

AN ACT concerning public utilities.

Be it enacted by the People of the State of Illinois,
represented in the General Assembly:

Section 5. The Public Utilities Act is amended by changing Sections 4-202, 4-203, 5-109, 5-202, and 10-105 and adding Section 5-202.1 as follows:

(220 ILCS 5/4-202) (from Ch. 111 2/3, par. 4-202)

Sec. 4-202. Action for injunction. Whenever the Commission shall be of the opinion that any public utility is failing or omitting or about to fail or omit, to do anything required of it by law, or by any order, decision, rule, regulation, direction, or requirement of the Commission, issued or made under authority of this Act, or is doing anything or about to do anything or permitting anything or about to permit anything to be done, contrary to or in violation of law or any order, decision, rule, regulation, direction, or requirement of the Commission, issued or made under authority of this Act, the Commission shall file an action or proceeding in the circuit court in and for the county in which the case or some part thereof arose, or in which the person or corporation complained of, if any, has its principal place of business, or in which the person complained of, if any, resides, in the name of the People of the State of Illinois, for the purpose of having the violation or threatened violation stopped and prevented, either by mandamus or injunction.

The Commission may express its opinion in a resolution based upon whatever facts and evidence have come to its attention and may issue the resolution ex parte and without holding any administrative hearing before bringing suit. Except in cases involving an imminent threat to the public

health or public safety, no such resolution shall be adopted until 48 hours after the public utility has been given notice of (i) the substance of the alleged violation, including a citation to the law or order, decision, rule, regulation, or direction of the Commission alleged to have been violated and (ii) the time and date of the meeting at which such resolution will first be before the Commission for consideration.

The Commission shall file the action or proceeding by complaint in the circuit court, alleging the violation or threatened violation complained of, and praying for appropriate relief by way of mandamus or injunction. It shall thereupon be the duty of the court to specify a time, not exceeding 20 days after the service of the copy of the complaint, within which the public utility complained of must answer the complaint, and in the meantime said public utility may be restrained. In case of default in answer, or after answer, the court shall immediately inquire into the facts and circumstances of the case. Such corporation or persons as the court may deem necessary or proper to be joined as parties, in order to make its judgment, or order effective, may be joined as parties. The final judgment in any action or proceeding shall either dismiss the action or proceeding or grant relief by mandamus or injunction or be made permanent as prayed for in the complaint, or in such modified or other form as will afford appropriate relief. An appeal may be taken from such final judgment as in other civil cases.

(Source: P.A. 84-617.)

(220 ILCS 5/4-203) (from Ch. 111 2/3, par. 4-203)

Sec. 4-203. Action to recover penalties.

(a) All civil penalties established under this Act shall be assessed and collected by the Commission. Except for the

penalties provided under Section 2-202, civil penalties may be assessed only after notice and opportunity to be heard. In determining the amount of the penalty, the Commission shall consider the appropriateness of the penalty to the size of the business of the public utility, corporation other than a public utility, or person acting as a public utility charged, the gravity of the violation, such other mitigating or aggravating factors as the Commission may find to exist, and the good faith of the public utility, corporation other than a public utility, or person acting as a public utility charged in attempting to achieve compliance after notification of a violation. Nothing in this Section, however, increases or decreases any minimum or maximum penalty prescribed elsewhere in this Act.

(b) If timely judicial review of a Commission order that imposes a civil penalty is taken by the public utility, corporation other than a public utility, or person acting as a public utility on which the civil penalty has been imposed, the reviewing court shall enter a judgment on all amounts upon affirmance of the Commission order. If timely judicial review is not taken and the civil penalty remains unpaid for 60 days after service of the order, the Commission in its discretion may either begin revocation proceedings or bring suit to recover the penalties. Unless stayed by a reviewing court, interest at the post-judgment rate set forth in Section 2-1303 of the Code of Civil Procedure shall accrue from 60 days after the date of service of the Commission order.

(c) Actions to recover delinquent civil penalties under this Act shall be brought in the name of the People of the State of Illinois in the circuit court in and for the county in which the cause, or some part thereof, arose, or in which the corporation complained of, if any, has its principal place of business, or in which the person, if any, complained

of, resides. The action shall be commenced and prosecuted to final judgment by the Commission. In any such action, all interest incurred up to the time of final court judgment may be sued for and recovered in that action. In all such actions, the procedure and rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the State in any such action shall be paid into the State treasury to the credit of the General Revenue Fund. Any such action may be compromised or discontinued on application of the Commission upon such terms as the court shall approve and order.

