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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF)	Petition for Review of an
ILLINOIS <i>ex rel.</i> KWAME RAOUL,)	Order of the Illinois
Attorney General of the State of Illinois,)	Commerce Commission in
)	
Petitioner,)	Docket No. 16-0376
)	
v.)	
)	
THE ILLINOIS COMMERCE)	
COMMISSION and THE PEOPLES GAS)	
LIGHT AND COKE COMPANY,)	
)	
Respondents.)	

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held:* The Illinois Commerce Commission properly construed section 9-220.3 of the Public Utilities Act and the Commission’s final order approving the system modernization program submitted by People Gas Light and Coke Company is affirmed.

¶ 2 This matter is before the court on administrative review of an order by the Illinois Commerce Commission (Commission) ruling on the scope, pace, and annual spending rate of

Peoples Gas Light and Coke Company's (Peoples Gas) system modernization program (SMP). On January 10, 2018, the Commission issued a 210-page final order approving the rolling, three-year plan for the SMP filed by Peoples Gas as modified by the staff of the Commission (Staff). The Illinois Attorney General now appeals and asserts that the Commission committed a serious error in its final order where it found it lacked authority under section 9-220.3 of the Public Utilities Act (the Act), 220 ILCS 5/9-220.3 (West 2016), to limit the proposed expenditures of the SMP. The Attorney General maintains that the matter must be reversed and remanded in order for the Commission to fully consider whether it should exercise its statutory authority to modify the scope, pace, and annual spending of the SMP. For the following reasons, we affirm the Final Order of the Commission.

¶ 3

I. BACKGROUND

¶ 4

Peoples Gas is an Illinois corporation engaged in the transportation, purchase, storage, distribution, and sale of natural gas to the public in Illinois, qualifying as a public utility as defined in the Act, see 220 ILCS 5/3-105 (West 2016), and therefore subject to the Act. Peoples Gas currently services approximately 95% of the homes and businesses in Chicago, Illinois. Having been in business for over 165 years, Peoples Gas faces the need to repair and replace portions of their distribution system and has endeavored to do so for a number of years. Prior to 2015, Peoples Gas worked under the Accelerated Main Replacement Program¹ (AMRP). After corporate changes in 2015, a new management team proposed and adopted the SMP which is the subject of the Commission's January 2018 final order. Peoples Gas expressed that this new program included the work identified as necessary under the original AMRP as well as other modernization work needed to comply with the U.S. Department of

¹ICC Docket No. 15-0592, filed November 15, 2015, concerning a request for investigation and restructuring of the AMRP was dismissed without further action as the issues raised were subsumed by ICC Docket No. 16-0376, the docket prompting this appeal.

Transportation's regulations as outlined by the Pipeline and Hazardous Materials Safety Administration.

¶ 5 A. The System Modernization Program

¶ 6 The SMP proposed an initial three-year plan, setting aside the last quarter of each year to update and add to the plan, thus allowing Peoples Gas to work under a flexible, rolling three-year plan. The proposal included a target end-date between 2035 and 2040. The SMP had four sub-programs including: (1) neighborhood replacement, (2) public and system improvement, (3), installation of high pressure facilities, and (4) transmission upgrades. Peoples Gas submitted that program performance would be reported twice a year to the Commission, during the annual Rider reconciliation process and in a mid-year progress report and include the following metrics to measure performance: (1) main replacement metrics, covering total cost, number of miles installed, cost per mile, and a comparison of actual to planned quantities; (2) main retirement metrics, covering total cost, number of miles of main retired, cost per mile, and comparison of actual to planned quantities; (3) service replacement, covering total cost, number of services replaced, cost per service, and comparison of actual to planned quantities; (4) meter installation, covering total cost, number of meters moved, and cost per meter; and (5) costs of restoration.

¶ 7 The Commission directed Staff to organize a series of "workshops" between Staff, Peoples Gas, and the various stakeholders to discuss the proposed SMP. Over a period of three months, these workshops were used to gather information, evaluate, and assess the new program. Participants included representatives from the Office of the Attorney General, Citizens Utility Board, City of Chicago, Illinois Industrial Energy Consumers and Gas Workers Union Local 18007, as well as Peoples Gas and Staff. On May 31, 2016, Staff

issued a report to the Commission summarizing and compiling the positions, opinions, concerns, and recommendations of the workshop participants. The May 2016 report concluded by identifying the main issues discussed during the workshops, recommending short-term oversight and monitoring, and outlining a rough schedule and topics to cover in the formal docketed proceedings to create a long-term plan for the program.

