



Rep. Thomas Morrison

Filed: 3/20/2019

10100HB2171ham001

LRB101 07615 RJF 57666 a

1 AMENDMENT TO HOUSE BILL 2171

2 AMENDMENT NO. _____. Amend House Bill 2171 by replacing
3 everything after the enacting clause with the following:

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

1 goes into effect, shall transact any business in this State
2 until it shall have obtained a certificate from the Commission
3 that public convenience and necessity require the transaction
4 of such business.

5 (b) No public utility shall begin the construction of any
6 new plant, equipment, property or facility which is not in
7 substitution of any existing plant, equipment, property or
8 facility or any extension or alteration thereof or in addition
9 thereto, unless and until it shall have obtained from the
10 Commission a certificate that public convenience and necessity
11 require such construction. Whenever after a hearing the
12 Commission determines that any new construction or the
13 transaction of any business by a public utility will promote
14 the public convenience and is necessary thereto, it shall have
15 the power to issue certificates of public convenience and
16 necessity. The Commission shall determine that proposed
17 construction will promote the public convenience and necessity
18 only if the utility demonstrates: (1) that the proposed
19 construction is necessary to provide adequate, reliable, and
20 efficient service to its customers and is the least-cost means
21 of satisfying the service needs of its customers or that the
22 proposed construction will promote the development of an
23 effectively competitive electricity market that operates
24 efficiently, is equitable to all customers, and is the least
25 cost means of satisfying those objectives; (2) that the utility
26 is capable of efficiently managing and supervising the

1 construction process and has taken sufficient action to ensure
2 adequate and efficient construction and supervision thereof;
3 ~~and~~ (3) that the utility is capable of financing the proposed
4 construction without significant adverse financial
5 consequences for the utility or its customers; and (4) that
6 existing customers will not subsidize the cost of new
7 facilities beyond that provided for in rules adopted by the
8 Commission and in excess of any refundable or nonrefundable
9 payments by customers to be served by the new facilities.
10 Notwithstanding the provisions of this subsection (b), the
11 demonstration under item (4) of this subsection (b) shall not
12 be required of public water or sewer utilities seeking a
13 certificate of public convenience and necessity in connection
14 with the acquisition of an existing water or sewer utility.

15 (c) After the effective date of this amendatory Act of
16 1987, no construction shall commence on any new nuclear power
17 plant to be located within this State, and no certificate of
18 public convenience and necessity or other authorization shall
19 be issued therefor by the Commission, until the Director of the
20 Illinois Environmental Protection Agency finds that the United
21 States Government, through its authorized agency, has
22 identified and approved a demonstrable technology or means for
23 the disposal of high level nuclear waste, or until such
24 construction has been specifically approved by a statute
25 enacted by the General Assembly.

26 As used in this Section, "high level nuclear waste" means

1 those aqueous wastes resulting from the operation of the first
2 cycle of the solvent extraction system or equivalent and the
3 concentrated wastes of the subsequent extraction cycles or
4 equivalent in a facility for reprocessing irradiated reactor
5 fuel and shall include spent fuel assemblies prior to fuel
6 reprocessing.

7 (d) In making its determination, the Commission shall
8 attach primary weight to the cost or cost savings to the
9 customers of the utility. The Commission may consider any or
10 all factors which will or may affect such cost or cost savings,
11 including the public utility's engineering judgment regarding
12 the materials used for construction. The Commission shall
13 explicitly address cost and cost savings to customers in its
14 order. For construction under subsection (b) serving one or
15 more customers in a discrete group, the Commission shall also
16 evaluate and explicitly address in its order the period by
17 which the construction investment will be considered
18 economical from the customer perspective.

19 (e) The Commission may issue a temporary certificate which
20 shall remain in force not to exceed one year in cases of
21 emergency, to assure maintenance of adequate service or to
22 serve particular customers, without notice or hearing, pending
23 the determination of an application for a certificate, and may
24 by regulation exempt from the requirements of this Section
25 temporary acts or operations for which the issuance of a
26 certificate will not be required in the public interest.

