



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB5363

by Rep. Lawrence Walsh, Jr.

SYNOPSIS AS INTRODUCED:

220 ILCS 5/8-406.2 new
220 ILCS 5/9-220.4 new

Amends the Public Utilities Act. Provides that a participating gas utility may elect to recover its natural gas utility service costs through a formula rate approved by the Illinois Commerce Commission. Provides that the Commission shall have the authority to conduct hearings concerning the prudence and reasonableness of the service costs incurred by the utility to be recovered. Provides that a gas public utility may apply for a certificate of public convenience and necessity to increase its gas service territory and extend its gas distribution system to serve a designated hardship area. Provides that the Illinois Commerce Commission shall, after notice and hearing, grant a certificate of public convenience and necessity if, based upon the application filed with the Commission and the evidentiary record, the Commission finds that specified criteria are satisfied. Provides that the Commission shall issue its decision with findings of fact and conclusions of law granting or denying the application no later than 120 days after the application is filed. Defines terms. Effective immediately.

LRB101 18659 SPS 68114 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 adding
5 Sections 8-406.2 and 9-220.4 as follows:

6 (220 ILCS 5/8-406.2 new)

7 Sec. 8-406.2. Certificate of public convenience and
8 necessity; extension of utility service area and facilities to
9 serve designated hardship areas.

10 (a) This Section is intended to provide a mechanism by
11 which a gas public utility may extend its service territory and
12 gas distribution system to provide service to designated
13 low-income areas whose residents do not have access to natural
14 gas service and must purchase more costly alternatives to
15 satisfy their energy needs.

16 (b) For purposes of this Section:

17 (1) "Designated hardship area" means a defined
18 geographic area described by the applicant gas utility that
19 meets the following requirements:

20 (A) the area is designated as a qualified census
21 tract by the U.S. Department of Housing and Urban
22 Development as published in the most current Federal
23 Register; if the U.S. Department of Housing and Urban

1 Development ceases to make this designation, then at
2 least 25% of the households in the area are at or below
3 the poverty level; and

4 (B) the area is not currently served by a gas
5 utility.

6 (2) "Hardship area facilities" means all gas
7 distribution system facilities that are proposed to be
8 constructed or extended and used to serve the designated
9 hardship area, through and including retail gas meters.

10 "Hardship area facilities" includes the capacity to
11 address reasonably foreseeable growth in areas adjacent to
12 or in the vicinity of the designated hardship area.

13 (c) A gas public utility may apply for a certificate of
14 public convenience and necessity pursuant to this Section to
15 increase its gas service territory and extend its gas
16 distribution system to serve a designated hardship area. An
17 application under this Section shall include all of the
18 following:

19 (1) a description of the designated hardship area and
20 its relationship to the existing gas distribution system of
21 the applicant;

22 (2) a showing that the designated hardship area meets
23 the criteria of paragraph (1) of subsection (b) of this
24 Section;

25 (3) a description of the hardship area facilities
26 proposed to serve the designated hardship area;

1 (4) a projection of the costs to construct and deploy
2 the hardship area facilities;

3 (5) a statement indicating that the gas distribution
4 utility has received written indications of interest from
5 at least 50% of the customers within the boundaries of the
6 designated hardship area demonstrating an interest shown
7 in obtaining gas service; and

8 (6) a showing that the estimated cost to construct and
9 deploy the hardship area facilities is equal to or less
10 than 250% of the amount allowed under the gas utilities'
11 then current tariffs to provide standard service to extend
12 main and services.

13 (d) The Commission shall, after notice and hearing, grant a
14 certificate of public convenience and necessity under this
15 Section if, based upon the application filed with the
16 Commission and the evidentiary record, the Commission finds
17 that all of the following criteria are satisfied:

18 (1) the area to be served is a designated hardship
19 area;

20 (2) the proposed hardship area facilities will provide
21 adequate, reliable, and efficient gas delivery service to
22 the customers within the designated hardship area and are
23 the least-cost means of providing such gas delivery service
24 to these customers;

25 (3) the public utility is capable of efficiently
26 managing and supervising the construction of the hardship

1 area facilities and has taken sufficient action to ensure
2 adequate and efficient construction and supervision of the
3 construction;

4 (4) the public utility is capable of financing the
5 construction of the hardship area facilities without
6 significant adverse financial consequences for the utility
7 or its customers; and

8 (5) the estimated cost to construct and deploy the
9 hardship area facilities is equal to or less than 250% of
10 the amount allowed under the gas utilities then current
11 tariffs to provide standard service to extend main and
12 services.