¶ 8 On July 20, 2016, the Commission issued an initiating and interim order opening a formal investigation into the SMP under section 8-501 and 10-101 of the Act, 220 ILCS 5/8-501, 10-101 (West 2016), and requiring Peoples Gas to file a preliminary report setting out the projections and plans for the SMP followed by monthly reports comparing the actual results of the program's implementation to the earlier projections. The investigation proceeded with discovery, evidentiary hearings before an administrative law judge, and written briefs totaling thousands of pages. Many parties participated including Staff, Peoples Gas, the Illinois Attorney General, the City of Chicago, Citizens Utility Board, Local 18007, Utility Workers of America, AFL-CIO, and Sargent Shriver National Center on Poverty Law and volumes of expert testimony were produced.² After an initial recommendation by the administrative law judge, the Commission reopened the record and ordered additional evidentiary hearings to further address the appropriate metrics to employ, the rate and schedule impacts, and outstanding questions in a previously filed Staff report. Of these additional issues to be addressed, the Commission specifically asked the parties to answer questions regarding Section 9-220.3 of the Act. First, what is the Commission's legal authority to limit recovery of SMP costs? And second, whether the Commission's authority

²The Attorney General does not contend that the Commission's decision lacked support by substantial evidence, thus we provide only a brief overview of the proceedings rather than delving into the testimony and arguments concerning the details of the SMP.

under Sections 8-501 or 8-503 to determine the scope, design, schedule, cost, and other issues related to an infrastructure project was precluded by section 9-220.3.

¶ 9 B. Cited Sections of The Public Utilities Act

¶ 10 1. Purpose

¶ 11 The Act was created to ensure that the State could effectively and comprehensively regulate the provision of “adequate, efficient, reliable, environmentally safe and least-cost public utility services at prices which accurately reflect the long-term cost of such services and which are equitable to all citizens.” 220 ILCS 5/1-102 (West 2016). To that end, the Act created the Commission and granted the Commission powers of general supervision, enforcement, investigation, and rate-making over any public utility. See generally, 220 ILCS 5/1-101 *et seq.* (West 2016).

¶ 12 2. Investigatory and Regulatory Powers

¶ 13 Under Article VIII, governing “Service Obligations and Conditions”, the Commission is granted the broad power to hold hearings, make determinations, upon complaint or its own motion, regarding specific matters. Sections 8-501 addresses “the rules, regulations, practices, equipment, appliances, facilities or service of any public utility” directing the Commission to ensure that such matters are conducted in a “just, reasonable, safe, proper, adequate or sufficient” manner. 220 ILCS 5/8-501 (West 2016). The Commission is also tasked to monitor the “the methods of manufacture, distribution, transmission, storage or supply,” to determine what “methods [are] to be observed, furnished, constructed, enforced or employed.” *Id.* If the Commission determines that any of these matters is lacking, the Commission is authorized to “fix the same by its order, decision, rule or regulation.” *Id.* This section further authorizes the Commission to consider public convenience and necessity in

determining whether “interconnection or extension of intrastate gas distribution or transmission pipelines or facilities is necessary[.]” *Id.* If such action is necessary, the Commission may order the work done, at a schedule set by the Commission, at no increased costs to the customers, recovery of costs instead a burden on the utility receiving gas from the interconnection or extension to repay the utility supplying the gas. *Id.*

¶ 14 Section 8-503 addresses whether “additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility” are necessary to promote either “the security and convenience of its employees or the public” or to secure “adequate service or facilities[.]” *Id.* § 8-503. The Commission is directed to “make and serve an order authorizing or directing” the work be done. *Id.* Furthermore, if the work requires joint action by two or more public utilities, the Commission may charge the utilities to agree upon a division of the associated costs, and if no agreement is reached, then the Commission can fix the expenses that will be the responsibility of each utility. *Id.* Section 8-503 also provides that there should be no increased cost to the costumers of the utility, if the utility is ordered to complete “the extension, construction, connection or interconnection of plant, equipment, pipe, line, facilities or other physical property of a public utility in whatever configuration the Commission finds necessary to ensure that natural gas is made available to consumer” or if directed to “purchas[e] and distribut[e] natural gas or gas substitutes” with another public utility. *Id.*

