



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB0221

Introduced 01/13/05, by Rep. Kurt M. Granberg - Dan Reitz -
Thomas Holbrook - Angelo Saviano

SYNOPSIS AS INTRODUCED:

220 ILCS 5/9-220

from Ch. 111 2/3, par. 9-220

Amends the Public Utilities Act. In provisions concerning rate changes based on changes in fuel costs, provides that the costs of fuel shall include the cost for synthetic natural gas pursuant to a gas utility's long-term supply contract with a company for the synthetic natural gas. Provides guidelines for determining if the cost for the synthetic natural gas is reasonable and prudent. Provides that aggregate long-term supply contracts for the purchase of synthetic natural gas shall not exceed 30% of the system supply annual requirements of the utility at the time of the contract.

LRB094 05815 MKM 35869 b

1 AN ACT concerning regulation.

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

4 Section 5. The Public Utilities Act is amended by changing
5 Section 9-220 as follows:

6 (220 ILCS 5/9-220) (from Ch. 111 2/3, par. 9-220)

7 Sec. 9-220. Rate changes based on changes in fuel costs.

8 (a) Notwithstanding the provisions of Section 9-201, the
9 Commission may authorize the increase or decrease of rates and
10 charges based upon changes in the cost of fuel used in the
11 generation or production of electric power, changes in the cost
12 of purchased power, or changes in the cost of purchased gas
13 through the application of fuel adjustment clauses or purchased
14 gas adjustment clauses. The Commission may also authorize the
15 increase or decrease of rates and charges based upon
16 expenditures or revenues resulting from the purchase or sale of
17 emission allowances created under the federal Clean Air Act
18 Amendments of 1990, through such fuel adjustment clauses, as a
19 cost of fuel. For the purposes of this paragraph, cost of fuel
20 used in the generation or production of electric power shall
21 include the amount of any fees paid by the utility for the
22 implementation and operation of a process for the
23 desulfurization of the flue gas when burning high sulfur coal
24 at any location within the State of Illinois irrespective of
25 the attainment status designation of such location; but shall
26 not include transportation costs of coal (i) except to the
27 extent that for contracts entered into on and after the
28 effective date of this amendatory Act of 1997, the cost of the
29 coal, including transportation costs, constitutes the lowest
30 cost for adequate and reliable fuel supply reasonably available
31 to the public utility in comparison to the cost, including
32 transportation costs, of other adequate and reliable sources of

1 fuel supply reasonably available to the public utility, or (ii)
2 except as otherwise provided in the next 3 sentences of this
3 paragraph. Such costs of fuel shall, when requested by a
4 utility or at the conclusion of the utility's next general
5 electric rate proceeding, whichever shall first occur, include
6 transportation costs of coal purchased under existing coal
7 purchase contracts. For purposes of this paragraph "existing
8 coal purchase contracts" means contracts for the purchase of
9 coal in effect on the effective date of this amendatory Act of
10 1991, as such contracts may thereafter be amended, but only to
11 the extent that any such amendment does not increase the
12 aggregate quantity of coal to be purchased under such contract.
13 The costs of fuel shall also include the cost for synthetic
14 natural gas pursuant to a gas utility's long-term supply
15 contract with a company for the synthetic natural gas. The
16 costs for the synthetic natural gas is presumed to be
17 reasonable and prudent if, at the time the contract is entered
18 into, (i) the coal used in the gasification process has high
19 volatile bituminous rank and greater than 1.7 pounds of sulfur
20 per million Btu content and (ii) the price per million Btu does
21 not exceed \$5 in 2004 dollars, which amount the Commission
22 shall adjust annually based on the change in the Annual
23 Consumer Price Index for All Urban Consumers for the Midwest
24 Region as published in April by the United States Department of
25 Labor, Bureau of Labor Statistics (or a suitable Consumer Price
26 Index calculation if this Consumer Price Index is not
27 available) for the previous calendar year; provided that the
28 price per million Btu shall not exceed \$5.50 at any time during
29 the contract. Aggregate long-term supply contracts for the
30 purchase of synthetic natural gas produced from coal through
31 the gasification process shall not exceed 30% of the system
32 supply annual requirements of the utility at the time of the
33 contract. Nothing herein shall authorize an electric utility to
34 recover through its fuel adjustment clause any amounts of
35 transportation costs of coal that were included in the revenue
36 requirement used to set base rates in its most recent general

1 rate proceeding. Cost shall be based upon uniformly applied
2 accounting principles. Annually, the Commission shall initiate
3 public hearings to determine whether the clauses reflect actual
4 costs of fuel, gas, power, or coal transportation purchased to
5 determine whether such purchases were prudent, and to reconcile
6 any amounts collected with the actual costs of fuel, power,
7 gas, or coal transportation prudently purchased. In each such
8 proceeding, the burden of proof shall be upon the utility to
9 establish the prudence of its cost of fuel, power, gas, or coal
10 transportation purchases and costs. The Commission shall issue
11 its final order in each such annual proceeding for an electric
12 utility by December 31 of the year immediately following the
13 year to which the proceeding pertains, provided, that the
14 Commission shall issue its final order with respect to such
15 annual proceeding for the years 1996 and earlier by December
16 31, 1998.

