

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 Nothing herein shall authorize an electric utility to recover
14 through its fuel adjustment clause any amounts of
15 transportation costs of coal that were included in the revenue
16 requirement used to set base rates in its most recent general
17 rate proceeding. Cost shall be based upon uniformly applied
18 accounting principles. Annually, the Commission shall initiate
19 public hearings to determine whether the clauses reflect actual
20 costs of fuel, gas, power, or coal transportation purchased to
21 determine whether such purchases were prudent, and to reconcile
22 any amounts collected with the actual costs of fuel, power,
23 gas, or coal transportation prudently purchased. In each such
24 proceeding, the burden of proof shall be upon the utility to
25 establish the prudence of its cost of fuel, power, gas, or coal
26 transportation purchases and costs. The Commission shall issue
27 its final order in each such annual proceeding for an electric
28 utility by December 31 of the year immediately following the
29 year to which the proceeding pertains, provided, that the
30 Commission shall issue its final order with respect to such
31 annual proceeding for the years 1996 and earlier by December
32 31, 1998.

33 (b) A public utility providing electric service, other than
34 a public utility described in subsections (e) or (f) of this
35 Section, may at any time during the mandatory transition period
36 file with the Commission proposed tariff sheets that eliminate

1 the public utility's fuel adjustment clause and adjust the
2 public utility's base rate tariffs by the amount necessary for
3 the base fuel component of the base rates to recover the public
4 utility's average fuel and power supply costs per kilowatt-hour
5 for the 2 most recent years for which the Commission has issued
6 final orders in annual proceedings pursuant to subsection (a),
7 where the average fuel and power supply costs per kilowatt-hour
8 shall be calculated as the sum of the public utility's prudent
9 and allowable fuel and power supply costs as found by the
10 Commission in the 2 proceedings divided by the public utility's
11 actual jurisdictional kilowatt-hour sales for those 2 years.
12 Notwithstanding any contrary or inconsistent provisions in
13 Section 9-201 of this Act, in subsection (a) of this Section or
14 in any rules or regulations promulgated by the Commission
15 pursuant to subsection (g) of this Section, the Commission
16 shall review and shall by order approve, or approve as
17 modified, the proposed tariff sheets within 60 days after the
18 date of the public utility's filing. The Commission may modify
19 the public utility's proposed tariff sheets only to the extent
20 the Commission finds necessary to achieve conformance to the
21 requirements of this subsection (b). During the 5 years
22 following the date of the Commission's order, but in any event
23 no earlier than January 1, 2007, a public utility whose fuel
24 adjustment clause has been eliminated pursuant to this
25 subsection shall not file proposed tariff sheets seeking, or
26 otherwise petition the Commission for, reinstatement of a fuel
27 adjustment clause.

28 (c) Notwithstanding any contrary or inconsistent
29 provisions in Section 9-201 of this Act, in subsection (a) of
30 this Section or in any rules or regulations promulgated by the
31 Commission pursuant to subsection (g) of this Section, a public
32 utility providing electric service, other than a public utility
33 described in subsection (e) or (f) of this Section, may at any
34 time during the mandatory transition period file with the
35 Commission proposed tariff sheets that establish the rate per
36 kilowatt-hour to be applied pursuant to the public utility's

1 fuel adjustment clause at the average value for such rate
2 during the preceding 24 months, provided that such average rate
3 results in a credit to customers' bills, without making any
4 revisions to the public utility's base rate tariffs. The
5 proposed tariff sheets shall establish the fuel adjustment rate
6 for a specific time period of at least 3 years but not more
7 than 5 years, provided that the terms and conditions for any
8 reinstatement earlier than 5 years shall be set forth in the
9 proposed tariff sheets and subject to modification or approval
10 by the Commission. The Commission shall review and shall by
11 order approve the proposed tariff sheets if it finds that the
12 requirements of this subsection are met. The Commission shall
13 not conduct the annual hearings specified in the last 3
14 sentences of subsection (a) of this Section for the utility for
15 the period that the factor established pursuant to this
16 subsection is in effect.