13 (e) The Commission shall issue its decision with findings
14 of fact and conclusions of law granting or denying the
15 application no later than 120 days after the application is
16 filed.

17 (220 ILCS 5/9-220.4 new)

18 Sec. 9-220.4. Natural gas utility formula rate.

19 (a) As used in this Section:

20 "Participating gas utility" means a public utility that
21 provides natural gas distribution services to more than 150,000
22 retail customers in Illinois that voluntarily elects to
23 participate.

24 "ICC Form 21" means the Annual Report of Electric Utilities
25 and/or Natural Gas Utilities to the Illinois Commerce

1 Commission that natural gas utilities are required to file with
2 the Illinois Commerce Commission under Section 5-109 of the
3 Public Utilities Act.

4 "FERC Form 1" means the Annual Report of Major Electric
5 Utilities, Licensees and Others that electric utilities are
6 required to file with the Federal Energy Regulatory Commission
7 under the Federal Power Act, Sections 3, 4(a), 304, and 209,
8 modified as necessary to be consistent with 83 Ill. Adm. Code
9 415 as of May 1, 2011.

10 "FERC Form 2" means the Annual Report of Major Natural Gas
11 Companies that natural gas utilities are required to file with
12 the Federal Energy Regulatory Commission under the Natural Gas
13 Act, Sections 10(a) and 16, and 18 CFR Parts 260.1 and 260.300,
14 modified as necessary to be consistent with 83 Ill. Adm. Code
15 505 as of August 1, 2019.

16 (b) A participating gas utility may elect to recover its
17 natural gas delivery services costs through a formula rate
18 approved by the Commission, which shall specify the cost
19 components that form the basis of the rate charged to customers
20 with sufficient specificity to operate in a standardized manner
21 and be updated annually with transparent information that
22 reflects the utility's actual costs to be recovered during the
23 applicable rate year, which is the period beginning with the
24 first billing day of January and extending through the last
25 billing day of the following December.

26 If the participating gas utility recovers a portion of its

1 costs through automatic adjustment clause tariffs other than
2 those authorized by Section 9-220.3 of this Act on the
3 effective date of this amendatory Act of the 101st General
4 Assembly, the participating gas utility may elect to continue
5 to recover these costs through such tariffs, but such costs
6 shall not be recovered through the formula rate. Automatic
7 adjustment clause tariffs providing for the recovery of costs
8 that the participating gas utility elects to be included in the
9 formula rate will be suspended by operation of law as of the
10 effective date of the initial formula rate recovering such
11 costs, provided that neither such suspension nor the formula
12 rate shall alter or affect reconciling charges or credits under
13 such automatic adjustment clause tariffs that arise from
14 periods prior to the beginning of the first calendar year to be
15 reconciled under subsection (c). Such suspended automatic
16 adjustment clause tariffs shall again become effective, by
17 operation of law and without any further order of the
18 Commission, as of the date when a formula rate recovering such
19 costs is no longer effective. If the participating gas utility,
20 prior to the effective date of this amendatory Act of the 101st
21 General Assembly, filed natural gas delivery services tariffs
22 with the Commission pursuant to Section 9-201 of this Act that
23 are still pending on the effective date of this amendatory Act
24 of the 101st General Assembly, the participating gas utility
25 shall, at the time it files its formula rate tariff with the
26 Commission, also file a notice of withdrawal with the

1 Commission to withdraw the natural gas delivery services
2 tariffs previously filed in accordance with Section 9-201 of
3 this Act. Upon receipt of such notice, the Commission shall
4 dismiss with prejudice any docket that had been initiated to
5 investigate the natural gas delivery services tariffs filed in
6 accordance with Section 9-201, and such tariffs and the record
7 related thereto shall not be the subject of any further
8 hearing, investigation, or proceeding of any kind related to
9 rates for natural gas delivery services.

10 The formula rate shall be implemented through a tariff
11 filed with the Commission consistent with the provisions of
12 this subsection (b) that shall be applicable to all natural gas
13 delivery services customers. The Commission shall initiate and
14 conduct an investigation of the tariff in a manner consistent
15 with the provisions of this subsection (b) and the provisions
16 of Article IX of this Act to the extent they do not conflict
17 with this subsection (b). The formula rate shall remain in
18 effect at the discretion of the utility.

