



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB1431

Introduced 2/21/2007, by Rep. Gary Hannig

SYNOPSIS AS INTRODUCED:

220 ILCS 5/9-220

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

Amends the Public Utilities Act. Extends to July 1, 2011 (rather than July 1, 2008) the date by which a gas utility must commence construction of a coal gasification facility in order for provisions authorizing the utility to enter into a 20-year supply contract with a company for synthetic natural gas produced from coal through the gasification process to apply. Makes changes to the method by which it is determined that the cost for synthetic natural gas under such a contract is reasonable and prudent and recoverable through the purchased gas adjustment clause. Provides that a utility shall be limited to selling 50% of its output of natural gas. Effective immediately.

LRB095 09002 MJR 29193 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

1 at any location within the State of Illinois irrespective of
2 the attainment status designation of such location; but shall
3 not include transportation costs of coal (i) except to the
4 extent that for contracts entered into on and after the
5 effective date of this amendatory Act of 1997, the cost of the
6 coal, including transportation costs, constitutes the lowest
7 cost for adequate and reliable fuel supply reasonably available
8 to the public utility in comparison to the cost, including
9 transportation costs, of other adequate and reliable sources of
10 fuel supply reasonably available to the public utility, or (ii)
11 except as otherwise provided in the next 3 sentences of this
12 paragraph. Such costs of fuel shall, when requested by a
13 utility or at the conclusion of the utility's next general
14 electric rate proceeding, whichever shall first occur, include
15 transportation costs of coal purchased under existing coal
16 purchase contracts. For purposes of this paragraph "existing
17 coal purchase contracts" means contracts for the purchase of
18 coal in effect on the effective date of this amendatory Act of
19 1991, as such contracts may thereafter be amended, but only to
20 the extent that any such amendment does not increase the
21 aggregate quantity of coal to be purchased under such contract.
22 Nothing herein shall authorize an electric utility to recover
23 through its fuel adjustment clause any amounts of
24 transportation costs of coal that were included in the revenue
25 requirement used to set base rates in its most recent general
26 rate proceeding. Cost shall be based upon uniformly applied

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

16 (b) A public utility providing electric service, other than
17 a public utility described in subsections (e) or (f) of this
18 Section, may at any time during the mandatory transition period
19 file with the Commission proposed tariff sheets that eliminate
20 the public utility's fuel adjustment clause and adjust the
21 public utility's base rate tariffs by the amount necessary for
22 the base fuel component of the base rates to recover the public
23 utility's average fuel and power supply costs per kilowatt-hour
24 for the 2 most recent years for which the Commission has issued
25 final orders in annual proceedings pursuant to subsection (a),
26 where the average fuel and power supply costs per kilowatt-hour

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

21 (c) Notwithstanding any contrary or inconsistent
22 provisions in Section 9-201 of this Act, in subsection (a) of
23 this Section or in any rules or regulations promulgated by the
24 Commission pursuant to subsection (g) of this Section, a public
25 utility providing electric service, other than a public utility
26 described in subsection (e) or (f) of this Section, may at any

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

20 (d) A public utility providing electric service, or a
21 public utility providing gas service may file with the
22 Commission proposed tariff sheets that eliminate the public
23 utility's fuel or purchased gas adjustment clause and adjust
24 the public utility's base rate tariffs to provide for recovery
25 of power supply costs or gas supply costs that would have been
26 recovered through such clause; provided, that the provisions of

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

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

22 (e) Notwithstanding any contrary or inconsistent
23 provisions in Section 9-201 of this Act, in subsection (a) of
24 this Section, or in any rules promulgated by the Commission
25 pursuant to subsection (g) of this Section, a public utility
26 providing electric service to more than 1,000,000 customers in

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

1 (f) Notwithstanding any contrary or inconsistent
2 provisions in Section 9-201 of this Act, in subsection (a) of
3 this Section, or in any rules or regulations promulgated by the
4 Commission pursuant to subsection (g) of this Section, a public
5 utility providing electric service to more than 500,000
6 customers but fewer than 1,000,000 customers in this State may,
7 within the first 6 months after the effective date of this
8 amendatory Act of 1997, file with the Commission proposed
9 tariff sheets that eliminate, effective January 1, 1997, the
10 public utility's fuel adjustment clause and adjust its base
11 rates by the amount necessary for the base fuel component of
12 the base rates to recover 91% of the public utility's average
13 fuel and power supply costs for the 2 most recent years for
14 which the Commission, as of January 1, 1997, has issued final
15 orders in annual proceedings pursuant to subsection (a), where
16 the average fuel and power supply costs per kilowatt-hour shall
17 be calculated as the sum of the public utility's prudent and
18 allowable fuel and power supply costs as found by the
19 Commission in the 2 proceedings divided by the public utility's
20 actual jurisdictional kilowatt-hour sales for those 2 years,
21 provided, that such tariff sheets shall be effective upon
22 filing. To the extent the application of the fuel adjustment
23 clause had resulted in net charges to customers after January
24 1, 1997, the utility shall also file a tariff sheet that
25 provides for a refund stated on a per kilowatt-hour basis of
26 such charges over a period not to exceed 6 months. Provided

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

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

19 (h) Any gas utility may enter into a 20-year supply
20 contract with any company for synthetic natural gas produced
21 from coal through the gasification process if the company has
22 commenced construction of a coal gasification facility by July
23 1, 2011 ~~2008~~. The cost for the synthetic natural gas is
24 reasonable and prudent and recoverable through the purchased
25 gas adjustment clause for years one through 20 ~~10~~ of the
26 contract if: (i) the only coal used in the gasification process

1 has high volatile bituminous rank and greater than 1.7 pounds
2 of sulfur per million Btu content; (ii) at the time the
3 contract term commences, the price per million Btu shall be no
4 greater than the long-term market price derived from the simple
5 average of the Henry Hub monthly futures prices for natural gas
6 as reported by the New York Mercantile Exchange (NYMEX) for the
7 60 months immediately following the effective date of the
8 contract ~~does not exceed \$5 in 2004 dollars~~, adjusted annually
9 based on the change in the Annual Consumer Price Index for All
10 Urban Consumers for the Midwest Region as published in April by
11 the United States Department of Labor, Bureau of Labor
12 Statistics (or a suitable Consumer Price Index calculation if
13 this Consumer Price Index is not available) for the previous
14 calendar year; provided that the price per million Btu shall
15 not increase by more than \$1.50 / mmbtu during the life of the
16 contract ~~exceed \$5.50 at any time during the contract~~; (iii)
17 the utility's aggregate long-term supply contracts for the
18 purchase of synthetic natural gas produced from coal through
19 the gasification process does not exceed 10% ~~25%~~ of the annual
20 system supply requirements of the utility at the time the
21 contract is entered into; and (iv) the contract is entered into
22 before December 31, 2009 ~~within one year after the effective~~
23 ~~date of this amendatory Act of the 94th General Assembly~~ and
24 terminates 20 years after the commencement of the production of
25 synthetic natural gas. The amount of gas a utility may sell
26 under this Section is limited to 50% of its output. ~~The~~

1 ~~contract shall provide that if, at any time during years 11~~
2 ~~through 20 of the contract, the Commission determines that the~~
3 ~~cost for the synthetic natural gas under the contract is not~~
4 ~~reasonable and prudent, then the company shall reimburse the~~
5 ~~utility for the difference between the cost deemed reasonable~~
6 ~~and prudent by the Commission and the cost imposed under the~~
7 ~~contract.~~

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

11 (Source: P.A. 94-63, eff. 6-21-05.)

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