1 A public utility shall not be required to obtain but may
2 apply for and obtain a certificate of public convenience and
3 necessity pursuant to this Section with respect to any matter
4 as to which it has received the authorization or order of the
5 Commission under the Electric Supplier Act, and any such
6 authorization or order granted a public utility by the
7 Commission under that Act shall as between public utilities be
8 deemed to be, and shall have except as provided in that Act the
9 same force and effect as, a certificate of public convenience
10 and necessity issued pursuant to this Section.

11 No electric cooperative shall be made or shall become a
12 party to or shall be entitled to be heard or to otherwise
13 appear or participate in any proceeding initiated under this
14 Section for authorization of power plant construction and as to
15 matters as to which a remedy is available under The Electric
16 Supplier Act.

17 (f) Such certificates may be altered or modified by the
18 Commission, upon its own motion or upon application by the
19 person or corporation affected. Unless exercised within a
20 period of 2 years from the grant thereof authority conferred by
21 a certificate of convenience and necessity issued by the
22 Commission shall be null and void.

23 No certificate of public convenience and necessity shall be
24 construed as granting a monopoly or an exclusive privilege,
25 immunity or franchise.

26 (g) A public utility that undertakes any of the actions

1 described in items (1) through (3) of this subsection (g) or
2 that has obtained approval pursuant to Section 8-406.1 of this
3 Act shall not be required to comply with the requirements of
4 this Section to the extent such requirements otherwise would
5 apply. For purposes of this Section and Section 8-406.1 of this
6 Act, "high voltage electric service line" means an electric
7 line having a design voltage of 100,000 or more. For purposes
8 of this subsection (g), a public utility may do any of the
9 following:

10 (1) replace or upgrade any existing high voltage
11 electric service line and related facilities,
12 notwithstanding its length;

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

17 (3) construct a high voltage electric service line and
18 related facilities that is constructed solely to serve a
19 single customer's premises or to provide a generator
20 interconnection to the public utility's transmission
21 system and that will pass under or over the premises owned
22 by the customer or generator to be served or under or over
23 premises for which the customer or generator has secured
24 the necessary right of way.

25 (h) A public utility seeking to construct a high-voltage
26 electric service line and related facilities (Project) must

1 show that the utility has held a minimum of 2 pre-filing public
2 meetings to receive public comment concerning the Project in
3 each county where the Project is to be located, no earlier than
4 6 months prior to filing an application for a certificate of
5 public convenience and necessity from the Commission. Notice of
6 the public meeting shall be published in a newspaper of general
7 circulation within the affected county once a week for 3
8 consecutive weeks, beginning no earlier than one month prior to
9 the first public meeting. If the Project traverses 2 contiguous
10 counties and where in one county the transmission line mileage
11 and number of landowners over whose property the proposed route
12 traverses is one-fifth or less of the transmission line mileage
13 and number of such landowners of the other county, then the
14 utility may combine the 2 pre-filing meetings in the county
15 with the greater transmission line mileage and affected
16 landowners. All other requirements regarding pre-filing
17 meetings shall apply in both counties. Notice of the public
18 meeting, including a description of the Project, must be
19 provided in writing to the clerk of each county where the
20 Project is to be located. A representative of the Commission
21 shall be invited to each pre-filing public meeting.

22 (i) For applications filed after the effective date of this
23 amendatory Act of the 99th General Assembly, the Commission
24 shall by registered mail notify each owner of record of land,
25 as identified in the records of the relevant county tax
26 assessor, included in the right-of-way over which the utility

1 seeks in its application to construct a high-voltage electric
2 line of the time and place scheduled for the initial hearing on
3 the public utility's application. The utility shall reimburse
4 the Commission for the cost of the postage and supplies
5 incurred for mailing the notice.

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

7 (220 ILCS 5/9-220.3)

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

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

10 (a) Tariff.

11 (1) Pursuant to Section 9-201 of this Act, a natural
12 gas utility serving more than 700,000 customers may file a
13 tariff for a surcharge which adjusts rates and charges to
14 provide for recovery of costs associated with investments
15 in qualifying infrastructure plant, independent of any
16 other matters related to the utility's revenue
17 requirement.

18 (2) Within 30 days after the effective date of this
19 amendatory Act of the 98th General Assembly, the Commission
20 shall adopt emergency rules to implement the provisions of
21 this amendatory Act of the 98th General Assembly. The
22 utility may file with the Commission tariffs implementing
23 the provisions of this amendatory Act of the 98th General
24 Assembly after the effective date of the emergency rules
25 authorized by subsection (i).