¶ 15 3. Ratemaking

¶ 16 Article IX of the Act governs rates, requiring public utilities to set rates for products and services at a just and reasonable level. See 220 ILCS 5/9-101 *et seq.* (West 2016). Generally,

there are two steps to the ratemaking process: the Commission first determines a utility company's revenue requirement,³ which includes fixed operating costs and a reasonable return on equity, then designs a rate that allows the company to recover that revenue from its customers as accurately as possible. See *People ex rel. Madigan v. Illinois Commerce Comm'n*, 2015 IL 116005, ¶ 31 (citing cases). Under section 1-102(a)(iii), “utilities are allowed a sufficient return on investment so as to enable them to attract capital in financial markets at competitive rates.” 220 ILCS 5/1-102(a)(iii) (West 2016). Section 9-211 of the Act provides that a utility's rate base may include “only the value of such investment which is both prudently incurred and used and useful in providing service to public utility customers.” *Id.* § 9-211. The Commission also engages in annual balancing adjustments to reconcile the revenue requirement, *Id.* § 9-107, and retains the power to fix rates if it finds that they are unjust, unreasonable, discriminatory, preferential, or in any way a violation of the law, *Id.* § 9-250.

¶ 17 In 2013, the Legislature enacted section 9-220.3 authorizing a natural gas utility, servicing more than 700,000 customers in Illinois, to file a tariff for a surcharge adjusting rates independent of the normal ratemaking process to recover on costs associated with investments in “qualifying infrastructure plant” (QIP). *Id.* § 9-220.3 (a)(1). This tariff is referred to as “Rider QIP” and is also addressed by the Commission’s rules set out in Part 556 of the Illinois Administrative Code. 83 Ill. Adm. Code 556 (2013). Under subsection (j), section 9-220.3 is set to be repealed on December 31, 2023. 220 ILCS 5/9-220.3(j) (West 2016).

³The components of the revenue requirement have frequently been expressed in the formula “R (revenue requirement) = C (operating costs) + Ir (invested capital or rate base times rate of return on capital).” *Citizens Utilities Co. v. Illinois Commerce Comm'n*, 124 Ill. 2d 195, 200-01 (1988).

¶ 18 The statute provides that if a utility chooses to file a tariff to recover costs for QIP, then the Commission has 120 days to issue an order “approving, or approving with modification to ensure compliance with this Section.” *Id.* § 9-220.3(a)(3). If there are modifications, the utility may accept the modifications or withdraw the tariff petition. *Id.* If there are no modifications, then the tariff takes effect. *Id.* The utility may withdraw the tariff at any time, subject to a final reconciliation. *Id.* Additionally, “[t]he utility's qualifying infrastructure investment net of accumulated depreciation may be transferred to the natural gas utility's rate base in the utility's next general rate case.” *Id.* § 9-220.3(a)(4).

¶ 19 Subsections (b) and (c) define what investments are included and excluded from QIP, respectively. *Id.* § 9-220.3(b)-(c). Although Article VIII of the Act provides for a utility’s general service obligations and conditions, section 9-220.3 directs a natural gas utility to recognize specific commitments such as additional reporting requirements and a directive to select and prioritize projects under QIP based on factors of improving public safety and reliability. *Id.* § 9-220.3(d)(1)-(2). Subsection (d) also defines the investment amount eligible for recovery in the applicable calendar year as “limited to the lesser of (i) the actual qualifying infrastructure plant placed in service in the applicable calendar year and (ii) the difference by which total plant additions in the applicable calendar year exceed the baseline amount, and subject to the limitation in subsection (g) of this Section.” *Id.* § 9-220.3(d)(3). Furthermore, QIP costs recovered are subject to reconciliation “during which the Commission may make adjustments to ensure that the limits defined in this paragraph are not exceeded.” *Id.* The Commission may also adjust the eligible amount of QIP recovery to zero if total plant additions in a calendar year do not exceed the baseline amount in the applicable calendar year. *Id.*