17 (d) A public utility providing electric service, or a
18 public utility providing gas service may file with the
19 Commission proposed tariff sheets that eliminate the public
20 utility's fuel or purchased gas adjustment clause and adjust
21 the public utility's base rate tariffs to provide for recovery
22 of power supply costs or gas supply costs that would have been
23 recovered through such clause; provided, that the provisions of
24 this subsection (d) shall not be available to a public utility
25 described in subsections (e) or (f) of this Section to
26 eliminate its fuel adjustment clause. Notwithstanding any
27 contrary or inconsistent provisions in Section 9-201 of this
28 Act, in subsection (a) of this Section, or in any rules or
29 regulations promulgated by the Commission pursuant to
30 subsection (g) of this Section, the Commission shall review and
31 shall by order approve, or approve as modified in the
32 Commission's order, the proposed tariff sheets within 240 days
33 after the date of the public utility's filing. The Commission's
34 order shall approve rates and charges that the Commission,
35 based on information in the public utility's filing or on the
36 record if a hearing is held by the Commission, finds will

1 recover the reasonable, prudent and necessary jurisdictional
2 power supply costs or gas supply costs incurred or to be
3 incurred by the public utility during a 12 month period found
4 by the Commission to be appropriate for these purposes,
5 provided, that such period shall be either (i) a 12 month
6 historical period occurring during the 15 months ending on the
7 date of the public utility's filing, or (ii) a 12 month future
8 period ending no later than 15 months following the date of the
9 public utility's filing. The public utility shall include with
10 its tariff filing information showing both (1) its actual
11 jurisdictional power supply costs or gas supply costs for a 12
12 month historical period conforming to (i) above and (2) its
13 projected jurisdictional power supply costs or gas supply costs
14 for a future 12 month period conforming to (ii) above. If the
15 Commission's order requires modifications in the tariff sheets
16 filed by the public utility, the public utility shall have 7
17 days following the date of the order to notify the Commission
18 whether the public utility will implement the modified tariffs
19 or elect to continue its fuel or purchased gas adjustment
20 clause in force as though no order had been entered. The
21 Commission's order shall provide for any reconciliation of
22 power supply costs or gas supply costs, as the case may be, and
23 associated revenues through the date that the public utility's
24 fuel or purchased gas adjustment clause is eliminated. During
25 the 5 years following the date of the Commission's order, a
26 public utility whose fuel or purchased gas adjustment clause
27 has been eliminated pursuant to this subsection shall not file
28 proposed tariff sheets seeking, or otherwise petition the
29 Commission for, reinstatement or adoption of a fuel or
30 purchased gas adjustment clause. Nothing in this subsection (d)
31 shall be construed as limiting the Commission's authority to
32 eliminate a public utility's fuel adjustment clause or
33 purchased gas adjustment clause in accordance with any other
34 applicable provisions of this Act.

35 (e) Notwithstanding any contrary or inconsistent
36 provisions in Section 9-201 of this Act, in subsection (a) of

1 this Section, or in any rules promulgated by the Commission
2 pursuant to subsection (g) of this Section, a public utility
3 providing electric service to more than 1,000,000 customers in
4 this State may, within the first 6 months after the effective
5 date of this amendatory Act of 1997, file with the Commission
6 proposed tariff sheets that eliminate, effective January 1,
7 1997, the public utility's fuel adjustment clause without
8 adjusting its base rates, and such tariff sheets shall be
9 effective upon filing. To the extent the application of the
10 fuel adjustment clause had resulted in net charges to customers
11 after January 1, 1997, the utility shall also file a tariff
12 sheet that provides for a refund stated on a per kilowatt-hour
13 basis of such charges over a period not to exceed 6 months;
14 provided however, that such refund shall not include the
15 proportional amounts of taxes paid under the Use Tax Act,
16 Service Use Tax Act, Service Occupation Tax Act, and Retailers'
17 Occupation Tax Act on fuel used in generation. The Commission
18 shall issue an order within 45 days after the date of the
19 public utility's filing approving or approving as modified such
20 tariff sheet. If the fuel adjustment clause is eliminated
21 pursuant to this subsection, the Commission shall not conduct
22 the annual hearings specified in the last 3 sentences of
23 subsection (a) of this Section for the utility for any period
24 after December 31, 1996 and prior to any reinstatement of such
25 clause. A public utility whose fuel adjustment clause has been
26 eliminated pursuant to this subsection shall not file a
27 proposed tariff sheet seeking, or otherwise petition the
28 Commission for, reinstatement of the fuel adjustment clause
29 prior to January 1, 2007.