19 The formula rate approved by the Commission shall do the
20 following:

21 (1) Provide for the recovery of the utility's actual
22 costs of natural gas delivery services that are prudently
23 incurred and reasonable in amount consistent with
24 Commission practice and law. The sole fact that a cost
25 differs from that incurred in a prior calendar year or that
26 an investment is different from that made in a prior

1 calendar year shall not imply the imprudence or
2 unreasonableness of that cost or investment.

3 (2) Reflect the utility's actual year-end capital
4 structure for the applicable calendar year, excluding
5 goodwill, unless that capital structure is shown to be
6 imprudent and unreasonable consistent with Commission
7 practice and law.

8 (3) Include a cost of equity, which shall be calculated
9 as the sum of the following:

10 (A) the average for the applicable calendar year of
11 the monthly average yields of 30-year U.S. Treasury
12 bonds published by the Board of Governors of the
13 Federal Reserve System in its weekly H.15 Statistical
14 Release or successor publication multiplied by
15 0.59491; and

16 (B) 771.20 basis points.

17 At such time as the Board of Governors of the Federal
18 Reserve System ceases to include the monthly average yields
19 of 30-year U.S. Treasury bonds in its weekly H.15
20 Statistical Release or successor publication, the monthly
21 average yields of the U.S. Treasury bonds then having the
22 longest duration published by the Board of Governors in its
23 weekly H.15 Statistical Release or successor publication
24 shall instead be used for purposes of this paragraph (3).

25 (4) Permit and set forth protocols, subject to a
26 determination of prudence and reasonableness consistent

1 with Commission practice and law, for the following:

2 (A) irrespective of the form of the award, recovery
3 of the expense of incentive compensation that is
4 awarded based on non-financial criteria such as the
5 achievement of operational metrics, including metrics
6 related to budget controls, safety, customer service,
7 efficiency and productivity, and environmental
8 compliance. The expense of incentive compensation that
9 is awarded based on net income or an affiliate's
10 earnings per share shall not be recoverable under the
11 formula rate;

12 (B) recovery of pension and other post-employment
13 benefits expense, provided that such costs are
14 supported by an actuarial study;

15 (C) recovery of severance costs, provided that if
16 the amount is over \$3,700,000, then the full amount
17 shall be amortized consistent with subparagraph (F) of
18 this paragraph (4);

19 (D) investment return at a rate equal to the
20 participating gas utility's weighted average cost of
21 long-term debt, on the pension assets as, and in the
22 amount, reported in Account 182.3 and 186 (or in such
23 other Account or Accounts as such asset may
24 subsequently be recorded) of the utility's most
25 recently filed ICC Form 21, FERC Form 2, or FERC Form 1
26 (to the extent applicable to gas delivery or common

1 costs a portion of which are allocable to gas
2 delivery), as applicable, net of deferred tax
3 benefits;

4 (E) recovery of the expenses related to the
5 Commission proceeding under this subsection (b) to
6 approve this formula rate and initial rates or to
7 subsequent proceedings related to the formula,
8 provided that the recovery shall be amortized over a
9 3-year period; recovery of expenses related to the
10 annual Commission proceedings under subsection (c) of
11 this Section to review the inputs to the formula rate
12 shall be expensed and recovered through the formula
13 rate;

14 (F) amortization over a 5-year period of the full
15 amount of each charge or credit that exceeds \$3,700,000
16 and that relates to a workforce reduction program's
17 severance costs, changes in accounting rules, changes
18 in law, compliance with any Commission-initiated
19 audit, or other similar expense, provided that any
20 unamortized balance shall be reflected in rate base.
21 For purposes of this subparagraph (F), changes in law
22 includes any enactment, repeal, or amendment in a law,
23 ordinance, rule, regulation, interpretation, permit,
24 license, consent, or order, including those relating
25 to taxes, accounting, or to environmental matters, or
26 in the interpretation or application thereof by any

1 governmental authority occurring after the effective
2 date of this amendatory Act of the 101st General
3 Assembly;

4 (G) recovery of existing regulatory assets over
5 the periods previously authorized by the Commission;

6 (H) historical weather normalized billing
7 determinants; and

8 (I) allocation methods for common costs.

