

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 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 Illinois gas utility may enter into a contract on
20 or before March 31, 2011 for up to 10 ~~20~~ years of supply with
21 any company for the purchase of substitute natural gas (SNG)
22 produced from coal through the gasification process if the
23 company has commenced construction of a coal gasification
24 facility by July 1, 2012 in Jefferson County and commencement
25 of construction shall mean that material physical site work has
26 occurred, such as site clearing and excavation, water runoff

1 prevention, water retention reservoir preparation, or
2 foundation development 2010. The contract shall contain the
3 following provisions ~~cost for the SNG is reasonable and prudent~~
4 ~~and recoverable through the purchased gas adjustment clause for~~
5 ~~years one through 10 of the contract if:~~ (i) the only coal to
6 be used in the gasification process has high volatile
7 bituminous rank and greater than 1.7 pounds of sulfur per
8 million Btu content; (ii) at the time the contract term
9 commences, the price per million Btu may ~~does~~ not exceed \$7.95
10 in 2008 dollars, adjusted annually based on the change in the
11 Annual Consumer Price Index for All Urban Consumers for the
12 Midwest Region as published in April by the United States
13 Department of Labor, Bureau of Labor Statistics (or a suitable
14 Consumer Price Index calculation if this Consumer Price Index
15 is not available) for the previous calendar year; provided that
16 the price per million Btu shall not exceed \$9.95 at any time
17 during the contract; (iii) the utility's aggregate long-term
18 supply contracts for the purchase of SNG does not exceed 25% of
19 the annual system supply requirements of the utility as of 2008
20 ~~at the time the contract is entered into~~ and the quantity of
21 SNG supplied to a utility may not exceed 16 million MMBtus; and
22 (iv) contract costs pursuant to subsection (h-10) of this
23 Section shall not include any lobbying expenses, charitable
24 contributions, advertising, organizational memberships, or
25 marketing expenses ~~by any one producer may not exceed 20~~
26 ~~billion cubic feet per year; and (iv) the contract is entered~~

1 ~~into within 120 days after the effective date of this~~
2 ~~amendatory Act of the 95th General Assembly and terminates no~~
3 ~~more than 20 years after the commencement of the commercial~~
4 ~~production of SNG at the facility. Contracts greater than 10~~
5 ~~years shall provide that if, at any time during supply years 11~~
6 ~~through 20 of the contract, the Commission determines that the~~
7 ~~cost for the synthetic natural gas purchased under the contract~~
8 ~~during supply years 11 through 20 is not reasonable and~~
9 ~~prudent, then the company shall reimburse the utility for the~~
10 ~~difference between the cost deemed reasonable and prudent by~~
11 ~~the Commission and the cost imposed under the contract.~~

12 (h-5) The Attorney General, on behalf of the people of the
13 State of Illinois, may specifically enforce the requirements of
14 this subsection (h-5). All ~~such~~ contracts, regardless of
15 duration, shall require the owner of any facility supplying SNG
16 under the contract to provide documentation to the Commission
17 each year, starting in the facility's first year of commercial
18 operation, accurately reporting the quantity of carbon dioxide
19 emissions from the facility that have been captured and
20 sequestered and reporting any quantities of carbon dioxide
21 released from the site or sites at which carbon dioxide
22 emissions were sequestered in prior years, based on continuous
23 monitoring of those sites. If, in any year, the owner of the
24 facility fails to demonstrate that the SNG facility captured
25 and sequestered at least 90% of the total carbon dioxide
26 emissions that the facility would otherwise emit or that

1 sequestration of emissions from prior years has failed,
2 resulting in the release of carbon dioxide into the atmosphere,
3 then the owner of the facility must offset excess emissions.
4 Any such carbon dioxide offsets must be permanent, additional,
5 verifiable, real, located within the State of Illinois, and
6 legally and practicably enforceable; provided that the owner of
7 the facility shall not be obligated to acquire carbon dioxide
8 emission offsets to the extent that the cost of acquiring. ~~The~~
9 ~~costs of~~ such offsets would ~~shall not~~ exceed \$40 million in any
10 given year. No costs of any purchases of carbon offsets may be
11 recovered from a utility or its customers. All carbon offsets
12 purchased for this purpose must be permanently retired. In
13 addition, carbon dioxide emission credits equivalent to 50% of
14 the amount of credits associated with the required
15 sequestration of carbon dioxide from the facility must be
16 permanently retired. Compliance with the sequestration
17 requirements and the offset purchase requirements specified in
18 this subsection (h-5) ~~(h)~~ shall be assessed annually by an
19 independent expert retained by the owner of the SNG facility,
20 with the advance written approval of the Attorney General. A ~~An~~
21 SNG facility operating pursuant to this subsection (h-5) ~~(h)~~
22 shall not forfeit its designation as a clean coal SNG facility
23 if the facility fails to fully comply with the applicable
24 carbon sequestration requirements in any given year, provided
25 the requisite offsets are purchased. ~~However, the Attorney~~
26 ~~General, on behalf of the People of the State of Illinois, may~~

