



1 SENATE RESOLUTION NO. 821

2 WHEREAS, The 97th Illinois General Assembly passed Senate  
3 Bill 1652 and House Bill 3036 with supermajority votes in both  
4 legislative chambers; Senate Bill 1652 became law on October  
5 26, 2011 as Public Act 97-616 and House Bill 3036 became law on  
6 December 30, 2011 as Public Act 97-646; and

7 WHEREAS, Public Act 97-616, which is commonly referred to  
8 as the Energy Infrastructure Modernization Act, confers  
9 substantial benefits upon the State's electric utility  
10 customers; it established detailed infrastructure investment  
11 plans to modernize and upgrade the State's aging electric grid  
12 in order to ensure the continued provision of safe, reliable,  
13 and affordable service to Illinoisans; participating utilities  
14 that elect to undertake the infrastructure investment plan may  
15 recover their costs through a performance-based formula rate  
16 tariff mechanism, which was designed to increase  
17 predictability, stability, and transparency in the ratemaking  
18 process; and

19 WHEREAS, Public Act 97-646 was enacted as "trailer  
20 legislation" to Public Act 97-616 with the intent to amend the  
21 Energy Infrastructure Modernization Act to provide additional  
22 benefits to customers; and

1           WHEREAS, To make this investment possible, the  
2 performance-based formula rate tariff must, among other  
3 things, establish and set forth certain protocols providing  
4 that participating utilities recover the costs of service and  
5 these investments, including, but not limited to, allowing for  
6 the recovery of an "investment return on pension assets net of  
7 deferred tax benefits equal to the utility's long-term debt  
8 cost of capital as of the end of the applicable calendar year",  
9 which is set forth in subparagraph (D) of paragraph (4) of  
10 subsection (c) of Section 16-108.5 of the Public Utilities Act;  
11 and

12           WHEREAS, In so providing, the General Assembly did not, and  
13 did not intend to, overturn or generally depart from Illinois  
14 Commerce Commission practice and law regarding the  
15 establishment of these protocols, including the electric  
16 utility's ability to continue to recover a debt return on its  
17 pension assets as the Commission has previously allowed; and

18           WHEREAS, No statutory authority was given to the Illinois  
19 Commerce Commission to deny recovery of a debt return on what  
20 is commonly referred to as, what is reported in the Federal  
21 Energy Regulatory Commission Form 1 (FERC Form 1) as, and what  
22 the General Assembly regarded to be a pension asset; and

23           WHEREAS, The Energy Infrastructure Modernization Act

1 further provides in subsections (c) and (d) of Section 16-108.5  
2 that those amounts to be credited or charged to customers  
3 following the annual reconciliation process under the  
4 performance-based formula rate shall be "with interest" so the  
5 utility will be made whole for unrecovered amounts that were  
6 prudently and reasonably incurred and customers will be made  
7 whole for amounts they overpaid, if any; and

8 WHEREAS, Such interest is intended to be set at the  
9 utility's weighted average cost of capital, determined in  
10 accordance with the statute, which represents the reasonable  
11 cost and means of financing a utility's investments and  
12 operating costs, so that the utility and customers are made  
13 whole when charges or credits are necessary to reconcile to  
14 actual prudent and reasonable investments and costs; and

15 WHEREAS, The Energy Infrastructure Modernization Act also  
16 provides that the final year-end cost data filed in FERC Form 1  
17 should generally be used to determine rates; and

18 WHEREAS, No statutory authority was given to the Illinois  
19 Commerce Commission to set rate base and capital structure  
20 using average numbers that do not represent final year-end  
21 values reflected in the FERC Form 1, and the Illinois Commerce  
22 Commission's use of such average is contrary to the statute;  
23 and

1           WHEREAS, The Illinois Commerce Commission Orders, entered  
2           on May 29, 2012 and September 19, 2012, in Commission Docket  
3           Nos. 11-0721 and 12-0001, respectively, failed to reflect the  
4           statutory directives and the intent of the Illinois General  
5           Assembly regarding numerous issues, including, but not limited  
6           to, the pension asset, interest rate, and rate base issues  
7           described herein; and

8           WHEREAS, Commonwealth Edison Company sought rehearing on a  
9           number of wrongly decided issues, including the pension asset,  
10          interest rate, and rate base issues described herein, and the  
11          Illinois Commerce Commission granted rehearing with respect to  
12          only these 3 issues; and

13          WHEREAS, The Illinois Commerce Commission Order on  
14          Rehearing, entered on October 3, 2012, in Commission Docket No.  
15          11-0721, reversed itself on the pension asset issue only; and

16          WHEREAS, On October 4, 2012, Commonwealth Edison Company  
17          filed its Notice of Appeal from the Illinois Commerce  
18          Commission's Order in Commission Docket No. 11-0721; and