9 (5) Provide for recovery of certain adjustments or
10 additions to amounts included in the utility's ICC Form 21
11 as directed in the participating utility's most recent
12 final Commission rate order relating to the following:

13 (A) additions to rate base that reflect an
14 allocated portion of the plant assets on the books and
15 records of an affiliated shared service company,
16 subject to adjustments for associated accumulated
17 depreciation and accumulated deferred income taxes,
18 that are used to support the operations of the utility
19 and represent assets that would otherwise be required
20 if the utility were not receiving services from the
21 shared service company;

22 (B) removal from rate base of any asset created to
23 adjust the basis of the utility's natural gas inventory
24 resulting from a decrement in inventory for tax
25 purposes not reflected for the utility's book basis;
26 and

1 (C) recovery of existing regulatory assets over
2 the periods previously authorized by the Commission,
3 including without limitation any regulatory asset
4 created to amortize an allocable portion of the
5 utility's shared service company's unrecognized gain
6 or loss on pension and other post-employment benefits
7 assets and prior service costs.

8 (6) Provide that if the participating gas utility's
9 earned rate of return on common equity related to the
10 provision of natural gas delivery services for the prior
11 rate year (calculated using costs and capital structure
12 approved by the Commission as provided in paragraphs (2)
13 and (3) of this subsection (b), consistent with this
14 Section, in accordance with Commission rules and orders,
15 including, but not limited to, adjustments for goodwill,
16 and after any Commission-ordered disallowances and taxes)
17 is higher than the rate of return on common equity
18 calculated pursuant to paragraph (3) of this subsection (b)
19 then the participating utility shall apply a credit through
20 the formula rate that reflects an amount equal to the value
21 of that portion of the earned rate of return on common
22 equity that is higher than the rate of return on common
23 equity calculated pursuant to paragraph (3) of this
24 subsection (b) for the prior rate year, adjusted for taxes.
25 If the participating utility's earned rate of return on
26 common equity related to the provision of natural gas

1 delivery services for the prior rate year (calculated using
2 costs and capital structure approved by the Commission as
3 provided in paragraphs (2) and (3) of this subsection (b),
4 consistent with this Section, in accordance with
5 Commission rules and orders, including, but not limited to,
6 adjustments for goodwill, and after any Commission-ordered
7 disallowances and taxes) is less than the return on common
8 equity calculated pursuant to paragraph (3) of this
9 subsection (b), then the participating utility shall apply
10 a charge through the formula rate that reflects an amount
11 equal to the value of that portion of the earned rate of
12 return on common equity that is less than the rate of
13 return on common equity calculated pursuant to paragraph
14 (3) of this subsection (b) for the prior rate year,
15 adjusted for taxes.

16 (7) Provide for an annual reconciliation, as described
17 in subsections (c) and (e) of this Section, with interest,
18 of the revenue requirement reflected in rates for each
19 calendar year, beginning with the calendar year in which
20 the utility files its formula rate tariff pursuant to
21 subsection (b) of this Section, with what the revenue
22 requirement would have been had the actual cost information
23 for the applicable calendar year been available at the
24 filing date.

25 The participating gas utility shall file, together with its
26 tariff, final data based on its most recently filed ICC Form 21

1 FERC Form 2, or FERC Form 1 (to the extent applicable to gas
2 delivery or common costs a portion of which are allocable to
3 gas delivery), as applicable, subject to the adjustments
4 specified in subsection (b), plus projected plant additions and
5 correspondingly updated depreciation reserve and expense for
6 the calendar year in which the tariff and data are filed, that
7 shall populate the formula rate and set the initial natural gas
8 delivery services rates under the formula. The participating
9 gas utility may also file revisions to other tariffs then in
10 effect that refer to a base rate or base rate case to conform
11 those references to the applicable formula rates or rate
12 setting process. Any changes taking effect after December 31,
13 2019 to the manner in which costs, revenues, assets, and
14 liabilities are classified, characterized, or allocated for
15 the purposes of reporting on ICC Form 21 shall be incorporated
16 into the formula rate only if those changes are consistent with
17 the manner in which those costs, revenues, assets, and
18 liabilities be classified, characterized, or allocated for the
19 purposes of reporting on FERC Form 2 or FERC Form 1 (to the
20 extent applicable to gas delivery or common costs a portion of
21 which are allocable to gas delivery). Nothing in this Section
22 is intended to allow costs that are not otherwise recoverable
23 to be recoverable by virtue of inclusion in ICC Form 21, FERC
24 Form 2, or FERC Form 1 (to the extent applicable to gas
25 delivery or common costs a portion of which are allocable to
26 gas delivery), as applicable.

