



Sen. James F. Clayborne, Jr.

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09600HB6267sam002

LRB096 18955 ASK 44105 a

1 AMENDMENT TO HOUSE BILL 6267

2 AMENDMENT NO. _____. Amend House Bill 6267, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Public Utilities Act is amended by changing
6 Section 9-220 as follows:

7 (220 ILCS 5/9-220) (from Ch. 111 2/3, par. 9-220)

8 Sec. 9-220. Rate changes based on changes in fuel costs.

9 (a) Notwithstanding the provisions of Section 9-201, the
10 Commission may authorize the increase or decrease of rates and
11 charges based upon changes in the cost of fuel used in the
12 generation or production of electric power, changes in the cost
13 of purchased power, or changes in the cost of purchased gas
14 through the application of fuel adjustment clauses or purchased
15 gas adjustment clauses. The Commission may also authorize the
16 increase or decrease of rates and charges based upon

1 expenditures or revenues resulting from the purchase or sale of
2 emission allowances created under the federal Clean Air Act
3 Amendments of 1990, through such fuel adjustment clauses, as a
4 cost of fuel. For the purposes of this paragraph, cost of fuel
5 used in the generation or production of electric power shall
6 include the amount of any fees paid by the utility for the
7 implementation and operation of a process for the
8 desulfurization of the flue gas when burning high sulfur coal
9 at any location within the State of Illinois irrespective of
10 the attainment status designation of such location; but shall
11 not include transportation costs of coal (i) except to the
12 extent that for contracts entered into on and after the
13 effective date of this amendatory Act of 1997, the cost of the
14 coal, including transportation costs, constitutes the lowest
15 cost for adequate and reliable fuel supply reasonably available
16 to the public utility in comparison to the cost, including
17 transportation costs, of other adequate and reliable sources of
18 fuel supply reasonably available to the public utility, or (ii)
19 except as otherwise provided in the next 3 sentences of this
20 paragraph. Such costs of fuel shall, when requested by a
21 utility or at the conclusion of the utility's next general
22 electric rate proceeding, whichever shall first occur, include
23 transportation costs of coal purchased under existing coal
24 purchase contracts. For purposes of this paragraph "existing
25 coal purchase contracts" means contracts for the purchase of
26 coal in effect on the effective date of this amendatory Act of

1 1991, as such contracts may thereafter be amended, but only to
2 the extent that any such amendment does not increase the
3 aggregate quantity of coal to be purchased under such contract.
4 Nothing herein shall authorize an electric utility to recover
5 through its fuel adjustment clause any amounts of
6 transportation costs of coal that were included in the revenue
7 requirement used to set base rates in its most recent general
8 rate proceeding. Cost shall be based upon uniformly applied
9 accounting principles. Annually, the Commission shall initiate
10 public hearings to determine whether the clauses reflect actual
11 costs of fuel, gas, power, or coal transportation purchased to
12 determine whether such purchases were prudent, and to reconcile
13 any amounts collected with the actual costs of fuel, power,
14 gas, or coal transportation prudently purchased. In each such
15 proceeding, the burden of proof shall be upon the utility to
16 establish the prudence of its cost of fuel, power, gas, or coal
17 transportation purchases and costs. The Commission shall issue
18 its final order in each such annual proceeding for an electric
19 utility by December 31 of the year immediately following the
20 year to which the proceeding pertains, provided, that the
21 Commission shall issue its final order with respect to such
22 annual proceeding for the years 1996 and earlier by December
23 31, 1998.

24 (b) A public utility providing electric service, other than
25 a public utility described in subsections (e) or (f) of this
26 Section, may at any time during the mandatory transition period

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

1 otherwise petition the Commission for, reinstatement of a fuel
2 adjustment clause.

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

1 subsection is in effect.

