

1 AN ACT relating to public 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. An increase in
15 the cost of purchased gas through the application of a
16 purchased gas adjustment clause, however, may not exceed by
17 more than 10% the cost of purchased gas under the immediately
18 previous applicable purchased gas adjustment clause. The
19 Commission may also authorize the increase or decrease of
20 rates and charges based upon expenditures or revenues
21 resulting from the purchase or sale of emission allowances
22 created under the federal Clean Air Act Amendments of 1990,
23 through such fuel adjustment clauses, as a cost of fuel. For
24 the purposes of this paragraph, cost of fuel used in the
25 generation or production of electric power shall include the
26 amount of any fees paid by the utility for the implementation
27 and operation of a process for the desulfurization of the
28 flue gas when burning high sulfur coal at any location within
29 the State of Illinois irrespective of the attainment status
30 designation of such location; but shall not include
31 transportation costs of coal (i) except to the extent that

1 for contracts entered into on and after the effective date of
2 this amendatory Act of 1997, the cost of the coal, including
3 transportation costs, constitutes the lowest cost for
4 adequate and reliable fuel supply reasonably available to the
5 public utility in comparison to the cost, including
6 transportation costs, of other adequate and reliable sources
7 of fuel supply reasonably available to the public utility, or
8 (ii) except as otherwise provided in the next 3 sentences of
9 this paragraph. Such costs of fuel shall, when requested by
10 a utility or at the conclusion of the utility's next general
11 electric rate proceeding, whichever shall first occur,
12 include transportation costs of coal purchased under existing
13 coal purchase contracts. For purposes of this paragraph
14 "existing coal purchase contracts" means contracts for the
15 purchase of coal in effect on the effective date of this
16 amendatory Act of 1991, as such contracts may thereafter be
17 amended, but only to the extent that any such amendment does
18 not increase the aggregate quantity of coal to be purchased
19 under such contract. Nothing herein shall authorize an
20 electric utility to recover through its fuel adjustment
21 clause any amounts of transportation costs of coal that were
22 included in the revenue requirement used to set base rates in
23 its most recent general rate proceeding. Cost shall be based
24 upon uniformly applied accounting principles. Annually, the
25 Commission shall initiate public hearings to determine
26 whether the clauses reflect actual costs of fuel, gas, power,
27 or coal transportation purchased to determine whether such
28 purchases were prudent, and to reconcile any amounts
29 collected with the actual costs of fuel, power, gas, or coal
30 transportation prudently purchased. In each such proceeding,
31 the burden of proof shall be upon the utility to establish
32 the prudence of its cost of fuel, power, gas, or coal
33 transportation purchases and costs. The Commission shall
34 issue its final order in each such annual proceeding for an

1 electric utility by December 31 of the year immediately
2 following the year to which the proceeding pertains,
3 provided, that the Commission shall issue its final order
4 with respect to such annual proceeding for the years 1996 and
5 earlier by December 31, 1998.

6 (b) A public utility providing electric service, other
7 than a public utility described in subsections (e) or (f) of
8 this Section, may at any time during the mandatory transition
9 period file with the Commission proposed tariff sheets that
10 eliminate the public utility's fuel adjustment clause and
11 adjust the public utility's base rate tariffs by the amount
12 necessary for the base fuel component of the base rates to
13 recover the public utility's average fuel and power supply
14 costs per kilowatt-hour for the 2 most recent years for which
15 the Commission has issued final orders in annual proceedings
16 pursuant to subsection (a), where the average fuel and power
17 supply costs per kilowatt-hour shall be calculated as the sum
18 of the public utility's prudent and allowable fuel and power
19 supply costs as found by the Commission in the 2 proceedings
20 divided by the public utility's actual jurisdictional
21 kilowatt-hour sales for those 2 years. Notwithstanding any
22 contrary or inconsistent provisions in Section 9-201 of this
23 Act, in subsection (a) of this Section or in any rules or
24 regulations promulgated by the Commission pursuant to
25 subsection (g) of this Section, the Commission shall review
26 and shall by order approve, or approve as modified, the
27 proposed tariff sheets within 60 days after the date of the
28 public utility's filing. The Commission may modify the
29 public utility's proposed tariff sheets only to the extent
30 the Commission finds necessary to achieve conformance to the
31 requirements of this subsection (b). During the 5 years
32 following the date of the Commission's order, but in any
33 event no earlier than January 1, 2005, a public utility whose
34 fuel adjustment clause has been eliminated pursuant to this

1 subsection shall not file proposed tariff sheets seeking, or
2 otherwise petition the Commission for, reinstatement of a
3 fuel adjustment clause.