¶ 20 Subsection (f) simply states that the applicable rate of return to apply to Rider QIP is the overall rate of return authorized in the utility's most recent gas rate case. *Id.* § 9-220.3(f). Subsection (e) provides for a review of the QIP investment, directing the utility to provide information documenting the amount of qualifying infrastructure investment. *Id.* § 9-220.3(e)(1). The statute further provides that, “[u]nless otherwise ordered by the Commission, each qualifying infrastructure investment adjustment shown on an Information Sheet shall become effective pursuant to the utility's approved tariffs.” *Id.* After the utility's tariff surcharge is approved under subsection (a), the utility is required to annually petition the Commission to conduct a hearing “to reconcile amounts billed under each surcharge authorized pursuant to this Section with the actual prudently incurred costs recoverable under this tariff in the preceding year.” *Id.* § 9-220.3(e)(2). Documentation of the accuracy and the prudence of the investment must be provided, as well as the number of jobs attributable to the surcharge tariff and a review of the highest risk plants according the utility's ranking system. *Id.*

¶ 21 Subsection (g) provides that:

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

Id. § 9-220.3(g).

¶ 22 Lastly, subsection (i) directs the Commission to promulgate rules and resolutions to carry out the provisions of the section and subsection (h) discusses the effect of the new enactment on pending dockets and excuses the utility and its affiliates from the filing requirements under section 9-220(h)-(h-1), if a surcharge tariff is obtained under section 9-220.3. *Id.* § 9-220.3(h)-(i).

¶ 23 C. The Final Order

¶ 24 At the conclusion of the proceedings, the Commission authorized Peoples Gas to continue with the SMP and approved the rolling, three-year plan and target end date with modifications. The Staff modifications deleted references to the corresponding QIP categories and added additional reporting requirements changing reporting deadlines from twice a year to monthly updated and requiring extra metrics to measure performance. Notably, Peoples Gas must report an “Earned Value” metric to measure the value of the work completed under the SMP. Other reporting metrics included in the order cover: the projects and neighborhoods completed, including the total cost and number of miles of main, services, and meters installed and retired; a list of remaining neighborhoods to be completed with projections for timelines and costs; and the percent decline in expenses showing the cost savings of replacing older, high-maintenance mains with new pipe.

¶ 25 As to the outstanding questions regarding the effect of section 9-220.3 on the Commission’s authority, the Commission adopted Staff’s position that the statute did not authorize the Commission to impose reductions on recovery levels for Rider QIP. Looking at the plain language of the section 9-220.3(d)(3), the Commission found that the section established the level of rate recovery for the SMP through Rider QIP and other QIP-eligible

capital work and its power to adjust recovery rates was limited to ensuring statutory limits were not exceeded. The Commission elaborated that section 9-220.3 simply provided for an expedited method of reconciling QIP costs and that all such costs must be approved up to the limit explicitly provided for in the statute. The Commission noted that any costs not approved through this expedited method were still eligible for consideration in a general rate case. The Commission further found that any determination concerning the prudence of costs related to the SMP would be determined in subsequent Rider QIP reconciliation proceedings or in a future rate case.

¶ 26 The Commission also adopted Staff's view that there is no direct conflict between section 9-220.3 and sections 8-501 and 8-503 of the Act, where they are contained in separate articles governing separate matters. The Commission found that it retained its authority to approve or to modify infrastructure investment plans using its Article VIII authority which in effect may reduce the amount properly recovered through QIP surcharges, but does not violate section 9-220.3 as long as the Commission is not imposing an alternate recovery cap. Furthermore, the Commission retains the right to make determinations concerning the prudence of cost recovery in Peoples Gas' annual QIP reconciliation proceeding.

¶ 27

II. ANALYSIS

¶ 28

In this appeal, the Attorney General raises only a narrow legal issue: what does section 9-220.3 of the Act provide for in terms of cost recovery and how does the provision affect the Commission's normal powers and duties of investigation and regulation. The Commission and Attorney General disagree over the proper reading of section 9-220.3, its relation to other sections of the Act, and the effect the statutory provisions have on the Commission's approval of the SMP.