17 (b) A public utility providing electric service, other than
18 a public utility described in subsections (e) or (f) of this
19 Section, may at any time during the mandatory transition period
20 file with the Commission proposed tariff sheets that eliminate
21 the public utility's fuel adjustment clause and adjust the
22 public utility's base rate tariffs by the amount necessary for
23 the base fuel component of the base rates to recover the public
24 utility's average fuel and power supply costs per kilowatt-hour
25 for the 2 most recent years for which the Commission has issued
26 final orders in annual proceedings pursuant to subsection (a),
27 where the average fuel and power supply costs per kilowatt-hour
28 shall be calculated as the sum of the public utility's prudent
29 and allowable fuel and power supply costs as found by the
30 Commission in the 2 proceedings divided by the public utility's
31 actual jurisdictional kilowatt-hour sales for those 2 years.
32 Notwithstanding any contrary or inconsistent provisions in
33 Section 9-201 of this Act, in subsection (a) of this Section or
34 in any rules or regulations promulgated by the Commission
35 pursuant to subsection (g) of this Section, the Commission
36 shall review and shall by order approve, or approve as

1 modified, the proposed tariff sheets within 60 days after the
2 date of the public utility's filing. The Commission may modify
3 the public utility's proposed tariff sheets only to the extent
4 the Commission finds necessary to achieve conformance to the
5 requirements of this subsection (b). During the 5 years
6 following the date of the Commission's order, but in any event
7 no earlier than January 1, 2007, a public utility whose fuel
8 adjustment clause has been eliminated pursuant to this
9 subsection shall not file proposed tariff sheets seeking, or
10 otherwise petition the Commission for, reinstatement of a fuel
11 adjustment clause.

12 (c) Notwithstanding any contrary or inconsistent
13 provisions in Section 9-201 of this Act, in subsection (a) of
14 this Section or in any rules or regulations promulgated by the
15 Commission pursuant to subsection (g) of this Section, a public
16 utility providing electric service, other than a public utility
17 described in subsection (e) or (f) of this Section, may at any
18 time during the mandatory transition period file with the
19 Commission proposed tariff sheets that establish the rate per
20 kilowatt-hour to be applied pursuant to the public utility's
21 fuel adjustment clause at the average value for such rate
22 during the preceding 24 months, provided that such average rate
23 results in a credit to customers' bills, without making any
24 revisions to the public utility's base rate tariffs. The
25 proposed tariff sheets shall establish the fuel adjustment rate
26 for a specific time period of at least 3 years but not more
27 than 5 years, provided that the terms and conditions for any
28 reinstatement earlier than 5 years shall be set forth in the
29 proposed tariff sheets and subject to modification or approval
30 by the Commission. The Commission shall review and shall by
31 order approve the proposed tariff sheets if it finds that the
32 requirements of this subsection are met. The Commission shall
33 not conduct the annual hearings specified in the last 3
34 sentences of subsection (a) of this Section for the utility for
35 the period that the factor established pursuant to this
36 subsection is in effect.

1 (d) A public utility providing electric service, or a
2 public utility providing gas service may file with the
3 Commission proposed tariff sheets that eliminate the public
4 utility's fuel or purchased gas adjustment clause and adjust
5 the public utility's base rate tariffs to provide for recovery
6 of power supply costs or gas supply costs that would have been
7 recovered through such clause; provided, that the provisions of
8 this subsection (d) shall not be available to a public utility
9 described in subsections (e) or (f) of this Section to
10 eliminate its fuel adjustment clause. Notwithstanding any
11 contrary or inconsistent provisions in Section 9-201 of this
12 Act, in subsection (a) of this Section, or in any rules or
13 regulations promulgated by the Commission pursuant to
14 subsection (g) of this Section, the Commission shall review and
15 shall by order approve, or approve as modified in the
16 Commission's order, the proposed tariff sheets within 240 days
17 after the date of the public utility's filing. The Commission's
18 order shall approve rates and charges that the Commission,
19 based on information in the public utility's filing or on the
20 record if a hearing is held by the Commission, finds will
21 recover the reasonable, prudent and necessary jurisdictional
22 power supply costs or gas supply costs incurred or to be
23 incurred by the public utility during a 12 month period found
24 by the Commission to be appropriate for these purposes,
25 provided, that such period shall be either (i) a 12 month
26 historical period occurring during the 15 months ending on the
27 date of the public utility's filing, or (ii) a 12 month future
28 period ending no later than 15 months following the date of the
29 public utility's filing. The public utility shall include with
30 its tariff filing information showing both (1) its actual
31 jurisdictional power supply costs or gas supply costs for a 12
32 month historical period conforming to (i) above and (2) its
33 projected jurisdictional power supply costs or gas supply costs
34 for a future 12 month period conforming to (ii) above. If the
35 Commission's order requires modifications in the tariff sheets
36 filed by the public utility, the public utility shall have 7