1 After the participating gas utility files its proposed
2 formula rate structure and protocols and initial rates, the
3 Commission shall initiate a docket to review the filing. The
4 Commission shall enter an order approving, or approving as
5 modified, the formula rate structure and protocols, the initial
6 rates, and any conforming revisions to other tariffs as just
7 and reasonable within 270 days after the date on which the
8 tariff was filed. Such review shall be based on the same
9 evidentiary standards, including, but not limited to, those
10 concerning the prudence and reasonableness of the costs
11 incurred by the utility, the Commission applies in a hearing to
12 review a filing for a general increase in rates under Article
13 IX of this Act. The formula rate structure and protocols,
14 initial rates, and any conforming revisions to other tariffs
15 shall take effect within 30 days after the Commission's order
16 approving the formula rate tariff.

17 Until the Commission approves a different rate design and
18 cost allocation pursuant to subsection (d) of this Section,
19 rate design and cost allocation across customer classes shall
20 be consistent with the Commission's most recent order regarding
21 the participating utility's request for a general increase in
22 its delivery services rates.

23 Subsequent changes to the formula rate structure or
24 protocols shall be made as set forth in Section 9-201 of this
25 Act, but nothing in this subsection (b) is intended to limit
26 the Commission's authority under Article IX and other

1 provisions of this Act to initiate an investigation of a
2 participating gas utility's formula rate tariff, provided that
3 any such changes shall be consistent with paragraphs (1)
4 through (7) of this subsection (b). Any change ordered by the
5 Commission shall be made at the same time new rates take effect
6 following the Commission's next order in accordance with
7 subsection (c) of this Section, provided that the new rates
8 take effect no less than 30 days after the date on which the
9 Commission issues an order adopting the change.

10 If the formula rate is terminated, the then current rates
11 shall remain in effect until new rates are set in accordance
12 with Article IX of this Act, subject to retroactive rate
13 adjustment, with interest, to reconcile rates charged with
14 actual costs.

15 (c) Subsequent to the Commission's issuance of an order
16 approving the participating gas utility's formula rate
17 structure and protocols, and initial rates under subsection (b)
18 of this Section, the participating gas utility shall file, on
19 or before May 1 of each year, with the Chief Clerk of the
20 Commission its updated cost inputs to the formula rate for the
21 applicable rate year and the corresponding new charges. Each
22 such filing shall conform to the following requirements and
23 include the following information:

24 (1) The inputs to the formula rate for the applicable
25 rate year shall be based on final historical data reflected
26 in the participating gas utility's most recently filed

1 annual ICC Form 21, FERC Form 2, or FERC Form 1 (to the
2 extent applicable to gas delivery or common costs a portion
3 of which are allocable to gas delivery), as applicable,
4 subject to adjustments specified in subsection (b) of this
5 Act, plus projected plant additions and correspondingly
6 updated depreciation reserve and expense for the calendar
7 year in which the inputs are filed. The filing shall also
8 include a reconciliation of the revenue requirement that
9 was in effect for the prior rate year (as set by the cost
10 inputs for the prior rate year) with the actual revenue
11 requirement for the prior rate year (determined using a
12 year-end rate base) that uses amounts reflected in the
13 applicable ICC Form 21, FERC Form 2, or FERC Form 1 (to the
14 extent applicable to gas delivery or common costs a portion
15 of which are allocable to gas delivery), as applicable,
16 subject to adjustments specified in subsection (b) of this
17 Act, that reports the actual costs for the prior rate year.
18 Any over-collection or under-collection indicated by such
19 reconciliation shall be reflected as a credit against, or
20 recovered as an additional charge to, respectively, with
21 interest calculated at a rate equal to the participating
22 gas utility's weighted average cost of capital approved by
23 the Commission for the prior rate year, the charges for the
24 applicable rate year. Provided, however, that the
25 reconciliations of the revenue requirement that was in
26 effect for a calendar year in which the participating gas