1 (3) The Commission shall issue an order approving, or
2 approving with modification to ensure compliance with this
3 Section, the tariff no later than 120 days after such
4 filing of the tariffs filed pursuant to this Section. The
5 utility shall have 7 days following the date of service of
6 the order to notify the Commission in writing whether it
7 will accept any modifications so identified in the order or
8 whether it has elected not to proceed with the tariff. If
9 the order includes no modifications or if the utility
10 notifies the Commission that it will accept such
11 modifications, the tariff shall take effect on the first
12 day of the calendar year in which the Commission issues the
13 order, subject to petitions for rehearing and appellate
14 procedures. After the tariff takes effect, the utility may,
15 upon 10 days' notice to the Commission, file to withdraw
16 the tariff at any time, and the Commission shall approve
17 such filing without suspension or hearing, subject to a
18 final reconciliation as provided in subsection (e) of this
19 Section.

20 (4) When a natural gas utility withdraws the surcharge
21 tariff, the utility shall not recover any additional
22 charges through the surcharge approved pursuant to this
23 Section, subject to the resolution of the final
24 reconciliation pursuant to subsection (e) of this Section.
25 The utility's qualifying infrastructure investment net of
26 accumulated depreciation may be transferred to the natural

1 gas utility's rate base in the utility's next general rate
2 case. The utility's delivery base rates in effect upon
3 withdrawal of the surcharge tariff shall not be adjusted at
4 the time the surcharge tariff is withdrawn.

5 (5) A natural gas utility that is subject to its
6 delivery base rates being fixed at their current rates
7 pursuant to a Commission order entered in Docket No.
8 11-0046, notwithstanding the effective date of its tariff
9 authorized pursuant to this Section, shall reflect in a
10 tariff surcharge only those projects placed in service
11 after the fixed rate period of the merger agreement has
12 expired by its terms.

13 (b) For purposes of this Section, "qualifying
14 infrastructure plant" includes only plant additions placed in
15 service not reflected in the rate base used to establish the
16 utility's delivery base rates. "Costs associated with
17 investments in qualifying infrastructure plant" shall include
18 a return on qualifying infrastructure plant and recovery of
19 depreciation and amortization expense on qualifying
20 infrastructure plant, net of the depreciation included in the
21 utility's base rates on any plant retired in conjunction with
22 the installation of the qualifying infrastructure plant.
23 Collectively the "qualifying infrastructure plant" and "costs
24 associated with investments in qualifying infrastructure
25 plant" are referred to as the "qualifying infrastructure
26 investment" and that are related to one or more of the

1 following:

2 (1) the installation of facilities to retire and
3 replace underground natural gas facilities, including
4 facilities appurtenant to facilities constructed of those
5 materials such as meters, regulators, and services, and
6 that are constructed of cast iron, wrought iron, ductile
7 iron, unprotected coated steel, unprotected bare steel,
8 mechanically coupled steel, copper, Cellulose Acetate
9 Butyrate (CAB) plastic, pre-1973 DuPont Aldyl "A"
10 polyethylene, PVC, or other types of materials identified
11 by a State or federal governmental agency as being prone to
12 leakage;

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

15 (3) the upgrading of the gas distribution system from a
16 low pressure to a medium pressure system, including
17 installation of high-pressure facilities to support the
18 upgrade;

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

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

25 (B) the communications hardware and software and
26 associated system software that creates a network

1 between advanced gas meters and utility business
2 systems and allows the collection and distribution of
3 gas-related information to customers and other parties
4 in addition to providing information to the utility
5 itself;

6 (5) replacing high-pressure transmission pipelines and
7 associated facilities identified as having a higher risk of
8 leakage or failure or installing or replacing
9 high-pressure transmission pipelines and associated
10 facilities to establish records and maximum allowable
11 operating pressures;

12 (6) replacing difficult to locate mains and service
13 pipes and associated facilities; and

14 (7) replacing or installing transmission and
15 distribution regulator stations, regulators, valves, and
16 associated facilities to establish over-pressure
17 protection.