1 days following the date of the order to notify the Commission
2 whether the public utility will implement the modified tariffs
3 or elect to continue its fuel or purchased gas adjustment
4 clause in force as though no order had been entered. The
5 Commission's order shall provide for any reconciliation of
6 power supply costs or gas supply costs, as the case may be, and
7 associated revenues through the date that the public utility's
8 fuel or purchased gas adjustment clause is eliminated. During
9 the 5 years following the date of the Commission's order, a
10 public utility whose fuel or purchased gas adjustment clause
11 has been eliminated pursuant to this subsection shall not file
12 proposed tariff sheets seeking, or otherwise petition the
13 Commission for, reinstatement or adoption of a fuel or
14 purchased gas adjustment clause. Nothing in this subsection (d)
15 shall be construed as limiting the Commission's authority to
16 eliminate a public utility's fuel adjustment clause or
17 purchased gas adjustment clause in accordance with any other
18 applicable provisions of this Act.

19 (e) Notwithstanding any contrary or inconsistent
20 provisions in Section 9-201 of this Act, in subsection (a) of
21 this Section, or in any rules promulgated by the Commission
22 pursuant to subsection (g) of this Section, a public utility
23 providing electric service to more than 1,000,000 customers in
24 this State may, within the first 6 months after the effective
25 date of this amendatory Act of 1997, file with the Commission
26 proposed tariff sheets that eliminate, effective January 1,
27 1997, the public utility's fuel adjustment clause without
28 adjusting its base rates, and such tariff sheets shall be
29 effective upon filing. To the extent the application of the
30 fuel adjustment clause had resulted in net charges to customers
31 after January 1, 1997, the utility shall also file a tariff
32 sheet that provides for a refund stated on a per kilowatt-hour
33 basis of such charges over a period not to exceed 6 months;
34 provided however, that such refund shall not include the
35 proportional amounts of taxes paid under the Use Tax Act,
36 Service Use Tax Act, Service Occupation Tax Act, and Retailers'

1 Occupation Tax Act on fuel used in generation. The Commission
2 shall issue an order within 45 days after the date of the
3 public utility's filing approving or approving as modified such
4 tariff sheet. If the fuel adjustment clause is eliminated
5 pursuant to this subsection, the Commission shall not conduct
6 the annual hearings specified in the last 3 sentences of
7 subsection (a) of this Section for the utility for any period
8 after December 31, 1996 and prior to any reinstatement of such
9 clause. A public utility whose fuel adjustment clause has been
10 eliminated pursuant to this subsection shall not file a
11 proposed tariff sheet seeking, or otherwise petition the
12 Commission for, reinstatement of the fuel adjustment clause
13 prior to January 1, 2007.

14 (f) Notwithstanding any contrary or inconsistent
15 provisions in Section 9-201 of this Act, in subsection (a) of
16 this Section, or in any rules or regulations promulgated by the
17 Commission pursuant to subsection (g) of this Section, a public
18 utility providing electric service to more than 500,000
19 customers but fewer than 1,000,000 customers in this State may,
20 within the first 6 months after the effective date of this
21 amendatory Act of 1997, file with the Commission proposed
22 tariff sheets that eliminate, effective January 1, 1997, the
23 public utility's fuel adjustment clause and adjust its base
24 rates by the amount necessary for the base fuel component of
25 the base rates to recover 91% of the public utility's average
26 fuel and power supply costs for the 2 most recent years for
27 which the Commission, as of January 1, 1997, has issued final
28 orders in annual proceedings pursuant to subsection (a), where
29 the average fuel and power supply costs per kilowatt-hour shall
30 be calculated as the sum of the public utility's prudent and
31 allowable fuel and power supply costs as found by the
32 Commission in the 2 proceedings divided by the public utility's
33 actual jurisdictional kilowatt-hour sales for those 2 years,
34 provided, that such tariff sheets shall be effective upon
35 filing. To the extent the application of the fuel adjustment
36 clause had resulted in net charges to customers after January

1 1, 1997, the utility shall also file a tariff sheet that
2 provides for a refund stated on a per kilowatt-hour basis of
3 such charges over a period not to exceed 6 months. Provided
4 however, that such refund shall not include the proportional
5 amounts of taxes paid under the Use Tax Act, Service Use Tax
6 Act, Service Occupation Tax Act, and Retailers' Occupation Tax
7 Act on fuel used in generation. The Commission shall issue an
8 order within 45 days after the date of the public utility's
9 filing approving or approving as modified such tariff sheet. If
10 the fuel adjustment clause is eliminated pursuant to this
11 subsection, the Commission shall not conduct the annual
12 hearings specified in the last 3 sentences of subsection (a) of
13 this Section for the utility for any period after December 31,
14 1996 and prior to any reinstatement of such clause. A public
15 utility whose fuel adjustment clause has been eliminated
16 pursuant to this subsection shall not file a proposed tariff
17 sheet seeking, or otherwise petition the Commission for,
18 reinstatement of the fuel adjustment clause prior to January 1,
19 2007.

20 (g) The Commission shall have authority to promulgate rules
21 and regulations to carry out the provisions of this Section.

22 (Source: P.A. 92-537, eff. 6-6-02.)