

1 AN ACT concerning utilities.

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

1 public utility in comparison to the cost, including
2 transportation costs, of other adequate and reliable sources
3 of fuel supply reasonably available to the public utility, or
4 (ii) except as otherwise provided in the next 3 sentences of
5 this paragraph. Such costs of fuel shall, when requested by
6 a utility or at the conclusion of the utility's next general
7 electric rate proceeding, whichever shall first occur,
8 include transportation costs of coal purchased under existing
9 coal purchase contracts. For purposes of this paragraph
10 "existing coal purchase contracts" means contracts for the
11 purchase of coal in effect on the effective date of this
12 amendatory Act of 1991, as such contracts may thereafter be
13 amended, but only to the extent that any such amendment does
14 not increase the aggregate quantity of coal to be purchased
15 under such contract. Nothing herein shall authorize an
16 electric utility to recover through its fuel adjustment
17 clause any amounts of transportation costs of coal that were
18 included in the revenue requirement used to set base rates in
19 its most recent general rate proceeding. Cost shall be based
20 upon uniformly applied accounting principles. Annually, the
21 Commission shall initiate public hearings to determine
22 whether the clauses reflect actual costs of fuel, gas, power,
23 or coal transportation purchased to determine whether such
24 purchases were prudent, and to reconcile any amounts
25 collected with the actual costs of fuel, power, gas, or coal
26 transportation prudently purchased. In each such proceeding,
27 the burden of proof shall be upon the utility to establish
28 the prudence of its cost of fuel, power, gas, or coal
29 transportation purchases and costs. The Commission shall
30 issue its final order in each such annual proceeding for an
31 electric utility by December 31 of the year immediately
32 following the year to which the proceeding pertains,
33 provided, that the Commission shall issue its final order
34 with respect to such annual proceeding for the years 1996 and

1 earlier by December 31, 1998.

2 (b) A public utility providing electric service, other
3 than a public utility described in subsections (e) or (f) of
4 this Section, may at any time during the mandatory transition
5 period file with the Commission proposed tariff sheets that
6 eliminate the public utility's fuel adjustment clause and
7 adjust the public utility's base rate tariffs by the amount
8 necessary for the base fuel component of the base rates to
9 recover the public utility's average fuel and power supply
10 costs per kilowatt-hour for the 2 most recent years for which
11 the Commission has issued final orders in annual proceedings
12 pursuant to subsection (a), where the average fuel and power
13 supply costs per kilowatt-hour shall be calculated as the sum
14 of the public utility's prudent and allowable fuel and power
15 supply costs as found by the Commission in the 2 proceedings
16 divided by the public utility's actual jurisdictional
17 kilowatt-hour sales for those 2 years. Notwithstanding any
18 contrary or inconsistent provisions in Section 9-201 of this
19 Act, in subsection (a) of this Section or in any rules or
20 regulations promulgated by the Commission pursuant to
21 subsection (g) of this Section, the Commission shall review
22 and shall by order approve, or approve as modified, the
23 proposed tariff sheets within 60 days after the date of the
24 public utility's filing. The Commission may modify the
25 public utility's proposed tariff sheets only to the extent
26 the Commission finds necessary to achieve conformance to the
27 requirements of this subsection (b). During the 5 years
28 following the date of the Commission's order, but in any
29 event no earlier than January 1, 2005, a public utility whose
30 fuel adjustment clause has been eliminated pursuant to this
31 subsection shall not file proposed tariff sheets seeking, or
32 otherwise petition the Commission for, reinstatement of a
33 fuel adjustment clause.

34 (c) Notwithstanding any contrary or inconsistent

1 provisions in Section 9-201 of this Act, in subsection (a) of
2 this Section or in any rules or regulations promulgated by
3 the Commission pursuant to subsection (g) of this Section, a
4 public utility providing electric service, other than a
5 public utility described in subsection (e) or (f) of this
6 Section, may at any time during the mandatory transition
7 period file with the Commission proposed tariff sheets that
8 establish the rate per kilowatt-hour to be applied pursuant
9 to the public utility's fuel adjustment clause at the average
10 value for such rate during the preceding 24 months, provided
11 that such average rate results in a credit to customers'
12 bills, without making any revisions to the public utility's
13 base rate tariffs. The proposed tariff sheets shall
14 establish the fuel adjustment rate for a specific time period
15 of at least 3 years but not more than 5 years, provided that
16 the terms and conditions for any reinstatement earlier than 5
17 years shall be set forth in the proposed tariff sheets and
18 subject to modification or approval by the Commission. The
19 Commission shall review and shall by order approve the
20 proposed tariff sheets if it finds that the requirements of
21 this subsection are met. 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 the period
24 that the factor established pursuant to this subsection is in
25 effect.