(d) Civil penalties related to the late filing of reports, taxes, or other filings shall be paid into the State treasury to the credit of the Public Utility Fund. Except as otherwise provided in this Act, all other fines and civil penalties shall be paid into the State treasury to the credit of the General Revenue Fund. Except as otherwise provided in this Act, actions to recover penalties under this Act shall be brought in the name of the People of the State of Illinois in the circuit court in and for the county in which the cause, or some part thereof, arose, or in which the corporation complained of, if any, has its principal place of business, or in which the person, if any, complained of, resides. The action shall be commenced and prosecuted to final judgment by the Commission. In any such action, all penalties incurred up to the time of commencing the same may be sued for and recovered. In all such actions, the procedure and rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the State in any such action shall be paid into the State treasury to the credit of the general fund. Any such action may be compromised or discontinued on application of the Commission upon such terms as the court shall approve and order.

(Source: P.A. 84-617.)

(220 ILCS 5/5-109) (from Ch. 111 2/3, par. 5-109)

Sec. 5-109. Reports; false reports; penalty. Each public utility in the State shall each year furnish to the Commission, in such form as the Commission shall require, annual reports as to all the items mentioned in the preceding Sections of this Article, and in addition such other items, whether of a nature similar to those therein enumerated or otherwise, as the Commission may prescribe. Such annual reports shall contain all the required information for the period to 12 twelve months ending on the ~~thirtieth-day-of~~ June 30 in each year, or ending on the ~~thirty-first--day--of~~ December 31 in each year, as the Commission may by order prescribe for each class of public utilities, and shall be filed with the Commission at its office in Springfield within three months after the close of the year for which the report is made. The Commission shall have authority to require any public utility to file monthly reports of earnings and expenses of such utility, and to file other periodical or special, or both periodical and special reports concerning any matter about which the Commission is authorized by law to keep itself informed. All reports shall be under oath.

When any report is erroneous or defective or appears to the Commission to be erroneous or defective, the Commission may notify the public utility to amend such report within 30 ~~thirty~~ days, and before or after the termination of such period the Commission may examine the officers, agents, or employees, and books, records, accounts, vouchers, plant, equipment and property of such public utility, and correct such items in the report as upon such examination the Commission may find defective or erroneous.

All reports made to the Commission by any public utility and the contents thereof shall be open to public inspection,

unless otherwise ordered by the Commission. Such reports shall be preserved in the office of the Commission.

Any public utility which fails to make and file any report called for by the Commission within the time specified; or to make specific answer to any question propounded by the Commission within 30 ~~thirty~~ days from the time it is lawfully required to do so, or within such further time, not to exceed 90 ~~ninety~~ days, as may in its discretion be allowed by the Commission, shall forfeit up to \$100 for each and every day it may so be in default if the utility collects less than \$100,000 annually in gross revenue; and if the utility collects \$100,000 or more annually in gross revenue, it shall forfeit \$1,000 ~~\$100~~ per day for each and every day it is in default.

Any person who willfully ~~wilfully~~ makes any false return or report to the Commission, or to any member, officer, or employee thereof, any person who willfully, in a return or report, withholds or fails to provide material information to which the Commission is entitled under this Act and which information is either required to be filed by statute, rule, regulation, order, or decision of the Commission or has been requested by the Commission, and any person who willfully aids or abets such person shall be guilty of a Class A misdemeanor.

(Source: P.A. 84-617.)

(220 ILCS 5/5-202) (from Ch. 111 2/3, par. 5-202)

Sec. 5-202. Violations; penalty. Any public utility, or any corporation other than a public utility, or any person acting as a public utility, that which violates or fails to comply with any provisions of this Act, or that which fails to obey, observe, or comply with any order, decision, rule, regulation, direction, or requirement, or any part or provision thereof, of the Commission, made or issued under

authority of this Act, in a case in which a penalty is not otherwise provided for in this Act, shall be subject to a civil penalty imposed in the manner provided in Section 4-203. A small public utility, as defined in subsection (b) of Section 4-502 of this Act, is subject to a civil penalty of not less than \$500 nor more than \$2,000 for each and every offense. All other public utilities, corporations other than a public utility, and persons acting as a public utility are subject to a civil penalty of up to \$30,000 for each and every offense, except as provided in this Section and in Sections 13-101, 13-304, 13-305, and 5-202.1 of this Act.