1 ~~specifically enforce the facility's sequestration~~
2 ~~requirements.~~

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

24 The contracts entered into by Illinois gas utilities shall
25 provide that the utility retains the right to terminate the
26 contract without further obligation or liability to any party

1 if the contract has been impaired as a result of any
2 legislative, administrative, judicial, or other governmental
3 action that is taken that eliminates all or part of the
4 prudence protection of this subsection (h-10) or denies the
5 recoverability of all or part of the contract costs through the
6 purchased gas adjustment clause. Should any Illinois gas
7 utility exercise its right under this subsection (h-10) to
8 terminate the contract, all contract costs incurred prior to
9 termination are and will be deemed reasonable, prudent, and
10 recoverable as and when incurred and not subject to review or
11 disallowance by the Commission. Any order, issued by the State
12 requiring or authorizing the discontinuation of the merchant
13 function, defined as the purchase and sale of natural gas by an
14 Illinois gas utility for the ultimate consumer in its service
15 territory shall include provisions necessary to prevent the
16 impairment of the value of any contract hereunder over its full
17 term.

18 (h-15) With respect to each contract entered into by the
19 company with an Illinois utility in accordance with the terms
20 stated in subsection (h) of this Section, within 60 days
21 following the completion of purchases of SNG, the Illinois
22 Power Agency shall conduct an analysis to determine (i) the
23 average contract SNG cost, which shall be calculated as the
24 total amount paid to a company for SNG over the contract term,
25 plus the cost to the utility of the required transportation and
26 storage services of SNG, divided by the total number of MMBtus

1 of SNG actually purchased under the utility contract; (ii) the
2 average natural gas purchase cost, which shall be calculated as
3 the total annual supply costs paid for natural gas (excluding
4 SNG) purchased by such utility over the contract term, plus the
5 costs of transportation and storage services of such natural
6 gas (excluding such costs for SNG), divided by the total number
7 of MMBtus of natural gas (excluding SNG) actually purchased by
8 the utility during the contract term; (iii) the cost
9 differential, which shall be the difference between the average
10 contract SNG cost and the average natural gas purchase cost;
11 and (iv) the revenue share target, which shall be the cost
12 differential multiplied by the total amount of SNG purchased
13 under such utility contract. If the average contract SNG cost
14 is equal to or less than the average natural gas purchase cost,
15 then the company shall have no further obligation to the
16 utility. If the average contract SNG cost for such SNG contract
17 is greater than the average natural gas purchase cost for such
18 utility, then the company shall market the daily production of
19 SNG and distribute on a monthly basis 5% of amounts collected
20 with respect to such future sales to the utilities in
21 proportion to each utility's SNG purchases from the company
22 during the term of the SNG contract to be used to reduce the
23 utility's natural gas costs through the purchased gas
24 adjustment clause; such payments to the utility shall continue
25 until such time as the sum of such payments equals the revenue
26 share target of that utility. The company or utilities shall

1 have no obligation to repay the revenue share target except as
2 provided for in this subsection (h-15).

3 (h-20) The General Assembly authorizes the Illinois
4 Finance Authority to issue bonds to the maximum extent
5 permitted to finance coal gasification facilities described in
6 this Section, which constitute both "industrial projects"
7 under Article 801 of the Illinois Finance Authority Act and
8 "clean coal and energy projects" under Sections 825-65 through
9 825-75 of the Illinois Finance Authority Act. The General
10 Assembly further authorizes the Illinois Power Agency to become
11 party to agreements and take such actions as necessary to
12 enable the Illinois Power Agency or its designate to (i) review
13 and confirm in writing that the terms stated in subsection (h)
14 of this Section are incorporated in the SNG contract, and (ii)
15 conduct an analysis pursuant to subsection (h-15) of this
16 Section. Administrative costs incurred by the Illinois Finance
17 Authority and Illinois Power Agency in performance of this
18 subsection (h-20) shall be subject to reimbursement by the
19 company on terms as the Illinois Finance Authority, the
20 Illinois Power Agency, and the company may agree. The utility
21 and its customers shall have no obligation to reimburse the
22 company, the Illinois Finance Authority, or the Illinois Power
23 Agency for any such costs.

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

1 (Source: P.A. 94-63, eff. 6-21-05; 95-1027, eff. 6-1-09.)

2 Section 99. Effective date. This Act takes effect upon
3 becoming law.