



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB2253

Introduced 2/15/2013, by Sen. Donne E. Trotter

SYNOPSIS AS INTRODUCED:

220 ILCS 5/9-201

from Ch. 111 2/3, par. 9-201

Amends the Public Utilities Act. Prevents the Commission from approving any increase in rates by a water or sewer service of greater than 15%. Requires these utilities to include notice of any proposed rate change on every bill sent to customers until the rate change is approved or denied. Allows customers who have had their rates increased by over 15% to file a civil action against the utility for damages in which the customers are certified as a class, are granted a rebuttable presumption that any increase in excess of 15% is unjustified, and are entitled to double damages as well as attorney's fees and costs. Entitles customers that have filed a class action against a water or sewer service utility for increasing their rates by over 15% to a temporary restraining order halting collection of the increase until the civil action is resolved.

LRB098 10618 MLW 40887 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 9-201 as follows:

6 (220 ILCS 5/9-201) (from Ch. 111 2/3, par. 9-201)

7 Sec. 9-201. (a) Unless the Commission otherwise orders, and
8 except as otherwise provided in this Section, no change shall
9 be made by any public utility in any rate or other charge or
10 classification, or in any rule, regulation, practice or
11 contract relating to or affecting any rate or other charge,
12 classification or service, or in any privilege or facility,
13 except after 45 days' notice to the Commission and to the
14 public as herein provided. Such notice shall be given by filing
15 with the Commission and keeping open for public inspection new
16 schedules or supplements stating plainly the change or changes
17 to be made in the schedule or schedules then in force, and the
18 time when the change or changes will go into effect, and by
19 publication in a newspaper of general circulation or such other
20 notice to persons affected by such change as may be prescribed
21 by rule of the Commission. The Commission, for good cause
22 shown, may allow changes without requiring the 45 days' notice
23 herein provided for, by an order specifying the changes so to

1 be made and the time when they shall take effect and the manner
2 in which they shall be filed and published.

3 When any change is proposed in any rate or other charge, or
4 classification, or in any rule, regulation, practice, or
5 contract relating to or affecting any rate or other charge,
6 classification or service, or in any privilege or facility,
7 such proposed change shall be plainly indicated on the new
8 schedule filed with the Commission, by some character to be
9 designated by the Commission, immediately preceding or
10 following the item. The Commission shall not approve any change
11 in any rate or other charge or classification, or in any rule,
12 regulation, practice or contract relating to or affecting any
13 rate or other charge, classification, or service for water or
14 sewer service which would result in an increase of more than
15 15% to the rate payers.

16 When any public utility providing water or sewer service
17 proposes any change in any rate or other charge, or
18 classification, or in any rule, regulation, practice, or
19 contract relating to or affecting any rate or other charge,
20 classification or service, or in any privilege or facility,
21 such utility shall, in addition to the other notice
22 requirements of this Act, provide notice of such change to all
23 customers potentially affected by including a notice and
24 description of such change, and of Commission procedures for
25 intervention, in the first bill sent to each such customer
26 after the filing of the proposed change and this notice shall

1 continue to be included in each bill until the final
2 disposition of the proposed change.

3 (b) Whenever there shall be filed with the Commission any
4 schedule stating an individual or joint rate or other charge,
5 classification, contract, practice, rule or regulation, the
6 Commission shall have power, and it is hereby given authority,
7 either upon complaint or upon its own initiative without
8 complaint, at once, and if it so orders, without answer or
9 other formal pleadings by the interested public utility or
10 utilities, but upon reasonable notice, to enter upon a hearing
11 concerning the propriety of such rate or other charge,
12 classification, contract, practice, rule or regulation, and
13 pending the hearing and decision thereon, such rate or other
14 charge, classification, contract, practice, rule or regulation
15 shall not go into effect. The period of suspension of such rate
16 or other charge, classification, contract, practice, rule or
17 regulation shall not extend more than 105 days beyond the time
18 when such rate or other charge, classification, contract,
19 practice, rule or regulation would otherwise go into effect
20 unless the Commission, in its discretion, extends the period of
21 suspension for a further period not exceeding 6 months.

22 All rates or other charges, classifications, contracts,
23 practices, rules or regulations not so suspended shall, on the
24 expiration of 45 days from the time of filing the same with the
25 Commission, or of such lesser time as the Commission may grant,
26 go into effect and be the established and effective rates or

1 other charges, classifications, contracts, practices, rules
2 and regulations, subject to the power of the Commission, after
3 a hearing had on its own motion or upon complaint, as herein
4 provided, to alter or modify the same.

5 Within 30 days after such changes have been authorized by
6 the Commission, copies of the new or revised schedules shall be
7 posted or filed in accordance with the terms of Section 9-103
8 of this Act, in such a manner that all changes shall be plainly
9 indicated. The Commission shall incorporate into the period of
10 suspension a review period of 4 business days during which the
11 Commission may review and determine whether the new or revised
12 schedules comply with the Commission's decision approving a
13 change to the public utility's rates. Such review period shall
14 not extend the suspension period by more than 2 days. Absent
15 notification to the contrary within the 4 business day period,
16 the new or revised schedules shall be deemed approved.

