



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB5167

by Rep. Arthur L. Turner

#### SYNOPSIS AS INTRODUCED:

220 ILCS 5/9-220

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

Amends the Public Utilities Act. Provides that any gas utility may enter into a contract for up to 20 years of supply with any company for the purchase of synthetic natural gas (rather than a 20-year supply contract with any company for synthetic natural gas) produced from coal through the gasification process if the company has commenced construction of a coal gasification facility by July 1, 2009 (rather than July 1, 2008). Makes changes in factors used to determine whether the cost for synthetic natural gas is reasonable and prudent. Effective immediately.

LRB095 19270 MJR 45546 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 for up to 20 years of supply with any company for the  
21 purchase of synthetic natural gas produced from coal through  
22 the gasification process if the company has commenced  
23 construction of a coal gasification facility by July 1, 2009  
24 ~~2008~~. The cost for the synthetic natural gas is reasonable and  
25 prudent and recoverable through the purchased gas adjustment  
26 clause for years one through 10 of the contract if: (i) the

1 only coal used in the gasification process has high volatile  
2 bituminous rank and greater than 1.7 pounds of sulfur per  
3 million Btu content; (ii) at the time the contract term  
4 commences, the price per million Btu does not exceed \$6.85 ~~\$5~~  
5 in 2008 ~~2004~~ dollars, adjusted annually based on the change in  
6 the Annual Consumer Price Index for All Urban Consumers for the  
7 Midwest Region as published in April by the United States  
8 Department of Labor, Bureau of Labor Statistics (or a suitable  
9 Consumer Price Index calculation if this Consumer Price Index  
10 is not available) for the previous calendar year; provided that  
11 the price per million Btu shall not exceed \$7.75 ~~\$5.50~~ at any  
12 time during the contract; (iii) the utility's aggregate  
13 long-term supply contracts for the purchase of synthetic  
14 natural gas produced from coal through the gasification process  
15 does not exceed 25% of the annual system supply requirements of  
16 the utility at the time the contract is entered into; and (iv)  
17 the contract is entered into within 120 days ~~one year~~ after the  
18 effective date of this amendatory Act of the 95th ~~94th~~ General  
19 Assembly and terminates no more than 20 years after the  
20 commencement of the commercial production of synthetic natural  
21 gas. Contracts greater than 10 years ~~The contract~~ shall provide  
22 that if, at any time during supply years 11 through 20 of the  
23 contract, the Commission determines that the cost for the  
24 synthetic natural gas purchased under the contract during years  
25 11 through 20 is not reasonable and prudent, then the company  
26 shall reimburse the utility for the difference between the cost

1 deemed reasonable and prudent by the Commission and the cost  
2 imposed under the contract.

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

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

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