¶ 29 We first address Peoples Gas’s contention that the Attorney General’s appeal is moot because it cannot have any practical effect on the Commission’s order approving the SMP. Peoples Gas contends that this challenge to the Commission’s interpretation of section 9-220.3 is being used to improperly challenge the Commission’s discretionary decision to approve the SMP. Peoples Gas asserts that the Attorney General is attempting to frame the matter as if the Commission “found its hands tied” by this statutory provision, when in fact, the Commission determined that it had the broad authority to reject the SMP in favor of the Attorney General’s long-term plan for main replacement and repair, but declined to exercise such authority after careful consideration of policy concerns and sound analysis of the evidence. Peoples Gas claims that the dispute boils down to the fact that the Commission rejected the Attorney General’s proposed alternative and, in so doing, made an ancillary legal conclusion which the Attorney General has now seized upon. Peoples Gas asserts that this conclusion was correct and cannot be justification for reversing the Commission’s decision approving the SMP which was properly decided on its merits. Thus, Peoples Gas contends there is no basis for this court to reverse the Commission’s January 10, 2018 order and we must affirm the final order in its entirety.

¶ 30 We recognize Peoples Gas’s frustration with the drawn-out nature of this appeal after an already lengthy and detailed docket proceeding before the Commission; however, we reject the assertion that this appeal is moot. The approval of the SMP, in particular, its proposed annual spending rate is a key concern in the argument over the interpretation of section 9-220.3. Whether the Commission is authorized to preemptively limit the total annual spending under the SMP will certainly influence whether we can find that the SMP was appropriately authorized. The Commission’s determined that it lacked the legal authority to make certain

changes that would limit the proposed annual spending affected the overall decision to approve the SMP. Thus, it is essential to resolve the questions of the scope and effect of section 9-220.3 to determine if the Commission's order was supported by substantial evidence and properly decided.

¶ 31

A. Standard of Review

¶ 32

The Act governs not only the Commission, but also the scope of judicial review over the Commission's orders. 220 ILCS 5/10-201(e)(iv) (West 2018); *People ex rel. Hartigan v. Illinois Commerce Comm'n*, 148 Ill. 2d 348, 366-67 (1992)). Under the Act, there are four instances in which a Commission order should be reversed: (1) if the findings are not supported by substantial evidence in the record, (2) the Commission lacked jurisdiction over the matter, (3) the order violates the State or federal constitution or laws, or (4) the proceedings were conducted in violation of the State or federal constitution or laws, to the prejudice of the appellant. 220 ILCS 5/10-201(e)(iv) (West 2018). This appeal is unique in that the Commission essentially determined that it did not have jurisdiction under the statute to make a determination as to one aspect of the SMP which was otherwise properly being investigated. The Attorney General asserts that the Commission did have the jurisdiction and authority to affect the annual spending rate of the SMP under other sections of the Act which control rather than section 9-220.3. As the Attorney General's challenge is solely on the statutory interpretation of section 9-220.3, this is a pure question of law which we will review *de novo*. *Illinois Landowners Alliance, NFP v. Illinois Commerce Comm'n*, 2017 IL 121302, ¶ 29 (Courts are not bound by the Commission's rulings on questions of law, which we review *de novo*).

the Commission asserts that 9-220.3 establishes a detailed, comprehensive surcharge scheme leaving no room for Commission discretion if the utility meets the minimum requirement to trigger recovery eligibility. In the Commission's view, section 9-220.3 assures gas utilities of recovering their prudently-incurred qualifying investment costs because it deems these costs just and reasonable, so long as such costs are within the statutory limits. Thus, the Commission contends its oversight role is limited under the surcharge scheme to ensure that the designated maximum limits on recovery are not exceeded. The Commission further notes it does consider whether the investment was prudently incurred, however, this is a consideration limited to the reconciliation period, not during the proposed spending phase.

¶ 37 The primary objective in interpreting a statute is to ascertain and give effect to the intent of the Legislature. *Solon v. Midwest Medical Records Ass'n*, 236 Ill. 2d 433, 440 (2010). The best evidence of the Legislature's intent is the language of the statute itself. *Bruso v. Alexian Brothers Hospital*, 178 Ill. 2d 445, 451-52 (1997). Thus, we first examine the plain language of the statute.

¶ 38 The Attorney General contends that the plain language of subsection (g) cannot be read as a guarantee of cost recovery because the statute states, "[t]he cumulative amount of increases billed under the surcharge, *** shall not exceed an annual average 4% of the utility's delivery base rate revenues, but shall not exceed 5.5% in any given year." The Attorney General maintains that nothing in the language of "shall not exceed" divests the Commission's broad regulatory authority to investigate and, if appropriate, modify particular expenditures. Thus, the Attorney General contends that the statute allows for approving Rider QIP costs at amounts below the specified ceilings and denying other costs deemed unjust, unreasonable, or imprudent, even if the cap has not been reached. The Commission responds

that subsection (g) must be read in conjunction with the other subsections in order to fully understand the scheme designed by the Legislature.