Every violation of the provisions of this Act or of any order, decision, rule, regulation, direction, or requirement of the Commission, or any part or portion thereof, by any corporation or person, is a separate and distinct offense, provided, however, that if the same act or omission violates more than one provision of this Act, or of any order, decision, rule, regulation, direction, or requirement of the Commission, only one penalty or cumulative penalty may be imposed for such act or omission. In case of a continuing violation, each day's continuance thereof shall be a separate and distinct offense, provided, however, that the cumulative penalty for any continuing violation shall not exceed \$500,000, except in the case of a small utility, as defined in subsection (b) of Section 4-502 of this Act, in which case the cumulative penalty for any continuing violation shall not exceed \$35,000, and provided further that these limits shall not apply where the violation was intentional and either (i) created substantial risk to the safety of the utility's employees or customers or the public or (ii) was intended to cause economic benefits to accrue to the violator and-in-case of--a--continuing--violation--each--day's--continuance--thereof shall-be-a-separate-and-distinct-offense.

In construing and enforcing the provisions of this Act

relating to penalties, the act, omission, or failure of any officer, agent, or employee of any public utility, corporation other than a public utility, or person acting as a public utility, that is acting within the scope of his official duties or employment, shall in every case be deemed to be the act, omission, or failure of such public utility, corporation other than a public utility, or person acting as a public utility.

If the party who has violated or failed to comply with this Act or an order, decision, rule, regulation, direction, or requirement of the Commission, or any part or provision thereof, fails to seek timely review pursuant to Sections 10-113 and 10-201 of this Act within-30-days--of--service--of the order, the party shall, upon expiration of the statutory time limit 30-days, be subject to the civil penalty provision of this Section.

No penalties shall accrue under this provision until 15 days after the mailing of a notice to such party or parties that they are in violation of or have failed to comply with the Act or order, decision, rule, regulation, direction, or requirement of the Commission or any part or provision thereof, except that this notice provision shall not apply when the violation was intentional.

(Source: P.A. 87-164.)

(220 ILCS 5/5-202.1 new)

Sec. 5-202.1. Misrepresentation before Commission; penalty.

(a) Any person or corporation, as defined in Sections 3-113 and 3-114 of this Act, who knowingly misrepresents facts or knowingly aids another in doing so or knowingly permits another to misrepresent facts through testimony or the offering or withholding of material information in any proceeding shall be subject to a civil penalty. Whenever the

Commission is of the opinion that a person or corporation is misrepresenting or has misrepresented facts, the Commission may initiate a proceeding to determine whether a misrepresentation has in fact occurred. If the Commission finds that a person or corporation has violated this Section, the Commission shall impose a penalty of not less than \$1,000 and not greater than \$500,000. Each misrepresentation of a fact found by the Commission shall constitute a separate and distinct violation. In determining the amount of the penalty to be assessed, the Commission may consider any matters of record in aggravation or mitigation of the penalty, as set forth in Section 4-203, including but not limited to the following:

(1) the presence or absence of due diligence on the part of the violator in attempting to comply with the Act;

(2) any economic benefits accrued, or expected to be accrued, by the violator because of the misrepresentation; and

(3) the amount of monetary penalty that will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with the Act.

(b) Any action to enforce civil penalties arising under this Section shall be undertaken pursuant to Section 4-203.

(220 ILCS 5/10-105) (from Ch. 111 2/3, par. 10-105)

Sec. 10-105. No person shall be excused from testifying or from producing any papers, books, accounts or documents in any investigation or inquiry or upon any hearing ordered by the Commission, when ordered to do so by the Commission or any commissioner or hearing examiner, upon the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate him or subject him to a penalty or forfeiture.

But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, before the Commission or a commissioner or hearing examiner: Provided, that such immunity shall extend only to a natural person, who in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise under oath. No person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying. The Commission or a commissioner or hearing examiner may, on the motion of a party or on its own motion, strike, in whole or in part, the testimony of a person who is not reasonably prepared to respond to questions under cross-examination intending to elicit information directly related to matters raised by that person in his testimony.

(Source: P.A. 84-617.)

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