2 (d) A public utility providing electric service, or a
3 public utility providing gas service may file with the
4 Commission proposed tariff sheets that eliminate the public
5 utility's fuel or purchased gas adjustment clause and adjust
6 the public utility's base rate tariffs to provide for recovery
7 of power supply costs or gas supply costs that would have been
8 recovered through such clause; provided, that the provisions of
9 this subsection (d) shall not be available to a public utility
10 described in subsections (e) or (f) of this Section to
11 eliminate its fuel adjustment clause. Notwithstanding any
12 contrary or inconsistent provisions in Section 9-201 of this
13 Act, in subsection (a) of this Section, or in any rules or
14 regulations promulgated by the Commission pursuant to
15 subsection (g) of this Section, the Commission shall review and
16 shall by order approve, or approve as modified in the
17 Commission's order, the proposed tariff sheets within 240 days
18 after the date of the public utility's filing. The Commission's
19 order shall approve rates and charges that the Commission,
20 based on information in the public utility's filing or on the
21 record if a hearing is held by the Commission, finds will
22 recover the reasonable, prudent and necessary jurisdictional
23 power supply costs or gas supply costs incurred or to be
24 incurred by the public utility during a 12 month period found
25 by the Commission to be appropriate for these purposes,
26 provided, that such period shall be either (i) a 12 month

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

1 eliminate a public utility's fuel adjustment clause or
2 purchased gas adjustment clause in accordance with any other
3 applicable provisions of this Act.

4 (e) Notwithstanding any contrary or inconsistent
5 provisions in Section 9-201 of this Act, in subsection (a) of
6 this Section, or in any rules promulgated by the Commission
7 pursuant to subsection (g) of this Section, a public utility
8 providing electric service to more than 1,000,000 customers in
9 this State may, within the first 6 months after the effective
10 date of this amendatory Act of 1997, file with the Commission
11 proposed tariff sheets that eliminate, effective January 1,
12 1997, the public utility's fuel adjustment clause without
13 adjusting its base rates, and such tariff sheets shall be
14 effective upon filing. To the extent the application of the
15 fuel adjustment clause had resulted in net charges to customers
16 after January 1, 1997, the utility shall also file a tariff
17 sheet that provides for a refund stated on a per kilowatt-hour
18 basis of such charges over a period not to exceed 6 months;
19 provided however, that such refund shall not include the
20 proportional amounts of taxes paid under the Use Tax Act,
21 Service Use Tax Act, Service Occupation Tax Act, and Retailers'
22 Occupation Tax Act on fuel used in generation. The Commission
23 shall issue an order within 45 days after the date of the
24 public utility's filing approving or approving as modified such
25 tariff sheet. If the fuel adjustment clause is eliminated
26 pursuant to this subsection, the Commission shall not conduct

1 the annual hearings specified in the last 3 sentences of
2 subsection (a) of this Section for the utility for any period
3 after December 31, 1996 and prior to any reinstatement of such
4 clause. A public utility whose fuel adjustment clause has been
5 eliminated pursuant to this subsection shall not file a
6 proposed tariff sheet seeking, or otherwise petition the
7 Commission for, reinstatement of the fuel adjustment clause
8 prior to January 1, 2007.

9 (f) Notwithstanding any contrary or inconsistent
10 provisions in Section 9-201 of this Act, in subsection (a) of
11 this Section, or in any rules or regulations promulgated by the
12 Commission pursuant to subsection (g) of this Section, a public
13 utility providing electric service to more than 500,000
14 customers but fewer than 1,000,000 customers in this State may,
15 within the first 6 months after the effective date of this
16 amendatory Act of 1997, file with the Commission proposed
17 tariff sheets that eliminate, effective January 1, 1997, the
18 public utility's fuel adjustment clause and adjust its base
19 rates by the amount necessary for the base fuel component of
20 the base rates to recover 91% of the public utility's average
21 fuel and power supply costs for the 2 most recent years for
22 which the Commission, as of January 1, 1997, has issued final
23 orders in annual proceedings pursuant to subsection (a), where
24 the average fuel and power supply costs per kilowatt-hour shall
25 be calculated as the sum of the public utility's prudent and
26 allowable fuel and power supply costs as found by the