19          WHEREAS, Ameren Illinois Company sought rehearing on a  
20          number of wrongly decided issues, including the interest rate  
21          and rate base issues described herein, and the Illinois

1 Commerce Commission denied rehearing on October 17, 2012; and

2 WHEREAS, On October 26, 2012, Ameren Illinois Company filed  
3 its Notice of Appeal from the Illinois Commerce Commission's  
4 Order in Commission Docket No. 12-0001; and

5 WHEREAS, The revenue deficiencies caused because of the  
6 errors in the Illinois Commerce Commission Orders, entered on  
7 May 29, 2012 and October 3, 2012 in Commission Docket No.  
8 11-0721 and on September 19, 2012 in Commission Docket No.  
9 12-0001, may preclude the participating utilities from  
10 implementing their infrastructure investment plans, including,  
11 but not limited to, their advanced metering infrastructure  
12 deployment plans, according to the schedule set forth in  
13 subsection (b) of Section 16-108.5, Section 16-108.6, or in any  
14 Illinois Commerce Commission order entered thereunder; and

15 WHEREAS, The Illinois Supreme and Appellate Courts have  
16 consistently held that, because the administrative agencies  
17 are creatures of statute, administrative agencies possess only  
18 those powers expressly delegated by law and may not act beyond  
19 their statutorily delegated authority; and

20 WHEREAS, The Illinois Supreme and Appellate Courts have  
21 consistently held that public policy in Illinois is expressed  
22 by the General Assembly, and it is not the province of an

1 administrative agency to inquire into the wisdom and propriety  
2 of the legislature's act or to substitute its own judgment for  
3 that of the legislature; therefore, be it

4       RESOLVED, BY THE SENATE OF THE NINETY-SEVENTH GENERAL  
5 ASSEMBLY OF THE STATE OF ILLINOIS, that we express serious  
6 concerns that the Illinois Commerce Commission Orders, entered  
7 on May 29, 2012 and October 3, 2012 in Commission Docket No.  
8 11-0721 and on September 19, 2012 in Commission Docket No.  
9 12-0001, fail to reflect the statutory directives and the  
10 intent of the Illinois General Assembly by (1) assessing  
11 interest on those amounts to be credited or charged to  
12 customers as set forth in subsection (d) of Section 16-108.5 of  
13 the Public Utilities Act at an amount that is not based on the  
14 utility's weighted average cost of capital; (2) determining  
15 rate base and capital structure using an average, rather than  
16 the year-end amounts as reflected in FERC Form 1; and (3)  
17 departing in numerous other ways from the directives of  
18 subsection (c) of Section 16-108.5 of the Public Utilities Act;  
19 and be it further

20       RESOLVED, That the Illinois Commerce Commission correctly  
21 reversed itself in its Order on Rehearing in Commission Docket  
22 No. 11-0721 by allowing Commonwealth Edison Company to earn a  
23 debt return on what is commonly referred to as, identified in  
24 the FERC Form 1 as, and referred to by the General Assembly as

1 a pension asset in subparagraph (D) of paragraph (4) of  
2 subsection (c) of Section 16-108.5 of the Public Utilities Act;  
3 and be it further

4 RESOLVED, That we urge the Illinois Commerce Commission to  
5 order Commonwealth Edison Company and Ameren Illinois Company  
6 to file changes to their performance-based formula rate tariffs  
7 that (1) apply an interest rate set at the utility's weighted  
8 average cost of capital as described herein; (2) set rate base  
9 and capital structure using final year-end values reflected in  
10 the FERC Form 1 rather than average numbers; and (3) correct  
11 other errors reflected in the Illinois Commerce Commission  
12 Orders entered May 29, 2012 and September 19, 2012 in  
13 Commission Docket Nos. 11-0721 and 12-0001, respectively, so  
14 that the tariffs reflect the statutory directives and the  
15 intent of the General Assembly in passing Public Acts 97-616  
16 and 97-646 as reaffirmed in this resolution; and be it further

17 RESOLVED, That we urge the Illinois Commerce Commission to  
18 enter orders approving such changes no later than December 31,  
19 2012; and be it further

20 RESOLVED, That each participating utility should be  
21 permitted, without penalty or being subject to any other  
22 adverse action, a reasonable time to ensure its infrastructure  
23 investment plan, including, but not limited to, its advanced

1 metering infrastructure deployment plan, is in compliance with  
2 the schedule set forth in subsection (b) of Section 16-108.5,  
3 Section 16-108.6, or in any Illinois Commerce Commission order  
4 entered thereunder; and be it further

5       RESOLVED, That suitable copies of this resolution be  
6 delivered to the Governor of the State of Illinois and the  
7 Chairman and Commissioners of the Illinois Commerce  
8 Commission.