



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

HB2171

by Rep. Thomas Morrison

#### SYNOPSIS AS INTRODUCED:

220 ILCS 5/8-406 from Ch. 111 2/3, par. 8-406  
220 ILCS 5/9-220.3  
220 ILCS 5/9-228 new  
220 ILCS 5/9-235 new  
220 ILCS 5/9-237 new

Amends the Public Utilities Act. Provides that a public utility shall demonstrate to the Illinois Commerce Commission that existing customers will not subsidize the cost of new facilities beyond what is provided for in rules and in excess of certain payments by customers for the Commission to approve new construction. Provides that the Commission's order concerning new construction shall explicitly address the economic impact on customers. Requires the Commission to annually report to the General Assembly a gas utility's projects related to a qualifying infrastructure plant, the projected timeline for the replacement of the cast iron and bare and vintage steel in the utility's system, and whether that timeline is adequate to address public safety concerns and reliability. Provides that when a gas public utility connects an applicant to its gas distribution system, certain costs associated with investments in plant additions shall be excluded from a cost-recovery mechanism that allocates the excess cost among existing customers. Requires the Commission to investigate each gas public utility tariff that provides for gas main extensions without additional charge to new customers. Requires the Commission to initiate a rulemaking proceeding providing for rules to establish a uniform method by which a natural gas public utility determines the value of a gas main extension provided to new customers without additional charge.

LRB101 07615 JRG 52662 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

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 Sections 8-406 and 9-220.3 and by adding Sections 9-228, 9-235,  
6 and 9-237 as follows:

7 (220 ILCS 5/8-406) (from Ch. 111 2/3, par. 8-406)

8 Sec. 8-406. Certificate of public convenience and  
9 necessity.

10 (a) No public utility not owning any city or village  
11 franchise nor engaged in performing any public service or in  
12 furnishing any product or commodity within this State as of  
13 July 1, 1921 and not possessing a certificate of public  
14 convenience and necessity from the Illinois Commerce  
15 Commission, the State Public Utilities Commission or the Public  
16 Utilities Commission, at the time this amendatory Act of 1985  
17 goes into effect, shall transact any business in this State  
18 until it shall have obtained a certificate from the Commission  
19 that public convenience and necessity require the transaction  
20 of such business.

21 (b) No public utility shall begin the construction of any  
22 new plant, equipment, property or facility which is not in  
23 substitution of any existing plant, equipment, property or

1 facility or any extension or alteration thereof or in addition  
2 thereto, unless and until it shall have obtained from the  
3 Commission a certificate that public convenience and necessity  
4 require such construction. Whenever after a hearing the  
5 Commission determines that any new construction or the  
6 transaction of any business by a public utility will promote  
7 the public convenience and is necessary thereto, it shall have  
8 the power to issue certificates of public convenience and  
9 necessity. The Commission shall determine that proposed  
10 construction will promote the public convenience and necessity  
11 only if the utility demonstrates: (1) that the proposed  
12 construction is necessary to provide adequate, reliable, and  
13 efficient service to its customers and is the least-cost means  
14 of satisfying the service needs of its customers or that the  
15 proposed construction will promote the development of an  
16 effectively competitive electricity market that operates  
17 efficiently, is equitable to all customers, and is the least  
18 cost means of satisfying those objectives; (2) that the utility  
19 is capable of efficiently managing and supervising the  
20 construction process and has taken sufficient action to ensure  
21 adequate and efficient construction and supervision thereof;  
22 ~~and~~ (3) that the utility is capable of financing the proposed  
23 construction without significant adverse financial  
24 consequences for the utility or its customers; and (4) that  
25 existing customers will not subsidize the cost of new  
26 facilities beyond that provided for in rules adopted by the

1 Commission and in excess of any refundable or nonrefundable  
2 payments by customers to be served by the new facilities.

3 (c) After the effective date of this amendatory Act of  
4 1987, no construction shall commence on any new nuclear power  
5 plant to be located within this State, and no certificate of  
6 public convenience and necessity or other authorization shall  
7 be issued therefor by the Commission, until the Director of the  
8 Illinois Environmental Protection Agency finds that the United  
9 States Government, through its authorized agency, has  
10 identified and approved a demonstrable technology or means for  
11 the disposal of high level nuclear waste, or until such  
12 construction has been specifically approved by a statute  
13 enacted by the General Assembly.