1 utility did not have a formula rate tariff approved in
2 accordance with subsection (b) of this Section effective
3 throughout the calendar year shall reconcile (i) the sum of
4 (x) the base rate revenue requirement or requirements
5 established by the rate order or orders in effect from time
6 to time during such calendar year (weighted, as
7 applicable), (y) the amount collected by the participating
8 gas utility via a surcharge tariff in accordance with
9 Section 9-220.3 of the Act during such calendar year on
10 account of qualifying infrastructure investment (as that
11 term is defined in subsection (b) of Section 9-220.3) that
12 occurred during such calendar year, and (z) the total
13 amount collected under other automatic adjustment clause
14 tariffs that the participating gas utility elects to be
15 included in the formula rate excluding any reconciliation
16 charges or credits applicable to periods prior to the
17 beginning of the first calendar year to be reconciled under
18 subsection (c); with (ii) the revenue requirement
19 determined using a year-end rate base for that calendar
20 year calculated pursuant to the formula rate using actual
21 costs for that year as reflected in the applicable ICC Form
22 21, FERC Form 2, or FERC Form 1 (to the extent applicable
23 to gas delivery or common costs a portion of which are
24 allocable to gas delivery), as applicable, subject to
25 adjustments specified in subsection (b). Such
26 reconciliations are not intended to provide for the

1 recovery of costs previously excluded from rates based on a
2 prior Commission order finding of imprudence or
3 unreasonableness. Each reconciliation shall be certified
4 by the participating gas utility in the same manner that
5 ICC Form 21, FERC Form 2, or FERC Form 1 (to the extent
6 applicable to gas delivery or common costs a portion of
7 which are allocable to gas delivery), as applicable, is
8 certified. The filing shall also include the charge or
9 credit, if any, resulting from the calculation required by
10 paragraph (7) of subsection (b) of this Section.
11 Notwithstanding anything that may be to the contrary, the
12 intent of the reconciliation is to ultimately reconcile the
13 revenue requirement reflected in base rates, revenues
14 collected under surcharge tariffs in accordance with
15 Section 9-220.3 of this Act to the extent related to
16 investment in the plant that occurred during such calendar
17 year, and revenues collected under other automatic
18 adjustment tariffs that the utility elects to include in
19 formula rates (excluding reconciling charges or credits
20 arising from prior years) beginning with the calendar year
21 in which the participating gas utility files its formula
22 rate tariff in accordance with subsection (b) of this
23 Section, with what the revenue requirement determined
24 using a year-end rate base for the applicable calendar year
25 would have been had the actual cost information for the
26 applicable calendar year been available at the filing date.

1 (2) The new charges shall take effect beginning on the
2 first billing day of the following January billing period
3 and remain in effect through the last billing day of the
4 next December billing period regardless of whether the
5 Commission enters upon a hearing in accordance with this
6 subsection (c).

7 (3) The filing shall include relevant and necessary
8 data and documentation for the applicable rate year that is
9 consistent with the Commission's rules applicable to a
10 filing for a general increase in rates or any rules adopted
11 by the Commission to implement this Section. Normalization
12 adjustments shall not be required. Notwithstanding any
13 other provision of this Section or Act or any rule or other
14 requirement adopted by the Commission, a participating gas
15 utility with more than one rate zone shall not be required
16 to file a separate set of such data and documentation for
17 each rate zone and may combine such data and documentation
18 into a single set of schedules.

19 Within 45 days after the participating gas utility files
20 its annual update of cost inputs to the formula rate, the
21 Commission shall have the authority, either upon complaint or
22 its own initiative, but with reasonable notice, to enter upon a
23 hearing concerning the prudence and reasonableness of the costs
24 incurred by the utility to be recovered during the applicable
25 rate year that are reflected in the inputs to the formula rate
26 derived from the utility's ICC Form 21, FERC Form 2, or FERC

