

# SB1538



## 103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB1538

Introduced 2/8/2023, by Sen. Cristina Castro

### SYNOPSIS AS INTRODUCED:

220 ILCS 5/9-220.3

Amends the Public Utilities Act. Changes the repeal date for provisions authorizing natural gas surcharges to provide for recovery of costs associated with investments in qualifying infrastructure plants from December 31, 2023 to July 1, 2023. Effective immediately.

LRB103 05801 AMQ 50821 b

A BILL FOR

1 AN ACT concerning utilities.

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

4 Section 5. The Public Utilities Act is amended by changing  
5 Section 9-220.3 as follows:

6 (220 ILCS 5/9-220.3)

7 (Section scheduled to be repealed on December 31, 2023)

8 Sec. 9-220.3. Natural gas surcharges authorized.

9 (a) Tariff.

10 (1) Pursuant to Section 9-201 of this Act, a natural  
11 gas utility serving more than 700,000 customers may file a  
12 tariff for a surcharge which adjusts rates and charges to  
13 provide for recovery of costs associated with investments  
14 in qualifying infrastructure plant, independent of any  
15 other matters related to the utility's revenue  
16 requirement.

17 (2) Within 30 days after the effective date of this  
18 amendatory Act of the 98th General Assembly, the  
19 Commission shall adopt emergency rules to implement the  
20 provisions of this amendatory Act of the 98th General  
21 Assembly. The utility may file with the Commission tariffs  
22 implementing the provisions of this amendatory Act of the  
23 98th General Assembly after the effective date of the

1 emergency rules authorized by subsection (i).

2 (3) The Commission shall issue an order approving, or  
3 approving with modification to ensure compliance with this  
4 Section, the tariff no later than 120 days after such  
5 filing of the tariffs filed pursuant to this Section. The  
6 utility shall have 7 days following the date of service of  
7 the order to notify the Commission in writing whether it  
8 will accept any modifications so identified in the order  
9 or whether it has elected not to proceed with the tariff.  
10 If the order includes no modifications or if the utility  
11 notifies the Commission that it will accept such  
12 modifications, the tariff shall take effect on the first  
13 day of the calendar year in which the Commission issues  
14 the order, subject to petitions for rehearing and  
15 appellate procedures. After the tariff takes effect, the  
16 utility may, upon 10 days' notice to the Commission, file  
17 to withdraw the tariff at any time, and the Commission  
18 shall approve such filing without suspension or hearing,  
19 subject to a final reconciliation as provided in  
20 subsection (e) of this Section.

21 (4) When a natural gas utility withdraws the surcharge  
22 tariff, the utility shall not recover any additional  
23 charges through the surcharge approved pursuant to this  
24 Section, subject to the resolution of the final  
25 reconciliation pursuant to subsection (e) of this Section.  
26 The utility's qualifying infrastructure investment net of

1 accumulated depreciation may be transferred to the natural  
2 gas utility's rate base in the utility's next general rate  
3 case. The utility's delivery base rates in effect upon  
4 withdrawal of the surcharge tariff shall not be adjusted  
5 at the time the surcharge tariff is withdrawn.

6 (5) A natural gas utility that is subject to its  
7 delivery base rates being fixed at their current rates  
8 pursuant to a Commission order entered in Docket No.  
9 11-0046, notwithstanding the effective date of its tariff  
10 authorized pursuant to this Section, shall reflect in a  
11 tariff surcharge only those projects placed in service  
12 after the fixed rate period of the merger agreement has  
13 expired by its terms.

14 (b) For purposes of this Section, "qualifying  
15 infrastructure plant" includes only plant additions placed in  
16 service not reflected in the rate base used to establish the  
17 utility's delivery base rates. "Costs associated with  
18 investments in qualifying infrastructure plant" shall include  
19 a return on qualifying infrastructure plant and recovery of  
20 depreciation and amortization expense on qualifying  
21 infrastructure plant, net of the depreciation included in the  
22 utility's base rates on any plant retired in conjunction with  
23 the installation of the qualifying infrastructure plant.  
24 Collectively the "qualifying infrastructure plant" and "costs  
25 associated with investments in qualifying infrastructure  
26 plant" are referred to as the "qualifying infrastructure

1 investment" and that are related to one or more of the  
2 following:

3 (1) the installation of facilities to retire and  
4 replace underground natural gas facilities, including  
5 facilities appurtenant to facilities constructed of those  
6 materials such as meters, regulators, and services, and  
7 that are constructed of cast iron, wrought iron, ductile  
8 iron, unprotected coated steel, unprotected bare steel,  
9 mechanically coupled steel, copper, Cellulose Acetate  
10 Butyrate (CAB) plastic, pre-1973 DuPont Aldyl "A"  
11 polyethylene, PVC, or other types of materials identified  
12 by a State or federal governmental agency as being prone  
13 to leakage;

14 (2) the relocation of meters from inside customers'  
15 facilities to outside;

16 (3) the upgrading of the gas distribution system from  
17 a low pressure to a medium pressure system, including  
18 installation of high-pressure facilities to support the  
19 upgrade;

20 (4) modernization investments by a combination  
21 utility, as defined in subsection (b) of Section 16-108.5  
22 of this Act, to install:

23 (A) advanced gas meters in connection with the  
24 installation of advanced electric meters pursuant to  
25 Sections 16-108.5 and 16-108.6 of this Act; and

26 (B) the communications hardware and software and

1 associated system software that creates a network  
2 between advanced gas meters and utility business  
3 systems and allows the collection and distribution of  
4 gas-related information to customers and other parties  
5 in addition to providing information to the utility  
6 itself;

7 (5) replacing high-pressure transmission pipelines and  
8 associated facilities identified as having a higher risk  
9 of leakage or failure or installing or replacing  
10 high-pressure transmission pipelines and associated  
11 facilities to establish records and maximum allowable  
12 operating pressures;

13 (6) replacing difficult to locate mains and service  
14 pipes and associated facilities; and

15 (7) replacing or installing transmission and  
16 distribution regulator stations, regulators, valves, and  
17 associated facilities to establish over-pressure  
18 protection.

19 With respect to the installation of the facilities  
20 identified in paragraph (1) of subsection (b) of this Section,  
21 the natural gas utility shall determine priorities for such  
22 installation with consideration of projects either: (i)  
23 integral to a general government public facilities improvement  
24 program or (ii) ranked in the highest risk categories in the  
25 utility's most recent Distribution Integrity Management Plan  
26 where removal or replacement is the remedial measure.

1 (c) Qualifying infrastructure investment, defined in  
2 subsection (b) of this Section, recoverable through a tariff  
3 authorized by subsection (a) of this Section, shall not  
4 include costs or expenses incurred in the ordinary course of  
5 business for the ongoing or routine operations of the utility,  
6 including, but not limited to:

7 (1) operating and maintenance costs; and

8 (2) costs of facilities that are revenue-producing,  
9 which means facilities that are constructed or installed  
10 for the purpose of serving new customers.

11 (d) Gas utility commitments. A natural gas utility that  
12 has in effect a natural gas surcharge tariff pursuant to this  
13 Section shall:

14 (1) recognize that the General Assembly identifies  
15 improved public safety and reliability of natural gas  
16 facilities as the cornerstone upon which this Section is  
17 designed, and qualifying projects should be encouraged,  
18 selected, and prioritized based on these factors; and

19 (2) provide information to the Commission as requested  
20 to demonstrate that (i) the projects included in the  
21 tariff are indeed qualifying projects and (ii) the  
22 projects are selected and prioritized taking into account  
23 improved public safety and reliability.

24 (3) The amount of qualifying infrastructure investment  
25 eligible for recovery under the tariff in the applicable  
26 calendar year is limited to the lesser of (i) the actual

1       qualifying infrastructure plant placed in service in the  
2       applicable calendar year and (ii) the difference by which  
3       total plant additions in the applicable calendar year  
4       exceed the baseline amount, and subject to the limitation  
5       in subsection (g) of this Section. A natural gas utility  
6       can recover the costs of qualifying infrastructure  
7       investments through an approved surcharge tariff from the  
8       beginning of each calendar year subject to the  
9       reconciliation initiated under paragraph (2) of subsection  
10      (e) of this Section, during which the Commission may make  
11      adjustments to ensure that the limits defined in this  
12      paragraph are not exceeded. Further, if total plant  
13      additions in a calendar year do not exceed the baseline  
14      amount in the applicable calendar year, the Commission,  
15      during the reconciliation initiated under paragraph (2) of  
16      subsection (e) of this Section for the applicable calendar  
17      year, shall adjust the amount of qualifying infrastructure  
18      investment eligible for recovery under the tariff to zero.