14 As used in this Section, "high level nuclear waste" means  
15 those aqueous wastes resulting from the operation of the first  
16 cycle of the solvent extraction system or equivalent and the  
17 concentrated wastes of the subsequent extraction cycles or  
18 equivalent in a facility for reprocessing irradiated reactor  
19 fuel and shall include spent fuel assemblies prior to fuel  
20 reprocessing.

21 (d) In making its determination, the Commission shall  
22 attach primary weight to the cost or cost savings to the  
23 customers of the utility. The Commission may consider any or  
24 all factors which will or may affect such cost or cost savings,  
25 including the public utility's engineering judgment regarding  
26 the materials used for construction. The Commission shall

1 explicitly address cost and cost savings to customers in its  
2 order. For construction under subsection (b) serving one or  
3 more customers in a discrete group, the Commission shall also  
4 evaluate and explicitly address in its order the period by  
5 which the construction investment will be considered  
6 economical from the customer perspective.

7 (e) The Commission may issue a temporary certificate which  
8 shall remain in force not to exceed one year in cases of  
9 emergency, to assure maintenance of adequate service or to  
10 serve particular customers, without notice or hearing, pending  
11 the determination of an application for a certificate, and may  
12 by regulation exempt from the requirements of this Section  
13 temporary acts or operations for which the issuance of a  
14 certificate will not be required in the public interest.

15 A public utility shall not be required to obtain but may  
16 apply for and obtain a certificate of public convenience and  
17 necessity pursuant to this Section with respect to any matter  
18 as to which it has received the authorization or order of the  
19 Commission under the Electric Supplier Act, and any such  
20 authorization or order granted a public utility by the  
21 Commission under that Act shall as between public utilities be  
22 deemed to be, and shall have except as provided in that Act the  
23 same force and effect as, a certificate of public convenience  
24 and necessity issued pursuant to this Section.

25 No electric cooperative shall be made or shall become a  
26 party to or shall be entitled to be heard or to otherwise

1 appear or participate in any proceeding initiated under this  
2 Section for authorization of power plant construction and as to  
3 matters as to which a remedy is available under The Electric  
4 Supplier Act.

5 (f) Such certificates may be altered or modified by the  
6 Commission, upon its own motion or upon application by the  
7 person or corporation affected. Unless exercised within a  
8 period of 2 years from the grant thereof authority conferred by  
9 a certificate of convenience and necessity issued by the  
10 Commission shall be null and void.

11 No certificate of public convenience and necessity shall be  
12 construed as granting a monopoly or an exclusive privilege,  
13 immunity or franchise.

14 (g) A public utility that undertakes any of the actions  
15 described in items (1) through (3) of this subsection (g) or  
16 that has obtained approval pursuant to Section 8-406.1 of this  
17 Act shall not be required to comply with the requirements of  
18 this Section to the extent such requirements otherwise would  
19 apply. For purposes of this Section and Section 8-406.1 of this  
20 Act, "high voltage electric service line" means an electric  
21 line having a design voltage of 100,000 or more. For purposes  
22 of this subsection (g), a public utility may do any of the  
23 following:

24 (1) replace or upgrade any existing high voltage  
25 electric service line and related facilities,  
26 notwithstanding its length;

1           (2) relocate any existing high voltage electric  
2 service line and related facilities, notwithstanding its  
3 length, to accommodate construction or expansion of a  
4 roadway or other transportation infrastructure; or

5           (3) construct a high voltage electric service line and  
6 related facilities that is constructed solely to serve a  
7 single customer's premises or to provide a generator  
8 interconnection to the public utility's transmission  
9 system and that will pass under or over the premises owned  
10 by the customer or generator to be served or under or over  
11 premises for which the customer or generator has secured  
12 the necessary right of way.

