumptions; (vii) amortization expenses related to costs; and (viii) changes in the timing of when an expenditure or investment is made such that it is accelerated to occur during the applicable year or deferred to occur in a subsequent year.

**(B)** the year-end rate base;

**(C)** the cost of equity approved in the multi-year rate plan; and

**(D)** the electric utility's actual year-end capital structure, provided that the common equity ratio in such capital structure may not exceed the common equity ratio that was approved by the Commission in the Multi-Year Rate Plan.

**(2)** The Commission's determinations of the prudence and reasonableness of the costs incurred for the applicable year, and of the original cost of plant in service as of the end of the applicable calendar year, shall be final upon entry of the Commission's order and shall not be subject to collateral attack in any other Commission proceeding, case, docket, order, rule, or regulation; however, nothing in this Section shall prohibit a party from petitioning the Commission to rehear or appeal to the courts the order pursuant to the provisions of this Act.

(g) During the period leading to approval of the first Multi-Year Integrated Grid Plan, each electric utility will necessarily continue to invest in its distribution grid. Those investments will be subject to a determination of prudence and reasonableness consistent with Commission practice and law. Any failure to conform to the Multi-Year Integrated Grid Plan ultimately approved shall not imply imprudence or unreasonableness.

(h) After calculating the Performance Adjustment and Annual Adjustment, the Commission shall order the electric utility to collect the amount in excess of the revenue requirement from customers, or issue a refund to customers, as applicable, to be applied through a surcharge beginning with the next calendar year.

Electric utilities subject to the requirements of this Section shall be permitted to file new or revised tariffs to comply with the provisions of, and Commission orders entered pursuant to, this Section.

## History

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2021 P.A. 102-662, § 90-50, effective September 16, 2021.

Illinois Compiled Statutes Annotated  
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