1 Commission in the 2 proceedings divided by the public utility's
2 actual jurisdictional kilowatt-hour sales for those 2 years,
3 provided, that such tariff sheets shall be effective upon
4 filing. To the extent the application of the fuel adjustment
5 clause had resulted in net charges to customers after January
6 1, 1997, the utility shall also file a tariff sheet that
7 provides for a refund stated on a per kilowatt-hour basis of
8 such charges over a period not to exceed 6 months. Provided
9 however, that such refund shall not include the proportional
10 amounts of taxes paid under the Use Tax Act, Service Use Tax
11 Act, Service Occupation Tax Act, and Retailers' Occupation Tax
12 Act on fuel used in generation. The Commission shall issue an
13 order within 45 days after the date of the public utility's
14 filing approving or approving as modified such tariff sheet. If
15 the fuel adjustment clause is eliminated pursuant to this
16 subsection, the Commission shall not conduct the annual
17 hearings specified in the last 3 sentences of subsection (a) of
18 this Section for the utility for any period after December 31,
19 1996 and prior to any reinstatement of such clause. A public
20 utility whose fuel adjustment clause has been eliminated
21 pursuant to this subsection shall not file a proposed tariff
22 sheet seeking, or otherwise petition the Commission for,
23 reinstatement of the fuel adjustment clause prior to January 1,
24 2007.

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

1 (h) Any Illinois gas utility may enter into a contract on
2 or before March 31, 2011 for up to 10 years of supply with any
3 company for the purchase of substitute natural gas (SNG)
4 produced from coal through the gasification process if the
5 company has commenced construction of a coal gasification
6 facility by July 1, 2012 in Jefferson County and commencement
7 of construction shall mean that material physical site work has
8 occurred, such as site clearing and excavation, water runoff
9 prevention, water retention reservoir preparation, or
10 foundation development. The contract shall contain the
11 following provisions: (i) the only coal to be used in the
12 gasification process has high volatile bituminous rank and
13 greater than 1.7 pounds of sulfur per million Btu content; (ii)
14 at the time the contract term commences, the price per million
15 Btu may not exceed \$7.95 in 2008 dollars, adjusted annually
16 based on the change in the Annual Consumer Price Index for All
17 Urban Consumers for the Midwest Region as published in April by
18 the United States Department of Labor, Bureau of Labor
19 Statistics (or a suitable Consumer Price Index calculation if
20 this Consumer Price Index is not available) for the previous
21 calendar year; provided that the price per million Btu shall
22 not exceed \$9.95 at any time during the contract; (iii) the
23 utility's aggregate long-term supply contracts for the
24 purchase of SNG does not exceed 25% of the annual system supply
25 requirements of the utility as of 2008 and the quantity of SNG
26 supplied to a utility may not exceed 16 million MMBtus per

1 year; and (iv) the contract costs pursuant to subsection (h-10)
2 of this Section shall not include any lobbying expenses,
3 charitable contributions, advertising, organizational
4 memberships, or marketing expenses ~~per year~~.

5 (h-5) The Attorney General, on behalf of the people of the
6 State of Illinois, may specifically enforce the requirements of
7 this subsection (h-5). All contracts, regardless of duration,
8 shall require the owner of any facility supplying SNG under the
9 contract to provide documentation to the Commission each year,
10 starting in the facility's first year of commercial operation,
11 accurately reporting the quantity of carbon dioxide emissions
12 from the facility that have been captured and sequestered and
13 reporting any quantities of carbon dioxide released from the
14 site or sites at which carbon dioxide emissions were
15 sequestered in prior years, based on continuous monitoring of
16 those sites. If, in any year, the owner of the facility fails
17 to demonstrate that the SNG facility captured and sequestered
18 at least 90% of the total carbon dioxide emissions that the
19 facility would otherwise emit or that sequestration of
20 emissions from prior years has failed, resulting in the release
21 of carbon dioxide into the atmosphere, then the owner of the
22 facility must offset excess emissions. Any such carbon dioxide
23 offsets must be permanent, additional, verifiable, real,
24 located within the State of Illinois, and legally and
25 practicably enforceable; provided that the owner of the
26 facility shall not be obligated to acquire carbon dioxide