13           (h) A public utility seeking to construct a high-voltage  
14 electric service line and related facilities (Project) must  
15 show that the utility has held a minimum of 2 pre-filing public  
16 meetings to receive public comment concerning the Project in  
17 each county where the Project is to be located, no earlier than  
18 6 months prior to filing an application for a certificate of  
19 public convenience and necessity from the Commission. Notice of  
20 the public meeting shall be published in a newspaper of general  
21 circulation within the affected county once a week for 3  
22 consecutive weeks, beginning no earlier than one month prior to  
23 the first public meeting. If the Project traverses 2 contiguous  
24 counties and where in one county the transmission line mileage  
25 and number of landowners over whose property the proposed route  
26 traverses is one-fifth or less of the transmission line mileage

1 and number of such landowners of the other county, then the  
2 utility may combine the 2 pre-filing meetings in the county  
3 with the greater transmission line mileage and affected  
4 landowners. All other requirements regarding pre-filing  
5 meetings shall apply in both counties. Notice of the public  
6 meeting, including a description of the Project, must be  
7 provided in writing to the clerk of each county where the  
8 Project is to be located. A representative of the Commission  
9 shall be invited to each pre-filing public meeting.

10 (i) For applications filed after the effective date of this  
11 amendatory Act of the 99th General Assembly, the Commission  
12 shall by registered mail notify each owner of record of land,  
13 as identified in the records of the relevant county tax  
14 assessor, included in the right-of-way over which the utility  
15 seeks in its application to construct a high-voltage electric  
16 line of the time and place scheduled for the initial hearing on  
17 the public utility's application. The utility shall reimburse  
18 the Commission for the cost of the postage and supplies  
19 incurred for mailing the notice.

20 (Source: P.A. 99-399, eff. 8-18-15.)

21 (220 ILCS 5/9-220.3)

22 (Section scheduled to be repealed on December 31, 2023)

23 Sec. 9-220.3. Natural gas surcharges authorized.

24 (a) Tariff.

25 (1) Pursuant to Section 9-201 of this Act, a natural



1 gas utility serving more than 700,000 customers may file a  
2 tariff for a surcharge which adjusts rates and charges to  
3 provide for recovery of costs associated with investments  
4 in qualifying infrastructure plant, independent of any  
5 other matters related to the utility's revenue  
6 requirement.

7 (2) Within 30 days after the effective date of this  
8 amendatory Act of the 98th General Assembly, the Commission  
9 shall adopt emergency rules to implement the provisions of  
10 this amendatory Act of the 98th General Assembly. The  
11 utility may file with the Commission tariffs implementing  
12 the provisions of this amendatory Act of the 98th General  
13 Assembly after the effective date of the emergency rules  
14 authorized by subsection (i).

15 (3) The Commission shall issue an order approving, or  
16 approving with modification to ensure compliance with this  
17 Section, the tariff no later than 120 days after such  
18 filing of the tariffs filed pursuant to this Section. The  
19 utility shall have 7 days following the date of service of  
20 the order to notify the Commission in writing whether it  
21 will accept any modifications so identified in the order or  
22 whether it has elected not to proceed with the tariff. If  
23 the order includes no modifications or if the utility  
24 notifies the Commission that it will accept such  
25 modifications, the tariff shall take effect on the first  
26 day of the calendar year in which the Commission issues the

1 order, subject to petitions for rehearing and appellate  
2 procedures. After the tariff takes effect, the utility may,  
3 upon 10 days' notice to the Commission, file to withdraw  
4 the tariff at any time, and the Commission shall approve  
5 such filing without suspension or hearing, subject to a  
6 final reconciliation as provided in subsection (e) of this  
7 Section.

8 (4) When a natural gas utility withdraws the surcharge  
9 tariff, the utility shall not recover any additional  
10 charges through the surcharge approved pursuant to this  
11 Section, subject to the resolution of the final  
12 reconciliation pursuant to subsection (e) of this Section.  
13 The utility's qualifying infrastructure investment net of  
14 accumulated depreciation may be transferred to the natural  
15 gas utility's rate base in the utility's next general rate  
16 case. The utility's delivery base rates in effect upon  
17 withdrawal of the surcharge tariff shall not be adjusted at  
18 the time the surcharge tariff is withdrawn.

19 (5) A natural gas utility that is subject to its  
20 delivery base rates being fixed at their current rates  
21 pursuant to a Commission order entered in Docket No.  
22 11-0046, notwithstanding the effective date of its tariff  
23 authorized pursuant to this Section, shall reflect in a  
24 tariff surcharge only those projects placed in service  
25 after the fixed rate period of the merger agreement has  
26 expired by its terms.