19           (4) For purposes of this Section, "baseline amount"  
20      means an amount equal to the utility's average of total  
21      depreciation expense, as reported on page 336, column (b)  
22      of the utility's ILCC Form 21, for the calendar years 2006  
23      through 2010.

24      (e) Review of investment.

25           (1) The amount of qualifying infrastructure investment  
26      shall be shown on an Information Sheet supplemental to the



1 surcharge tariff and filed with the Commission monthly or  
2 some other time period at the option of the utility. The  
3 Information Sheet shall be accompanied by data showing the  
4 calculation of the qualifying infrastructure investment  
5 adjustment. Unless otherwise ordered by the Commission,  
6 each qualifying infrastructure investment adjustment shown  
7 on an Information Sheet shall become effective pursuant to  
8 the utility's approved tariffs.

9 (2) For each calendar year in which a surcharge tariff  
10 is in effect, the natural gas utility shall file a  
11 petition with the Commission to initiate hearings to  
12 reconcile amounts billed under each surcharge authorized  
13 pursuant to this Section with the actual prudently  
14 incurred costs recoverable under this tariff in the  
15 preceding year. The petition filed by the natural gas  
16 utility shall include testimony and schedules that support  
17 the accuracy and the prudence of the qualifying  
18 infrastructure investment for the calendar year being  
19 reconciled. The petition filed shall also include the  
20 number of jobs attributable to the natural gas surcharge  
21 tariff as required by rule. The review of the utility's  
22 investment shall include identification and review of all  
23 plant that was ranked within the highest risk categories  
24 in that utility's most recent Distribution Integrity  
25 Management Plan.

26 (f) The rate of return applied shall be the overall rate of

1 return authorized by the Commission in the utility's last gas  
2 rate case.

3 (g) The cumulative amount of increases billed under the  
4 surcharge, since the utility's most recent delivery service  
5 rate order, shall not exceed an annual average 4% of the  
6 utility's delivery base rate revenues, but shall not exceed  
7 5.5% in any given year. On the effective date of new delivery  
8 base rates, the surcharge shall be reduced to zero with  
9 respect to qualifying infrastructure investment that is  
10 transferred to the rate base used to establish the utility's  
11 delivery base rates, provided that the utility may continue to  
12 charge or refund any reconciliation adjustment determined  
13 pursuant to subsection (e) of this Section.

14 (h) If a gas utility obtains a surcharge tariff under this  
15 Section 9-220.3, then it and its affiliates are excused from  
16 the rate case filing requirements contained in Sections  
17 9-220(h) and 9-220(h-1). In the event a natural gas utility,  
18 prior to the effective date of this amendatory Act of the 98th  
19 General Assembly, made a rate case filing that is still  
20 pending on the effective date of this amendatory Act of the  
21 98th General Assembly, the natural gas utility may, at the  
22 time it files its surcharge tariff with the Commission, also  
23 file a notice with the Commission to withdraw its rate case  
24 filing. Any affiliate of such natural gas utility may also  
25 file to withdraw its rate case filing. Upon receipt of such  
26 notice, the Commission shall dismiss the rate case filing with

1 prejudice and such tariffs and the record related thereto  
2 shall not be the subject of any further hearing,  
3 investigation, or proceeding of any kind related to rates for  
4 gas delivery services. Notwithstanding the foregoing, a  
5 natural gas utility shall not be permitted to withdraw a rate  
6 case filing for which a proposed order recommending a rate  
7 reduction is pending. A natural gas utility shall not be  
8 permitted to withdraw the gas delivery services tariffs that  
9 are the subject of Commission Docket Nos. 12-0511/12-0512  
10 (cons.). None of the costs incurred for the withdrawn rate  
11 case are recoverable from ratepayers.

12 (i) The Commission shall promulgate rules and regulations  
13 to carry out the provisions of this Section under the  
14 emergency rulemaking provisions set forth in Section 5-45 of  
15 the Illinois Administrative Procedure Act, and such emergency  
16 rules shall be effective no later than 30 days after the  
17 effective date of this amendatory Act of the 98th General  
18 Assembly.

19 (j) This Section is repealed July 1, 2023 ~~December 31,~~  
20 ~~2023~~.

21 (Source: P.A. 98-57, eff. 7-5-13.)

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