¶ 39 At first blush, the language of subsection (g) does not appear to require the Commission to approve any and all expenditures that come within the minimum and maximum range set by the Legislature. However, there also is no directive in the statutory provisions of section 9-220.3 that requires the Commission to investigate and make determinations as to justness and reasonableness. Throughout section 9-220.3, the Commission is only directed to take the following actions: approve the tariffs or requests for withdrawal, implement rules and regulation to carry out the Section, conduct reconciliation hearings, and make adjustments to ensure compliance. Thus, neither reading presented by the parties is fully supported by the plain language of subsection (g).

¶ 40 The Attorney General also directs this court to a few words in the first line of the section which states, “[p]ursuant to Section 9-201 of this Act, a natural gas utility *** may file ***” to argue that the Commission’s oversight of Rider QIP requires a formal pre-determination of justness and reasonableness. Section 9-201 imposes a requirement to determine the justness and reasonableness of the rates and charges. 220 ILCS 5/9-201(c) (West 2016). Thus, the Attorney General contends that section 9-220.3 must also by this reference.

¶ 41 We do not find that that section 9-220.3 incorporates the provisions of section 9-201 by reference. Section 9-201 states that, “the Commission shall have power, and it is hereby given authority, *** to enter upon a hearing concerning the propriety of such rate or other charge, classification, contract, practice, rule or regulation[.]” *Id.* § 9-201(b). Such hearing would suspend the rate or other charge for an initial period of up to 105 days, or at the Commission’s discretion, a further period of up to six months. *Id.* Section 9-201’s also

provides for a 45-day notice period which is open to both the Commission and the public. See 220 ILCS 5/9-201(a) (West 2016) (“Unless the Commission otherwise orders, and except as otherwise provided in this Section, no change shall be made by any public utility in any rate *** except after 45 days’ notice to the Commission and to the public as herein provided.”). These provisions under section 9-201 would be at odds with the strict directive in 9-220.3(a)(3) to issue approval of filed tariffs within 120 days.

¶ 42 Although section 9-220.3 is prefaced with the phrase “pursuant to section 9-201,” this statement continues, “may file a tariff for a surcharge which adjusts rates and charges *** independent of any other matters related to the utility’s revenue requirement.” Thus, there is an alternative reading available that would not conflict with the other provisions in section 9-220.3. As Section 9-201 prohibits rate changes, “[u]nless the Commission otherwise orders, and except as otherwise provided in this Section,” it is possible to read section 9-220.3’s preface simply as acknowledging that this will be a rate change that will be ordered by the Commission outside of the requirements of section 9-201. This would support the Commission’s assertion that the Legislature enacted section 9-220.3 to authorize cost recovery for QIP investment as *per se* just and reasonable, and separate it from the requirements of normal rate changes and revenue requirement calculations.

¶ 43 The Attorney General rejects the Commission’s reading of the statute as rendering QIP investments *per se* just and reasonable, if they meet the minimum expenditure requirement because there is no explicit language stating that such charges are deemed just and reasonable. Furthermore, the Attorney General highlights that in other Articles of the Act, the Legislature has specified where a public utility may recover all of the associated costs, whereas here section 9-220.3 only specifies costs which are eligible and “can” be recovered.

The Attorney General maintains that the word “can” denotes the utility has permission, but it is not entitled to mandatory recovery. Similarly, the Attorney General points to other sections in the Act, where the Legislature has been clearer in the past when it intended to enact a guarantee, using the language “notwithstanding any other provision of this Act.” See, *e.g.*, 220 ILCS 5/8-206(a), (k), (l); 220 ILCS 5/8-509.5; and 220 ILCS 5/13-701 (West 2016).

¶ 44 We acknowledge that section 9-220.3 does not include any language indicating that qualifying investments must be deemed just and reasonable. However, the use of permissive language in Section 9-220.3 does not influence our reading of the statute. Although there are a number of subsections containing permissive rather than mandatory language (see *e.g.* “A natural gas utility can recover the costs” 220 ILCS 5/9-220.3(d)(3)), this permissive language is attributable to the fact that a public utility is not required to invoke the statute’s provisions and can rely on filing a general rate case to recover the same costs. Thus, the use of permissive language does not control our determination of the Commission’s authority under the section.

