

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 upon en changes in fuel
8 costs.

9 (a) Notwithstanding the provisions of Section 9-201, the
10 Commission may authorize the increase or decrease of rates
11 and charges based upon changes in the cost of fuel used in
12 the generation or production of electric power, changes in
13 the cost of purchased power, or changes in the cost of
14 purchased gas through the application of fuel adjustment
15 clauses or purchased gas adjustment clauses. The Commission
16 may also authorize the increase or decrease of rates and
17 charges based upon expenditures or revenues resulting from
18 the purchase or sale of emission allowances created under the
19 federal Clean Air Act Amendments of 1990, through such fuel
20 adjustment clauses, as a cost of fuel. For the purposes of
21 this paragraph, cost of fuel used in the generation or
22 production of electric power shall include the amount of any
23 fees paid by the utility for the implementation and operation
24 of a process for the desulfurization of the flue gas when
25 burning high sulfur coal at any location within the State of
26 Illinois irrespective of the attainment status designation of
27 such location; but shall not include transportation costs of
28 coal (i) except to the extent that for contracts entered into
29 on and after the effective date of this amendatory Act of
30 1997, the cost of the coal, including transportation costs,
31 constitutes the lowest cost for adequate and reliable fuel

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

1 proceeding for the years 1996 and earlier by December 31,
2 1998.

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

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

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

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

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

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

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

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

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

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

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