1           (b) For purposes of this Section, "qualifying  
2 infrastructure plant" includes only plant additions placed in  
3 service not reflected in the rate base used to establish the  
4 utility's delivery base rates. "Costs associated with  
5 investments in qualifying infrastructure plant" shall include  
6 a return on qualifying infrastructure plant and recovery of  
7 depreciation and amortization expense on qualifying  
8 infrastructure plant, net of the depreciation included in the  
9 utility's base rates on any plant retired in conjunction with  
10 the installation of the qualifying infrastructure plant.  
11 Collectively the "qualifying infrastructure plant" and "costs  
12 associated with investments in qualifying infrastructure  
13 plant" are referred to as the "qualifying infrastructure  
14 investment" and that are related to one or more of the  
15 following:

16           (1) the installation of facilities to retire and  
17 replace underground natural gas facilities, including  
18 facilities appurtenant to facilities constructed of those  
19 materials such as meters, regulators, and services, and  
20 that are constructed of cast iron, wrought iron, ductile  
21 iron, unprotected coated steel, unprotected bare steel,  
22 mechanically coupled steel, copper, Cellulose Acetate  
23 Butyrate (CAB) plastic, pre-1973 DuPont Aldyl "A"  
24 polyethylene, PVC, or other types of materials identified  
25 by a State or federal governmental agency as being prone to  
26 leakage;

1           (2) the relocation of meters from inside customers'  
2 facilities to outside;

3           (3) the upgrading of the gas distribution system from a  
4 low pressure to a medium pressure system, including  
5 installation of high-pressure facilities to support the  
6 upgrade;

7           (4) modernization investments by a combination  
8 utility, as defined in subsection (b) of Section 16-108.5  
9 of this Act, to install:

10           (A) advanced gas meters in connection with the  
11 installation of advanced electric meters pursuant to  
12 Sections 16-108.5 and 16-108.6 of this Act; and

13           (B) the communications hardware and software and  
14 associated system software that creates a network  
15 between advanced gas meters and utility business  
16 systems and allows the collection and distribution of  
17 gas-related information to customers and other parties  
18 in addition to providing information to the utility  
19 itself;

20           (5) replacing high-pressure transmission pipelines and  
21 associated facilities identified as having a higher risk of  
22 leakage or failure or installing or replacing  
23 high-pressure transmission pipelines and associated  
24 facilities to establish records and maximum allowable  
25 operating pressures;

26           (6) replacing difficult to locate mains and service

1 pipes and associated facilities; and

2 (7) replacing or installing transmission and  
3 distribution regulator stations, regulators, valves, and  
4 associated facilities to establish over-pressure  
5 protection.

6 With respect to the installation of the facilities  
7 identified in paragraph (1) of subsection (b) of this Section,  
8 the natural gas utility shall determine priorities for such  
9 installation with consideration of projects either: (i)  
10 integral to a general government public facilities improvement  
11 program or (ii) ranked in the highest risk categories in the  
12 utility's most recent Distribution Integrity Management Plan  
13 where removal or replacement is the remedial measure.

14 (c) Qualifying infrastructure investment, defined in  
15 subsection (b) of this Section, recoverable through a tariff  
16 authorized by subsection (a) of this Section, shall not include  
17 costs or expenses incurred in the ordinary course of business  
18 for the ongoing or routine operations of the utility,  
19 including, but not limited to:

20 (1) operating and maintenance costs; and

21 (2) costs of facilities that are revenue-producing,  
22 which means facilities that are constructed or installed  
23 for the purpose of serving new customers.

24 (d) Gas utility commitments. A natural gas utility that has  
25 in effect a natural gas surcharge tariff pursuant to this  
26 Section shall:

1           (1) recognize that the General Assembly identifies  
2 improved public safety and reliability of natural gas  
3 facilities as the cornerstone upon which this Section is  
4 designed, and qualifying projects should be encouraged,  
5 selected, and prioritized based on these factors; and

6           (2) provide information to the Commission as requested  
7 to demonstrate that (i) the projects included in the tariff  
8 are indeed qualifying projects and (ii) the projects are  
9 selected and prioritized taking into account improved  
10 public safety and reliability.