¶ 45 Contrary to the Attorney General’s assertions, there is language written into the statute which supports finding that the Commission lacks discretion to make pre-determinations of justness and reasonableness and instead is required to approve the tariffs as submitted. Notably, in subsection (a), the Commission is only directed to approve the tariff. The Commission is given a limited power to modify the tariff, but it cannot outright reject a tariff request. In subsection (b), the statute provides that, ““Costs associated with investments in qualifying infrastructure plant’ shall include a return *** and recovery” 220 ILCS 5/9-220.3(b) (West 2016) (emphasis added). Subsection (e) provides that “each qualifying infrastructure investment adjustment shown on an Information Sheet shall become effective

pursuant to the utility's approved tariffs. *Id.* § 9-220.3(e)(1) (emphasis added). The use of “shall” generally indicates a legislative intent to make a law or provision mandatory. *Puss N Boots, Inc. v. Mayor's License Comm'n of City of Chicago*, 232 Ill. App. 3d 984, 986-87 (1992). Reading the Legislative directives in subsections (a), (b), and (e), together bolster an interpretation of the statute where cost recovery for QIP investments is mandated and the general requirement that rate changes must first be found just and reasonable are removed.

¶ 46 As the plain language of the statutory provisions at issue is not explicit as to whether it acts as a guarantee, but there is language supporting the Commission’s interpretation, we will defer to the Commission as the agency with expertise over the interpretation of the statutes governing the programs which it is charged with administering and enforcing. See *Illinois Consolidated Telephone Co.*, 95 Ill. 2d at 152; *Commonwealth Edison Co.*, 398 Ill. App. 3d at 514.

¶ 47 The Attorney General further asserts that the Commission’s broad authority to investigate and regulate under sections 8-501 and 8-503 of the Act are not limited by the revenue recovery provisions in section 9-220.3, therefore the Commission is permitted to modify the pace of Peoples Gas spending on SMP, following an investigation and hearing. The Attorney General maintains that section 8-501 gives the Commission authority to prospectively investigate and regulate a gas utility’s operations in order to ensure affordable rates, which extends to the QIP eligible projects proposed under the SMP. The Attorney General further contends that the broad authority to affect regulatory change seen in section 8-503, which empowers the Commission to secure adequate service or facilities by ordering additions, extensions, repairs, improvements, or changes to existing plant, equipment, apparatus, facilities, and other physical property of the utility, should also extend to the QIP eligible

projects. The Attorney General asserts that there is nothing about section 9-220.3 which suspends the Commission's Article VIII authority to ensure that infrastructure spending is just, reasonable, safe, proper, adequate, and sufficient.

¶ 48 The Commission acknowledges that section 8-501 grants general supervisory authority and tasks the Commission with ensuring that certain aspects of a utility's practices are just, reasonable, safe, proper, adequate, or sufficient. The Commission may "fix" "rules, regulations, practices, appliances, facilities or service," if finding after hearing that they are "unjust, unreasonable, unsafe, improper, inadequate, or insufficient." However, the Commission contends that this does not allow the Commission to modify the SMP's annual spending rate. First, the spending level is not a "practice" or "service" within the meaning of 8-501, and even if it were, section 8-501 does not allow the Commission to act in direct contradiction to section 9-220.3's provisions. Accordingly, the Commission contends that Peoples Gas's annual SMP spending level, as authorized by Section 9-220.3, cannot constitute an unjust, unreasonable, etc. practice or service under Section 8-501 as a matter of law.