26 (d) A public utility providing electric service, or a
27 public utility providing gas service may file with the
28 Commission proposed tariff sheets that eliminate the public
29 utility's fuel or purchased gas adjustment clause and adjust
30 the public utility's base rate tariffs to provide for
31 recovery of power supply costs or gas supply costs that would
32 have been recovered through such clause; provided, that the
33 provisions of this subsection (d) shall not be available to a
34 public utility described in subsections (e) or (f) of this

1 Section to eliminate its fuel adjustment clause.
2 Notwithstanding any contrary or inconsistent provisions in
3 Section 9-201 of this Act, in subsection (a) of this Section,
4 or in any rules or regulations promulgated by the Commission
5 pursuant to subsection (g) of this Section, the Commission
6 shall review and shall by order approve, or approve as
7 modified in the Commission's order, the proposed tariff
8 sheets within 240 days after the date of the public utility's
9 filing. The Commission's order shall approve rates and
10 charges that the Commission, based on information in the
11 public utility's filing or on the record if a hearing is held
12 by the Commission, finds will recover the reasonable, prudent
13 and necessary jurisdictional power supply costs or gas supply
14 costs incurred or to be incurred by the public utility during
15 a 12 month period found by the Commission to be appropriate
16 for these purposes, provided, that such period shall be
17 either (i) a 12 month historical period occurring during the
18 15 months ending on the date of the public utility's filing,
19 or (ii) a 12 month future period ending no later than 15
20 months following the date of the public utility's filing.
21 The public utility shall include with its tariff filing
22 information showing both (1) its actual jurisdictional power
23 supply costs or gas supply costs for a 12 month historical
24 period conforming to (i) above and (2) its projected
25 jurisdictional power supply costs or gas supply costs for a
26 future 12 month period conforming to (ii) above. If the
27 Commission's order requires modifications in the tariff
28 sheets filed by the public utility, the public utility shall
29 have 7 days following the date of the order to notify the
30 Commission whether the public utility will implement the
31 modified tariffs or elect to continue its fuel or purchased
32 gas adjustment clause in force as though no order had been
33 entered. The Commission's order shall provide for any
34 reconciliation of power supply costs or gas supply costs, as

1 the case may be, and associated revenues through the date
2 that the public utility's fuel or purchased gas adjustment
3 clause is eliminated. During the 5 years following the date
4 of the Commission's order, a public utility whose fuel or
5 purchased gas adjustment clause has been eliminated pursuant
6 to this subsection shall not file proposed tariff sheets
7 seeking, or otherwise petition the Commission for,
8 reinstatement or adoption of a fuel or purchased gas
9 adjustment clause. Nothing in this subsection (d) shall be
10 construed as limiting the Commission's authority to eliminate
11 a public utility's fuel adjustment clause or purchased gas
12 adjustment clause in accordance with any other applicable
13 provisions of this Act.

14 (e) Notwithstanding any contrary or inconsistent
15 provisions in Section 9-201 of this Act, in subsection (a)
16 of this Section, or in any rules promulgated by the
17 Commission pursuant to subsection (g) of this Section, a
18 public utility providing electric service to more than
19 1,000,000 customers in this State may, within the first 6
20 months after the effective date of this amendatory Act of
21 1997, file with the Commission proposed tariff sheets that
22 eliminate, effective January 1, 1997, the public utility's
23 fuel adjustment clause without adjusting its base rates, and
24 such tariff sheets shall be effective upon filing. To the
25 extent the application of the fuel adjustment clause had
26 resulted in net charges to customers after January 1, 1997,
27 the utility shall also file a tariff sheet that provides for
28 a refund stated on a per kilowatt-hour basis of such charges
29 over a period not to exceed 6 months; provided however, that
30 such refund shall not include the proportional amounts of
31 taxes paid under the Use Tax Act, Service Use Tax Act,
32 Service Occupation Tax Act, and Retailers' Occupation Tax Act
33 on fuel used in generation. The Commission shall issue an
34 order within 45 days after the date of the public utility's

1 filing approving or approving as modified such tariff sheet.
2 If the fuel adjustment clause is eliminated pursuant to this
3 subsection, the Commission shall not conduct the annual
4 hearings specified in the last 3 sentences of subsection (a)
5 of this Section for the utility for any period after
6 December 31, 1996 and prior to any reinstatement of such
7 clause. A public utility whose fuel adjustment clause has
8 been eliminated pursuant to this subsection shall not file a
9 proposed tariff sheet seeking, or otherwise petition the
10 Commission for, reinstatement of the fuel adjustment clause
11 prior to January 1, 2005.

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

1 charges to customers after January 1, 1997, the utility shall
2 also file a tariff sheet that provides for a refund stated on
3 a per kilowatt-hour basis of such charges over a period not
4 to exceed 6 months. Provided however, that such refund shall
5 not include the proportional amounts of taxes paid under the
6 Use Tax Act, Service Use Tax Act, Service Occupation Tax Act,
7 and Retailers' Occupation Tax Act on fuel used in generation.
8 The Commission shall issue an order within 45 days after the
9 date of the public utility's filing approving or approving as
10 modified such tariff sheet. If the fuel adjustment clause is
11 eliminated pursuant to this subsection, the Commission shall
12 not conduct the annual hearings specified in the last 3
13 sentences of subsection (a) of this Section for the utility
14 for any period after December 31, 1996 and prior to any
15 reinstatement of such clause. A public utility whose fuel
16 adjustment clause has been eliminated pursuant to this
17 subsection shall not file a proposed tariff sheet seeking, or
18 otherwise petition the Commission for, reinstatement of the
19 fuel adjustment clause prior to January 1, 2005.

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

23 (Source: P.A. 90-561, eff. 12-16-97.)