1 emission offsets to the extent that the cost of acquiring such
2 offsets would exceed \$40 million in any given year. No costs of
3 any purchases of carbon offsets may be recovered from a utility
4 or its customers. All carbon offsets purchased for this purpose
5 must be permanently retired. In addition, carbon dioxide
6 emission credits equivalent to 50% of the amount of credits
7 associated with the required sequestration of carbon dioxide
8 from the facility must be permanently retired unless the owner
9 of the facility is required to fund carbon dioxide
10 transportation or sequestration. Compliance with the
11 sequestration requirements and the offset purchase
12 requirements specified in this subsection (h-5) shall be
13 assessed annually by an independent expert retained by the
14 owner of the SNG facility, with the advance written approval of
15 the Attorney General. A SNG facility operating pursuant to this
16 subsection (h-5) shall not forfeit its designation as a clean
17 coal SNG facility if the facility fails to fully comply with
18 the applicable carbon sequestration requirements in any given
19 year, provided the requisite offsets are purchased.

20 (h-10) Contract costs for SNG incurred by an Illinois gas
21 utility are reasonable and prudent and recoverable through the
22 purchased gas adjustment clause and are not subject to review
23 or disallowance by the Commission. Contract costs are costs
24 incurred by the utility under the terms of a contract that
25 incorporates the terms stated in subsection (h) of this Section
26 as confirmed in writing by the Illinois Power Agency as set

1 forth in subsection (h-20) of this Section, which confirmation
2 shall be deemed conclusive, or as a consequence of or condition
3 to its performance under the contract, including (i) amounts
4 paid for SNG under the SNG contract and (ii) costs of
5 transportation and storage services of SNG purchased from
6 interstate pipelines under federally approved tariffs. Any
7 contract, the terms of which have been confirmed in writing by
8 the Illinois Power Agency as set forth in subsection (h-20) of
9 this Section and the performance of the parties under such
10 contract cannot be grounds for challenging prudence or cost
11 recovery by the utility through the purchased gas adjustment
12 clause, and in such cases, the Commission is directed not to
13 consider, and has no authority to consider, any attempted
14 challenges.

15 The contracts entered into by Illinois gas utilities shall
16 provide that the utility retains the right to terminate the
17 contract without further obligation or liability to any party
18 if the contract has been impaired as a result of any
19 legislative, administrative, judicial, or other governmental
20 action that is taken that eliminates all or part of the
21 prudence protection of this subsection (h-10) or denies the
22 recoverability of all or part of the contract costs through the
23 purchased gas adjustment clause. Should any Illinois gas
24 utility exercise its right under this subsection (h-10) to
25 terminate the contract, all contract costs incurred prior to
26 termination are and will be deemed reasonable, prudent, and

1 recoverable as and when incurred and not subject to review or
2 disallowance by the Commission. Any order, issued by the State
3 requiring or authorizing the discontinuation of the merchant
4 function, defined as the purchase and sale of natural gas by an
5 Illinois gas utility for the ultimate consumer in its service
6 territory shall include provisions necessary to prevent the
7 impairment of the value of any contract hereunder over its full
8 term.

9 (h-15) With respect to each contract entered into by the
10 company with an Illinois utility in accordance with the terms
11 stated in subsection (h) of this Section, within 60 days
12 following the completion of purchases of SNG, the Illinois
13 Power Agency shall conduct an analysis to determine (i) the
14 average contract SNG cost, which shall be calculated as the
15 total amount paid to a company for SNG over the contract term,
16 plus the cost to the utility of the required transportation and
17 storage services of SNG, divided by the total number of MMBtus
18 of SNG actually purchased under the utility contract; (ii) the
19 average natural gas purchase cost, which shall be calculated as
20 the total annual supply costs paid for natural gas (excluding
21 SNG) purchased by such utility over the contract term, plus the
22 costs of transportation and storage services of such natural
23 gas (excluding such costs for SNG), divided by the total number
24 of MMBtus of natural gas (excluding SNG) actually purchased by
25 the utility during the contract term; (iii) the cost
26 differential, which shall be the difference between the average