11           (3) The amount of qualifying infrastructure investment  
12 eligible for recovery under the tariff in the applicable  
13 calendar year is limited to the lesser of (i) the actual  
14 qualifying infrastructure plant placed in service in the  
15 applicable calendar year and (ii) the difference by which  
16 total plant additions in the applicable calendar year  
17 exceed the baseline amount, and subject to the limitation  
18 in subsection (g) of this Section. A natural gas utility  
19 can recover the costs of qualifying infrastructure  
20 investments through an approved surcharge tariff from the  
21 beginning of each calendar year subject to the  
22 reconciliation initiated under paragraph (2) of subsection  
23 (e) of this Section, during which the Commission may make  
24 adjustments to ensure that the limits defined in this  
25 paragraph are not exceeded. Further, if total plant  
26 additions in a calendar year do not exceed the baseline

1 amount in the applicable calendar year, the Commission,  
2 during the reconciliation initiated under paragraph (2) of  
3 subsection (e) of this Section for the applicable calendar  
4 year, shall adjust the amount of qualifying infrastructure  
5 investment eligible for recovery under the tariff to zero.

6 (4) For purposes of this Section, "baseline amount"  
7 means an amount equal to the utility's average of total  
8 depreciation expense, as reported on page 336, column (b)  
9 of the utility's ILCC Form 21, for the calendar years 2006  
10 through 2010.

11 (e) Review of investment.

12 (1) The amount of qualifying infrastructure investment  
13 shall be shown on an Information Sheet supplemental to the  
14 surcharge tariff and filed with the Commission monthly or  
15 some other time period at the option of the utility. The  
16 Information Sheet shall be accompanied by data showing the  
17 calculation of the qualifying infrastructure investment  
18 adjustment. Unless otherwise ordered by the Commission,  
19 each qualifying infrastructure investment adjustment shown  
20 on an Information Sheet shall become effective pursuant to  
21 the utility's approved tariffs.

22 (2) For each calendar year in which a surcharge tariff  
23 is in effect, the natural gas utility shall file a petition  
24 with the Commission to initiate hearings to reconcile  
25 amounts billed under each surcharge authorized pursuant to  
26 this Section with the actual prudently incurred costs

1 recoverable under this tariff in the preceding year. The  
2 petition filed by the natural gas utility shall include  
3 testimony and schedules that support the accuracy and the  
4 prudence of the qualifying infrastructure investment for  
5 the calendar year being reconciled. The petition filed  
6 shall also include the number of jobs attributable to the  
7 natural gas surcharge tariff as required by rule. The  
8 review of the utility's investment shall include  
9 identification and review of all plant that was ranked  
10 within the highest risk categories in that utility's most  
11 recent Distribution Integrity Management Plan.

12 (f) The rate of return applied shall be the overall rate of  
13 return authorized by the Commission in the utility's last gas  
14 rate case.

15 (g) The cumulative amount of increases billed under the  
16 surcharge, since the utility's most recent delivery service  
17 rate order, shall not exceed an annual average 4% of the  
18 utility's delivery base rate revenues, but shall not exceed  
19 5.5% in any given year. On the effective date of new delivery  
20 base rates, the surcharge shall be reduced to zero with respect  
21 to qualifying infrastructure investment that is transferred to  
22 the rate base used to establish the utility's delivery base  
23 rates, provided that the utility may continue to charge or  
24 refund any reconciliation adjustment determined pursuant to  
25 subsection (e) of this Section.