17 (c) If the Commission enters upon a hearing concerning the
18 propriety of any proposed rate or other charge, classification,
19 contract, practice, rule or regulation, the Commission shall
20 establish the rates or other charges, classifications,
21 contracts, practices, rules or regulations proposed, in whole
22 or in part, or others in lieu thereof, which it shall find to
23 be just and reasonable. In such hearing, the burden of proof to
24 establish the justness and reasonableness of the proposed rates
25 or other charges, classifications, contracts, practices, rules
26 or regulations, in whole and in part, shall be upon the

1 utility. The utility, the staff of the Commission, the Attorney
2 General, or any party to a proceeding initiated under this
3 Section who has been granted intervenor status and submitted a
4 post-hearing brief must be given the opportunity to present
5 oral argument, if requested no later than the date for filing
6 exceptions, on the propriety of any proposed rate or other
7 charge, classification, contract, practice, rule, or
8 regulation. No rate or other charge, classification, contract,
9 practice, rule or regulation shall be found just and reasonable
10 unless it is consistent with Sections of this Article.

11 (d) Except where compliance with Section 8-401 of this Act
12 is of urgent and immediate concern, no representative of a
13 public utility may discuss with a commissioner, commissioner's
14 assistant, or hearing examiner in a non-public setting a
15 planned filing for a general rate increase. If a public utility
16 makes a filing under this Section, then no substantive
17 communication by any such person with a commissioner,
18 commissioner's assistant or hearing examiner concerning the
19 filing is permitted until a notice of hearing has been issued.
20 After the notice of hearing has been issued, the only
21 communications by any such person with a commissioner,
22 commissioner's assistant, or hearing examiner concerning the
23 filing permitted are communications permitted under Section
24 10-103 of this Act. If any such communication does occur, then
25 within 5 days of the docket being initiated all details
26 relating to the communication shall be placed on the public

1 record of the proceeding. The record shall include any
2 materials, whether written, recorded, filmed, or graphic in
3 nature, produced or reproduced on any media, used in connection
4 with the communication. The record shall reflect the names of
5 all persons who transmitted, received, or were otherwise
6 involved in the communication, the duration of the
7 communication, and whether the communication occurred in
8 person or by other means. In the case of an oral communication,
9 the record shall also reflect the location or locations of all
10 persons involved in the communication and, if the communication
11 occurred by telephone, the telephone numbers for the callers
12 and recipients of the communication. A commissioner,
13 commissioner's assistant, or hearing examiner who is involved
14 in any such communication shall be recused from the affected
15 proceeding. The Commission, or any commissioner or hearing
16 examiner presiding over the proceeding shall, in the event of a
17 violation of this Section, take action necessary to ensure that
18 such violation does not prejudice any party or adversely affect
19 the fairness of the proceedings including dismissing the
20 affected proceeding. Nothing in this subsection (d) is intended
21 to preclude otherwise allowable updates on issues that may be
22 indirectly related to a general rate case filing because cost
23 recovery for the underlying activity may be requested. Such
24 updates may include, without limitation, issues related to
25 outages and restoration, credit ratings, security issuances,
26 reliability, Federal Energy Regulatory Commission matters,

1 Federal Communications Commission matters, regional
2 reliability organizations, consumer education, or labor
3 matters, provided that such updates may not include cost
4 recovery in a planned rate case.

5 (e) If a public utility providing water or sewer service
6 imposes a change in any rate, charge, classification, rule,
7 regulation, practice, or contract that would result in an
8 increase of greater than 15%, affected rate payers may file a
9 civil cause of action against the utility.

10 (1) Notwithstanding any provision in the Code of Civil
11 Procedure, rate payers shall be certified as a class. When
12 the utility files its answer to the complaint it shall
13 provide a list of all customers subject to the rate
14 increase, including their contact information on record
15 with the utility, to the plaintiffs' attorneys so that all
16 affected customers may be contacted regarding the civil
17 action.

18 (2) If the rate payers can establish a rate increase
19 greater than 15%, this creates a rebuttable presumption
20 that any increase in excess of 15% is unjustified,
21 notwithstanding any approval or findings by the
22 Commission. The utility can overcome this presumption only
23 by establishing through clear and convincing evidence that
24 the rate increase is the minimum increase necessary to
25 allow the continuation of service to the affected
26 customers. For purposes of rebutting this presumption, any

1 approval or findings of fact by the Commission shall not be
2 given any presumption of validity or sufficiency, and the
3 utility must satisfy the trier of fact of the necessity of
4 the increase through independent evidence and testimony.

5 (3) If plaintiffs prevail damages shall be awarded in
6 the amount of twice the rate increase paid by the rate
7 payers, together with reasonable attorney's fees and costs
8 as determined by the court.

9 If rate payers file a civil action under this paragraph the
10 court shall, upon a showing by the rate payers that a rate
11 increase of greater than 15% has been imposed, issue a
12 Temporary Restraining Order preventing the utility from
13 collecting the disputed rate increase until a final disposition
14 has been entered in the civil action.

15 (Source: P.A. 96-33, eff. 7-10-09.)