30 (f) Notwithstanding any contrary or inconsistent
31 provisions in Section 9-201 of this Act, in subsection (a) of
32 this Section, or in any rules or regulations promulgated by the
33 Commission pursuant to subsection (g) of this Section, a public
34 utility providing electric service to more than 500,000
35 customers but fewer than 1,000,000 customers in this State may,
36 within the first 6 months after the effective date of this

1 amendatory Act of 1997, file with the Commission proposed
2 tariff sheets that eliminate, effective January 1, 1997, the
3 public utility's fuel adjustment clause and adjust its base
4 rates by the amount necessary for the base fuel component of
5 the base rates to recover 91% of the public utility's average
6 fuel and power supply costs for the 2 most recent years for
7 which the Commission, as of January 1, 1997, has issued final
8 orders in annual proceedings pursuant to subsection (a), where
9 the average fuel and power supply costs per kilowatt-hour shall
10 be calculated as the sum of the public utility's prudent and
11 allowable fuel and power supply costs as found by the
12 Commission in the 2 proceedings divided by the public utility's
13 actual jurisdictional kilowatt-hour sales for those 2 years,
14 provided, that such tariff sheets shall be effective upon
15 filing. To the extent the application of the fuel adjustment
16 clause had resulted in net charges to customers after January
17 1, 1997, the utility shall also file a tariff sheet that
18 provides for a refund stated on a per kilowatt-hour basis of
19 such charges over a period not to exceed 6 months. Provided
20 however, that such refund shall not include the proportional
21 amounts of taxes paid under the Use Tax Act, Service Use Tax
22 Act, Service Occupation Tax Act, and Retailers' Occupation Tax
23 Act on fuel used in generation. The Commission shall issue an
24 order within 45 days after the date of the public utility's
25 filing approving or approving as modified such tariff sheet. If
26 the fuel adjustment clause is eliminated pursuant to this
27 subsection, the Commission shall not conduct the annual
28 hearings specified in the last 3 sentences of subsection (a) of
29 this Section for the utility for any period after December 31,
30 1996 and prior to any reinstatement of such clause. A public
31 utility whose fuel adjustment clause has been eliminated
32 pursuant to this subsection shall not file a proposed tariff
33 sheet seeking, or otherwise petition the Commission for,
34 reinstatement of the fuel adjustment clause prior to January 1,
35 2007.

36 (g) The Commission shall have authority to promulgate rules

1 and regulations to carry out the provisions of this Section.

2 (h) Any gas utility may enter into a long-term supply
3 contract with any company for synthetic natural gas produced
4 from coal through the gasification process. The cost for the
5 synthetic natural gas is reasonable and prudent and recoverable
6 through the purchased gas adjustment clause if: (i) the only
7 coal used in the gasification process has high volatile
8 bituminous rank and greater than 1.7 pounds of sulfur per
9 million Btu content; (ii) at the time the contract is entered
10 into the price per million Btu does not exceed \$5 in 2004
11 dollars, adjusted annually based on the change in the Annual
12 Consumer Price Index for All Urban Consumers for the Midwest
13 Region as published in April by the United States Department of
14 Labor, Bureau of Labor Statistics (or a suitable Consumer Price
15 Index calculation if this Consumer Price Index is not
16 available) for the previous calendar year; provided that the
17 price per million Btu shall not exceed \$5.50 at any time during
18 the contract; (iii) the utility's aggregate long-term supply
19 contracts for the purchase of synthetic natural gas produced
20 from coal through the gasification process does not exceed 25%
21 of the annual system supply requirements of the utility at the
22 time the contract is entered into; and (iv) the contract is
23 entered into before January 1, 2015 and terminates before
24 January 1, 2036.

25 (i) If a gas utility or an affiliate of a gas utility has
26 an ownership interest in any entity that produces or sells
27 synthetic natural gas, Article VII of this Act shall apply.

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

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