26 (h) If a gas utility obtains a surcharge tariff under this



1 Section 9-220.3, then it and its affiliates are excused from  
2 the rate case filing requirements contained in Sections  
3 9-220(h) and 9-220(h-1). In the event a natural gas utility,  
4 prior to the effective date of this amendatory Act of the 98th  
5 General Assembly, made a rate case filing that is still pending  
6 on the effective date of this amendatory Act of the 98th  
7 General Assembly, the natural gas utility may, at the time it  
8 files its surcharge tariff with the Commission, also file a  
9 notice with the Commission to withdraw its rate case filing.  
10 Any affiliate of such natural gas utility may also file to  
11 withdraw its rate case filing. Upon receipt of such notice, the  
12 Commission shall dismiss the rate case filing with prejudice  
13 and such tariffs and the record related thereto shall not be  
14 the subject of any further hearing, investigation, or  
15 proceeding of any kind related to rates for gas delivery  
16 services. Notwithstanding the foregoing, a natural gas utility  
17 shall not be permitted to withdraw a rate case filing for which  
18 a proposed order recommending a rate reduction is pending. A  
19 natural gas utility shall not be permitted to withdraw the gas  
20 delivery services tariffs that are the subject of Commission  
21 Docket Nos. 12-0511/12-0512 (cons.). None of the costs incurred  
22 for the withdrawn rate case are recoverable from ratepayers.

23 (i) The Commission shall promulgate rules and regulations  
24 to carry out the provisions of this Section under the emergency  
25 rulemaking provisions set forth in Section 5-45 of the Illinois  
26 Administrative Procedure Act, and such emergency rules shall be

1 effective no later than 30 days after the effective date of  
2 this amendatory Act of the 98th General Assembly.

3 (i-5) For each natural gas utility with a tariff effective  
4 under this Section in a calendar year, the Commission shall  
5 annually report to the General Assembly the following:

6 (1) the gas utility's projects described under  
7 subsection (b) of this Section;

8 (2) the projected timeline for the replacement of the  
9 cast iron and bare and vintage steel in each utility's  
10 system; and

11 (3) whether that timeline is adequate to address public  
12 safety concerns and the reliability of natural gas  
13 facilities.

14 The report shall be submitted no later than December 1 for  
15 the prior calendar year. The first report will be due December  
16 1, 2019.

17 (j) This Section is repealed December 31, 2023.

18 (Source: P.A. 98-57, eff. 7-5-13.)

19 (220 ILCS 5/9-228 new)

20 Sec. 9-228. Consideration of gas main extension costs.  
21 Whenever a gas public utility connects an applicant to its gas  
22 distribution system, any costs associated with investments in  
23 plant addition beyond that provided for in rules adopted by the  
24 Commission and in excess of any refundable payment or  
25 nonrefundable payment by the applicant at the time of

1 connection shall be excluded from a cost-recovery mechanism  
2 that allocates the excess cost among existing customers.

3 (220 ILCS 5/9-235 new)

4 Sec. 9-235. Tariffed gas main extension provisions. No  
5 later than 60 days after the effective date of this amendatory  
6 Act of the 101st General Assembly, the Commission shall  
7 initiate a docketed investigation reviewing each gas public  
8 utility tariff that provides for gas main extensions without  
9 additional charge to new customers in excess of the default  
10 extensions without charge as specified in 83 Ill. Adm. Code  
11 501. While the primary focus of the investigations shall be to  
12 determine whether existing customers are subsidizing the  
13 connection of new customers to the gas distribution system, the  
14 Commission is not restricted in considering other issues  
15 related to gas main extensions. To the extent that  
16 subsidization by existing customers is occurring beyond that  
17 provided for in rules adopted by the Commission, the Commission  
18 shall appropriately modify or cancel the tariff to eliminate  
19 any future subsidization. If the Commission modifies a gas  
20 utility's gas main extension tariff, the utility shall either  
21 accept or reject the modifications through an appropriate  
22 filing with the Commission within 10 days after the  
23 Commission's order. If the utility rejects the modifications,  
24 the Commission shall cancel the tariff and the Commission's gas  
25 main extension rules in 83 Ill. Adm. Code 501 govern gas main

1 extensions for that utility. During the investigation under  
2 this Section, the relevant provisions of the gas utility's gas  
3 main extension tariff shall be suspended and the Commission's  
4 gas main extension rules in 83 Ill. Adm. Code 501 govern until  
5 the conclusion of the investigation.

6 (220 ILCS 5/9-237 new)

7 Sec. 9-237. Gas main extension rulemaking. No later than 60  
8 days after the effective date of this amendatory Act of the  
9 101st General Assembly, the Commission shall initiate a  
10 rulemaking proceeding providing for rules to establish a  
11 uniform method by which a natural gas public utility determines  
12 the value of a gas main extension provided to new customers  
13 without additional charge.