18 With respect to the installation of the facilities
19 identified in paragraph (1) of subsection (b) of this Section,
20 the natural gas utility shall determine priorities for such
21 installation with consideration of projects either: (i)
22 integral to a general government public facilities improvement
23 program or (ii) ranked in the highest risk categories in the
24 utility's most recent Distribution Integrity Management Plan
25 where removal or replacement is the remedial measure.

26 (c) Qualifying infrastructure investment, defined in

1 subsection (b) of this Section, recoverable through a tariff
2 authorized by subsection (a) of this Section, shall not include
3 costs or expenses incurred in the ordinary course of business
4 for the ongoing or routine operations of the utility,
5 including, but not limited to:

6 (1) operating and maintenance costs; and

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

10 (d) Gas utility commitments. A natural gas utility that has
11 in effect a natural gas surcharge tariff pursuant to this
12 Section shall:

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

18 (2) provide information to the Commission as requested
19 to demonstrate that (i) the projects included in the tariff
20 are indeed qualifying projects and (ii) the projects are
21 selected and prioritized taking into account improved
22 public safety and reliability.

23 (3) The amount of qualifying infrastructure investment
24 eligible for recovery under the tariff in the applicable
25 calendar year is limited to the lesser of (i) the actual
26 qualifying infrastructure plant placed in service in the

1 applicable calendar year and (ii) the difference by which
2 total plant additions in the applicable calendar year
3 exceed the baseline amount, and subject to the limitation
4 in subsection (g) of this Section. A natural gas utility
5 can recover the costs of qualifying infrastructure
6 investments through an approved surcharge tariff from the
7 beginning of each calendar year subject to the
8 reconciliation initiated under paragraph (2) of subsection
9 (e) of this Section, during which the Commission may make
10 adjustments to ensure that the limits defined in this
11 paragraph are not exceeded. Further, if total plant
12 additions in a calendar year do not exceed the baseline
13 amount in the applicable calendar year, the Commission,
14 during the reconciliation initiated under paragraph (2) of
15 subsection (e) of this Section for the applicable calendar
16 year, shall adjust the amount of qualifying infrastructure
17 investment eligible for recovery under the tariff to zero.

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

23 (e) Review of investment.

24 (1) The amount of qualifying infrastructure investment
25 shall be shown on an Information Sheet supplemental to the
26 surcharge tariff and filed with the Commission monthly or

1 some other time period at the option of the utility. The
2 Information Sheet shall be accompanied by data showing the
3 calculation of the qualifying infrastructure investment
4 adjustment. Unless otherwise ordered by the Commission,
5 each qualifying infrastructure investment adjustment shown
6 on an Information Sheet shall become effective pursuant to
7 the utility's approved tariffs.

8 (2) For each calendar year in which a surcharge tariff
9 is in effect, the natural gas utility shall file a petition
10 with the Commission to initiate hearings to reconcile
11 amounts billed under each surcharge authorized pursuant to
12 this Section with the actual prudently incurred costs
13 recoverable under this tariff in the preceding year. The
14 petition filed by the natural gas utility shall include
15 testimony and schedules that support the accuracy and the
16 prudence of the qualifying infrastructure investment for
17 the calendar year being reconciled. The petition filed
18 shall also include the number of jobs attributable to the
19 natural gas surcharge tariff as required by rule. The
20 review of the utility's investment shall include
21 identification and review of all plant that was ranked
22 within the highest risk categories in that utility's most
23 recent Distribution Integrity Management Plan.

24 (f) The rate of return applied shall be the overall rate of
25 return authorized by the Commission in the utility's last gas
26 rate case.

1 (g) The cumulative amount of increases billed under the
2 surcharge, since the utility's most recent delivery service
3 rate order, shall not exceed an annual average 4% of the
4 utility's delivery base rate revenues, but shall not exceed
5 5.5% in any given year. On the effective date of new delivery
6 base rates, the surcharge shall be reduced to zero with respect
7 to qualifying infrastructure investment that is transferred to
8 the rate base used to establish the utility's delivery base
9 rates, provided that the utility may continue to charge or
10 refund any reconciliation adjustment determined pursuant to
11 subsection (e) of this Section.

