- 1 AN ACT concerning utilities.
- 2 Be it enacted by the People of the State of Illinois,
- 3 represented in the General Assembly:
- 4 Section 5. The Public Utilities Act is amended by
- 5 changing Section 9-220 as follows:
- 6 (220 ILCS 5/9-220) (from Ch. 111 2/3, par. 9-220)
- 7 Sec. 9-220. Rate changes based <u>upon</u> on changes in fuel
- 8 costs.
- (a) Notwithstanding the provisions of Section 9-201, the 9 Commission may authorize the increase or decrease of rates 10 and charges based upon changes in the cost of fuel used in 11 12 the generation or production of electric power, changes in 13 the cost of purchased power, or changes in the cost of purchased gas through the application of fuel adjustment 14 15 clauses or purchased gas adjustment clauses. The Commission 16 may also authorize the increase or decrease of rates and charges based upon expenditures or revenues resulting from 17 18 the purchase or sale of emission allowances created under the 19 federal Clean Air Act Amendments of 1990, through such fuel 20 adjustment clauses, as a cost of fuel. For the purposes of this paragraph, cost of fuel used in the generation or 21 22 production of electric power shall include the amount of any fees paid by the utility for the implementation and operation 23 of a process for the desulfurization of the flue gas when 24 burning high sulfur coal at any location within the State of 25 26 Illinois irrespective of the attainment status designation of 27 such location; but shall not include transportation costs of coal (i) except to the extent that for contracts entered into 28 on and after the effective date of this amendatory Act of 29 1997, the cost of the coal, including transportation costs, 30 constitutes the lowest cost for adequate and reliable fuel 31

1 supply reasonably available to the public utility 2 comparison to the cost, including transportation costs, other adequate and reliable sources of fuel supply reasonably 3 4 available to the public utility, or (ii) except as otherwise 5 provided in the next 3 sentences of this paragraph. 6 costs of fuel shall, when requested by a utility or at the 7 conclusion of the utility's next general electric rate 8 proceeding, whichever shall first occur, 9 transportation costs of coal purchased under existing coal purchase contracts. For purposes of this paragraph "existing 10 11 coal purchase contracts" means contracts for the purchase of coal in effect on the effective date of this amendatory Act 12 13 of 1991, as such contracts may thereafter be amended, only to the extent that any such amendment does not increase 14 15 the aggregate quantity of coal to be purchased under 16 contract. Nothing herein shall authorize an electric utility to recover through its fuel adjustment clause any amounts 17 transportation costs of coal that were included in the 18 19 revenue requirement used to set base rates in its most recent 20 general rate proceeding. Cost shall be based upon uniformly 2.1 applied accounting principles. Annually, the Commission shall 22 initiate public hearings to determine whether the clauses 23 reflect actual costs of fuel, gas, power, or coal transportation purchased to determine whether such purchases 24 25 were prudent, and to reconcile any amounts collected with the actual costs of fuel, power, gas, or coal transportation 26 prudently purchased. In each such proceeding, the burden of 27 proof shall be upon the utility to establish the prudence of 28 29 cost of fuel, power, gas, or coal transportation 30 purchases and costs. The Commission shall issue its final order in each such annual proceeding for an electric utility 31 32 by December 31 of the year immediately following the year to which the proceeding pertains, provided, that the Commission 33 shall issue its final order with respect to such annual 34

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

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

1 (c) Notwithstanding any contrary or inconsistent 2 provisions in Section 9-201 of this Act, in subsection (a) of this Section or in any rules or regulations promulgated by 3 4 the Commission pursuant to subsection (g) of this Section, 5 public utility providing electric service, other than a 6 public utility described in subsection (e) or (f) of 7 Section, may at any time during the mandatory transition 8 period file with the Commission proposed tariff sheets 9 establish the rate per kilowatt-hour to be applied pursuant to the public utility's fuel adjustment clause at the average 10 11 value for such rate during the preceding 24 months, provided that such average rate results in a credit to customers' 12 bills, without making any revisions to the public utility's 13 tariffs. The proposed tariff sheets shall 14 rate 15 establish the fuel adjustment rate for a specific time period 16 of at least 3 years but not more than 5 years, provided that the terms and conditions for any reinstatement earlier than 5 17 years shall be set forth in the proposed tariff sheets and 18 19 subject to modification or approval by the Commission. The Commission shall review and shall by order approve the 20 2.1 proposed tariff sheets if it finds that the requirements of 22 this subsection are met. The Commission shall not conduct 23 the annual hearings specified in the last 3 sentences of subsection (a) of this Section for the utility for the period 24 25 that the factor established pursuant to this subsection is in 26 effect.

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

27

28

29

30

31

32

33

34

1

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

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

15

18

2.1

29

34

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

order within 45 days after the date of the public utility's

2 filing approving or approving as modified such tariff sheet.

3 If the fuel adjustment clause is eliminated pursuant to this

4 subsection, the Commission shall not conduct the annual

hearings specified in the last 3 sentences of subsection (a)

6 of this Section for the utility for any period after

December 31, 1996 and prior to any reinstatement of such

8 clause. A public utility whose fuel adjustment clause has

been eliminated pursuant to this subsection shall not file a

proposed tariff sheet seeking, or otherwise petition the

Commission for, reinstatement of the fuel adjustment clause

prior to January 1, 2005.

5

7

9

10

11

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

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

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

- 21 (g) The Commission shall have authority to promulgate 22 rules and regulations to carry out the provisions of this 23 Section.
- 24 (Source: P.A. 90-561, eff. 12-16-97.)