1 Form 1 (to the extent applicable to gas delivery or common
2 costs a portion of which are allocable to gas delivery), as
3 applicable, subject to adjustments specified in subsection (b)
4 of this Act. During the course of the hearing, each objection
5 shall be stated with particularity and evidence provided in
6 support thereof, after which the utility shall have the
7 opportunity to rebut the evidence. Discovery shall be allowed
8 consistent with the Commission's Rules of Practice, which Rules
9 shall be enforced by the Commission or the assigned
10 administrative law judge. The Commission shall apply the same
11 evidentiary standards, including, but not limited to, those
12 concerning the prudence and reasonableness of the costs
13 incurred by the participating gas utility, in the hearing as it
14 would apply in a hearing to review a filing for a general
15 increase in rates under Article IX of this Act. The Commission
16 shall not, however, have the authority in a proceeding under
17 this subsection (c) to consider or order any changes to the
18 structure or protocols of the formula rate approved in
19 accordance with subsection (b) of this Section. In a proceeding
20 under this subsection (c), the Commission shall enter its order
21 no later than the earlier of 240 days after the utility's
22 filing of its annual update of cost inputs to the formula rate
23 or December 31. The Commission's determinations of the prudence
24 and reasonableness of the costs incurred for the applicable
25 calendar year shall be final upon entry of the Commission's
26 order and shall not be subject to reopening, reexamination, or

1 collateral attack in any other Commission proceeding, case,
2 docket, order, rule or regulation, provided, however, that
3 nothing in this subsection (c) shall prohibit a party from
4 petitioning the Commission to rehear or appeal to the courts
5 the order pursuant to the provisions of this Act.

6 If the Commission does not, either upon complaint or its
7 own initiative, enter upon a hearing within 45 days after the
8 utility files the annual update of cost inputs to its formula
9 rate, then the costs incurred for the applicable calendar year
10 shall be deemed prudent and reasonable, and the filed charges
11 shall not be subject to reopening, reexamination, or collateral
12 attack in any other proceeding, case, docket, order, rule, or
13 regulation.

14 A participating gas utility's first filing of the updated
15 cost inputs, and any Commission investigation of such inputs in
16 accordance with this subsection (c) shall proceed
17 notwithstanding the fact that the Commission's investigation
18 under subsection (b) of this Section is still pending and
19 notwithstanding any other law, order, rule, or Commission
20 practice to the contrary.

21 (d) Nothing in subsections (b) and (c) shall prohibit the
22 Commission from investigating, or a participating gas utility
23 from filing, revenue-neutral tariff changes related to rate
24 design of a formula rate that has been placed into effect for
25 the utility. Following approval of a participating gas
26 utility's formula rate tariff in accordance with subsection

1 (b), the utility shall make a filing with the Commission within
2 one year after the effective date of the formula rate tariff
3 that proposes changes to the tariff to incorporate the findings
4 of any final rate design orders of the Commission applicable to
5 the participating gas utility and entered subsequent to the
6 Commission's approval of the tariff. The Commission shall,
7 after notice and hearing, enter its order approving, or
8 approving with modification, the proposed changes to the
9 formula rate tariff within 240 days after the utility's filing.
10 Following such approval, the utility shall make a filing with
11 the Commission during each subsequent 3-year period that either
12 proposes revenue-neutral tariff changes or re-files the
13 existing tariffs without change, which shall present the
14 Commission with an opportunity to suspend the tariffs and
15 consider revenue-neutral tariff changes related to rate
16 design.

17 (e) Any surcharge tariff of a participating gas utility
18 authorized by paragraph (3) of subsection (a) of Section
19 9-220.3 which is in effect as of the effective date of the
20 formula rate tariff approved by the Commission for that utility
21 in accordance with the provisions of this Section will be
22 suspended by operation of law as of the effective date of that
23 formula rate tariff. Notwithstanding anything in paragraph (4)
24 of subsection (a) of Section 9-220.3 and paragraph (2) of
25 subsection (e) of Section 9-220.3, a participating gas utility
26 shall not file a petition to initiate a final reconciliation of

1 amounts collected under such a surcharge tariff on account of
2 qualifying infrastructure investment (as that term is defined
3 in subsection (b) of Section 9-220.3) that occurred during any
4 calendar year for which a reconciliation will be made under
5 subsection (c), and no adjustment to the participating gas
6 utility's initial rates as calculated under paragraph (1) of
7 subsection (c) shall be made based on the fact that the utility
8 had such a tariff in effect or recovered any portion of its
9 revenue requirement through such a tariff.

10 (f) The provisions of this Section are severable under
11 Section 1.31 of the Statute on Statutes.

12 Section 99. Effective date. This Act takes effect upon
13 becoming law.