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

30 (d) A public utility providing electric service, or a
31 public utility providing gas service may file with the
32 Commission proposed tariff sheets that eliminate the public
33 utility's fuel or purchased gas adjustment clause and adjust
34 the public utility's base rate tariffs to provide for

1 recovery of power supply costs or gas supply costs that would
2 have been recovered through such clause; provided, that the
3 provisions of this subsection (d) shall not be available to a
4 public utility described in subsections (e) or (f) of this
5 Section to eliminate its fuel adjustment clause.
6 Notwithstanding any contrary or inconsistent provisions in
7 Section 9-201 of this Act, in subsection (a) of this Section,
8 or in any rules or regulations promulgated by the Commission
9 pursuant to subsection (g) of this Section, the Commission
10 shall review and shall by order approve, or approve as
11 modified in the Commission's order, the proposed tariff
12 sheets within 240 days after the date of the public utility's
13 filing. The Commission's order shall approve rates and
14 charges that the Commission, based on information in the
15 public utility's filing or on the record if a hearing is held
16 by the Commission, finds will recover the reasonable, prudent
17 and necessary jurisdictional power supply costs or gas supply
18 costs incurred or to be incurred by the public utility during
19 a 12 month period found by the Commission to be appropriate
20 for these purposes, provided, that such period shall be
21 either (i) a 12 month historical period occurring during the
22 15 months ending on the date of the public utility's filing,
23 or (ii) a 12 month future period ending no later than 15
24 months following the date of the public utility's filing.
25 The public utility shall include with its tariff filing
26 information showing both (1) its actual jurisdictional power
27 supply costs or gas supply costs for a 12 month historical
28 period conforming to (i) above and (2) its projected
29 jurisdictional power supply costs or gas supply costs for a
30 future 12 month period conforming to (ii) above. If the
31 Commission's order requires modifications in the tariff
32 sheets filed by the public utility, the public utility shall
33 have 7 days following the date of the order to notify the
34 Commission whether the public utility will implement the

1 modified tariffs or elect to continue its fuel or purchased
2 gas adjustment clause in force as though no order had been
3 entered. The Commission's order shall provide for any
4 reconciliation of power supply costs or gas supply costs, as
5 the case may be, and associated revenues through the date
6 that the public utility's fuel or purchased gas adjustment
7 clause is eliminated. During the 5 years following the date
8 of the Commission's order, a public utility whose fuel or
9 purchased gas adjustment clause has been eliminated pursuant
10 to this subsection shall not file proposed tariff sheets
11 seeking, or otherwise petition the Commission for,
12 reinstatement or adoption of a fuel or purchased gas
13 adjustment clause. Nothing in this subsection (d) shall be
14 construed as limiting the Commission's authority to eliminate
15 a public utility's fuel adjustment clause or purchased gas
16 adjustment clause in accordance with any other applicable
17 provisions of this Act.

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

1 taxes paid under the Use Tax Act, Service Use Tax Act,
2 Service Occupation Tax Act, and Retailers' Occupation Tax Act
3 on fuel used in generation. The Commission shall issue an
4 order within 45 days after the date of the public utility's
5 filing approving or approving as modified such tariff sheet.
6 If the fuel adjustment clause is eliminated pursuant to this
7 subsection, the Commission shall not conduct the annual
8 hearings specified in the last 3 sentences of subsection (a)
9 of this Section for the utility for any period after
10 December 31, 1996 and prior to any reinstatement of such
11 clause. A public utility whose fuel adjustment clause has
12 been eliminated pursuant to this subsection shall not file a
13 proposed tariff sheet seeking, or otherwise petition the
14 Commission for, reinstatement of the fuel adjustment clause
15 prior to January 1, 2005.

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

1 by the public utility's actual jurisdictional kilowatt-hour
2 sales for those 2 years, provided, that such tariff sheets
3 shall be effective upon filing. To the extent the
4 application of the fuel adjustment clause had resulted in net
5 charges to customers after January 1, 1997, the utility shall
6 also file a tariff sheet that provides for a refund stated on
7 a per kilowatt-hour basis of such charges over a period not
8 to exceed 6 months. Provided however, that such refund shall
9 not include the proportional amounts of taxes paid under the
10 Use Tax Act, Service Use Tax Act, Service Occupation Tax Act,
11 and Retailers' Occupation Tax Act on fuel used in generation.
12 The Commission shall issue an order within 45 days after the
13 date of the public utility's filing approving or approving as
14 modified such tariff sheet. If the fuel adjustment clause is
15 eliminated pursuant to this subsection, 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
18 for any period after December 31, 1996 and prior to any
19 reinstatement of such clause. A public utility whose fuel
20 adjustment clause has been eliminated pursuant to this
21 subsection shall not file a proposed tariff sheet seeking, or
22 otherwise petition the Commission for, reinstatement of the
23 fuel adjustment clause prior to January 1, 2005.

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

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

28 Section 99. Effective date. This Act takes effect upon
29 becoming law.