1 contract SNG cost and the average natural gas purchase cost;
2 and (iv) the revenue share target, which shall be the cost
3 differential multiplied by the total amount of SNG purchased
4 under such utility contract. If the average contract SNG cost
5 is equal to or less than the average natural gas purchase cost,
6 then the company shall have no further obligation to the
7 utility. If the average contract SNG cost for such SNG contract
8 is greater than the average natural gas purchase cost for such
9 utility, then the company shall market the daily production of
10 SNG and distribute on a monthly basis 5% of amounts collected
11 with respect to such future sales to the utilities in
12 proportion to each utility's SNG purchases from the company
13 during the term of the SNG contract to be used to reduce the
14 utility's natural gas costs through the purchased gas
15 adjustment clause; such payments to the utility shall continue
16 until such time as the sum of such payments equals the revenue
17 share target of that utility. The company or utilities shall
18 have no obligation to repay the revenue share target except as
19 provided for in this subsection (h-15).

20 (h-20) The General Assembly authorizes the Illinois
21 Finance Authority to issue bonds to the maximum extent
22 permitted to finance coal gasification facilities described in
23 this Section, which constitute both "industrial projects"
24 under Article 801 of the Illinois Finance Authority Act and
25 "clean coal and energy projects" under Sections 825-65 through
26 825-75 of the Illinois Finance Authority Act. The General

1 Assembly further authorizes the Illinois Power Agency to become
2 party to agreements and take such actions as necessary to
3 enable the Illinois Power Agency or its designate to (i) review
4 and confirm in writing that the terms stated in subsection (h)
5 of this Section are incorporated in the SNG contract, and (ii)
6 conduct an analysis pursuant to subsection (h-15) of this
7 Section. Administrative costs incurred by the Illinois Finance
8 Authority and Illinois Power Agency in performance of this
9 subsection (h-20) shall be subject to reimbursement by the
10 company on terms as the Illinois Finance Authority, the
11 Illinois Power Agency, and the company may agree. The utility
12 and its customers shall have no obligation to reimburse the
13 company, the Illinois Finance Authority, or the Illinois Power
14 Agency for any such costs.

15 (h-25) The State of Illinois pledges that the State may not
16 enact any law or take any action to (1) break or repeal the
17 authority for SNG purchase contracts entered into between
18 public gas utilities and the clean coal SNG facility located in
19 Jefferson County pursuant to subsection (h) of this Section or
20 (2) deny public gas utilities their full cost recovery for
21 contract costs, as defined in subsection (h-10), that are
22 incurred under such SNG purchase contracts. These pledges are
23 for the benefit of the parties to such SNG purchase contracts
24 and the issuers and holders of bonds or other obligations
25 issued or incurred to finance or refinance the clean coal SNG
26 facility located in Jefferson County. The beneficiaries are

1 authorized to include and refer to these pledges in any finance
2 agreement into which they may enter in regard to such
3 contracts.

4 (h-30) The State of Illinois retains and reserves all other
5 rights to enact new or amendatory legislation or take any other
6 action, including, but not limited to, such legislation or
7 other action that would (1) directly or indirectly raise the
8 costs that the clean coal SNG facility must incur; (2) directly
9 or indirectly place additional restrictions, regulations, or
10 requirements on the clean coal SNG facility; (3) prohibit
11 sequestration in general or prohibit a specific sequestration
12 method or project; or (4) increase minimum sequestration
13 requirements.

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

17 (Source: P.A. 95-1027, eff. 6-1-09; 96-1364, eff. 7-28-10.)

18 Section 99. Effective date. This Act takes effect upon
19 becoming law."