12 (h) If a gas utility obtains a surcharge tariff under this
13 Section 9-220.3, then it and its affiliates are excused from
14 the rate case filing requirements contained in Sections
15 9-220(h) and 9-220(h-1). In the event a natural gas utility,
16 prior to the effective date of this amendatory Act of the 98th
17 General Assembly, made a rate case filing that is still pending
18 on the effective date of this amendatory Act of the 98th
19 General Assembly, the natural gas utility may, at the time it
20 files its surcharge tariff with the Commission, also file a
21 notice with the Commission to withdraw its rate case filing.
22 Any affiliate of such natural gas utility may also file to
23 withdraw its rate case filing. Upon receipt of such notice, the
24 Commission shall dismiss the rate case filing with prejudice
25 and such tariffs and the record related thereto shall not be
26 the subject of any further hearing, investigation, or

1 proceeding of any kind related to rates for gas delivery
2 services. Notwithstanding the foregoing, a natural gas utility
3 shall not be permitted to withdraw a rate case filing for which
4 a proposed order recommending a rate reduction is pending. A
5 natural gas utility shall not be permitted to withdraw the gas
6 delivery services tariffs that are the subject of Commission
7 Docket Nos. 12-0511/12-0512 (cons.). None of the costs incurred
8 for the withdrawn rate case are recoverable from ratepayers.

9 (i) The Commission shall promulgate rules and regulations
10 to carry out the provisions of this Section under the emergency
11 rulemaking provisions set forth in Section 5-45 of the Illinois
12 Administrative Procedure Act, and such emergency rules shall be
13 effective no later than 30 days after the effective date of
14 this amendatory Act of the 98th General Assembly.

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

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

20 (2) the projected timeline for the replacement of the
21 cast iron and bare and vintage steel in each utility's
22 system; and

23 (3) whether that timeline is adequate to address public
24 safety concerns and the reliability of natural gas
25 facilities.

26 The report shall be submitted no later than December 1 for

1 the prior calendar year. The first report will be due December
2 1, 2019.

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

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

5 (220 ILCS 5/9-228 new)

6 Sec. 9-228. Consideration of gas main extension costs.
7 Whenever a gas public utility connects a new customer to its
8 gas distribution system, any costs associated with investments
9 in plant addition beyond that provided for in rules adopted by
10 the Commission and in excess of any refundable payment or
11 nonrefundable payment by the new customer for the connection
12 shall be excluded from a cost-recovery mechanism that allocates
13 the excess cost among existing customers.

14 (220 ILCS 5/9-235 new)

15 Sec. 9-235. Tariffed gas main extension provisions. No
16 later than 60 days after the effective date of this amendatory
17 Act of the 101st General Assembly, the Commission shall
18 initiate a docketed investigation reviewing each gas public
19 utility tariff that provides for gas main extensions without
20 additional charge to new customers in excess of the default
21 extensions without charge as specified in 83 Ill. Adm. Code
22 501. While the primary focus of the investigations shall be to
23 determine whether existing customers are subsidizing the
24 connection of new customers to the gas distribution system, the

1 Commission is not restricted in considering other issues
2 related to gas main extensions. To the extent that
3 subsidization by existing customers is occurring beyond that
4 provided for in rules adopted by the Commission, the Commission
5 shall appropriately modify or cancel the tariff to eliminate
6 any future subsidization. If the Commission modifies a gas
7 utility's gas main extension tariff, the utility shall either
8 accept or reject the modifications through an appropriate
9 filing with the Commission within 10 days after the
10 Commission's order. If the utility rejects the modifications,
11 the Commission shall cancel the tariff and the Commission's gas
12 main extension rules in 83 Ill. Adm. Code 501 shall govern gas
13 main extensions for that utility. During investigations under
14 this Section, the relevant provisions of the gas utility's gas
15 main extension tariff shall be suspended and the Commission's
16 gas main extension rules in 83 Ill. Adm. Code 501 shall govern
17 until the conclusion of the investigations. This Section does
18 not apply to a gas utility that on January 1, 2019 provided gas
19 service to fewer than 100,000 customers in Illinois.

20 (220 ILCS 5/9-237 new)

21 Sec. 9-237. Gas main extension rulemaking. No later than 60
22 days after the effective date of this amendatory Act of the
23 101st General Assembly, the Commission shall initiate a
24 rulemaking proceeding providing for rules to establish a
25 uniform method by which a natural gas public utility determines

1 the value of a gas main extension provided to new customers
2 without additional charge.

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