¶ 49 We recognize that the proceedings of this docket were initiated under the authority of section 8-501 and section 10-101⁴ of the Act. However, on the limited question of the scope of section 9-220.3 which governs a specific rate surcharge for QIP investment, we find that sections 8-501 and 8-503 do not inform our analysis. In general, statutes must be read as a whole rather than in isolation, especially when courts attempt to define the legislative intent underlying the statute. *People v. NL Industries*, 152 Ill. 2d 82, 98 (1992). Nevertheless, the

⁴Section 10-101 provides "The Commission, or any commissioner or administrative law judge designated by the Commission, shall have power to hold investigations, inquiries and hearings concerning any matters covered by the provisions of this Act, or by any other Acts relating to public utilities subject to such rules and regulations as the Commission may establish." 220 ILCS 5/10-101 (West 2016).

sections cited by the Attorney General stem from a separate article of the Act and are meant to address the public utility's service obligations and conditions that may be imposed on the public utility rather than how to determine rates. It is irrefutable that the Commission has broad powers under section 8-501 and 8-503, but only in relation to the matters discussed by these sections. In considering the SMP as a whole, there were many portions of the SMP which fell under the purview of section 8-501 and 8-503, but the proposed annual spending and its relation to the Rider QIP do not. Primarily, these two sections in Article VIII lay out the ability of the Commission to direct the public utility to take a specific action and make no mention of the costs associated with these actions. These sections only touch on the matter of cost and charges under the specific circumstances triggered by the Commission's ordering of the public utility to take certain actions. Thus, they do not conflict with or control the Commission's responsibilities under section 9-220.3.

¶ 50 In considering the language of section 9-220.3 and its relation to other sections in the Act, we find no reason to question the Commission's reading of the statutory provisions and adopt the Attorney General's alternative reading. We therefore defer to the Commission's interpretation of its authority under section 9-220.3 and do not delve into the argument raised by the Attorney General regarding the content of the legislative debates to determine whether the section was meant to act as a guarantee or a cap on cost recovery.

¶ 51 C. Remaining Arguments

¶ 52 1. Reconciliation

¶ 53 The Attorney General contends that the reconciliation proceeding contained in subsection (e) of section 9-220.3 was not intended to be the only method for regulating the spending of Rider QIP eligible projects. The Attorney General argues that relying on this after-the-fact

proceeding, alone, is an insufficient safeguard and fails to recognize the Commission's broad authority to address the prospective impact of a utility's operations on rates or affordability.

¶ 54 The Commission contends that the Attorney General's arguments aim solely to second-guess the Legislature's decision to establish annual reconciliation proceedings as the means to ensure that gas utilities recover only their prudently-incurred qualifying investment costs through the surcharge. The Commission defends the process as a sufficient safeguard, because it is a formal, contested proceeding in which the utility must present detailed cost and revenue data, testimony, and other evidence to justify the accuracy and prudence of the costs it seeks to recover and the revenue that it has collected pursuant to the rider. See 220 ILCS 5/9-220.3(e)(2); 83 Ill. Admin. Code § 556.100 (annual reconciliation).

¶ 55 We note that deference to the Commission is "especially appropriate in the area of fixing rates." *Iowa-Illinois Gas & Electric Co. v. Illinois Commerce Comm'n*, 19 Ill. 2d 436, 442, (1960); accord *United Cities Gas Co. v. Illinois Commerce Comm'n*, 163 Ill.2d 1, 12 (1994). The Legislature has entrusted to the Commission, and not the courts, to utilize its sound business judgment in the determination of rates. See *Cerro Copper Products v. Illinois Commerce Comm'n*, 83 Ill. 2d 364, 371 (1980); *City of Chicago v. Illinois Commerce Comm'n*, 281 Ill. App. 3d 617, 622 (1996) ("Matters of rate regulation are of legislative character and courts should not interfere with the functions and authority of the Commission so long as its order demonstrates sound and lawful analysis."). Thus, we decline to rule on whether the reconciliation process is a sufficient safeguard for fixing rates in relation to QIP investment given that it is the scheme set up by the Legislature and entrusted to the Commission to carry out.

¶ 56 2. Repealer and Purpose of the Section

¶ 57 The Attorney General asserts that the sunset provision in subsection (j) contradicts the Commission's conclusion that section 9-220.3 restricts its authority to limit the SMP's annual spending where the SMP is slated to run until 2040, but section 9-220.3 is set to be repealed at the end of 2023. The Attorney General contends that it is implausible for there to be a distinction between the Commission's oversight of the SMP for a fraction of the period the program is slated to run. The Commission first responds that the Attorney General's view makes no sense given that the SMP is just one program proposed by Peoples Gas, whereas section 9-220.3 governs the proposal of programs by all natural gas public utilities. Therefore, the sunset provision should not be read solely in view of its potential effect on the SMP. Second, the Commission asserts that the main purpose of the surcharge scheme is to encourage large gas utilities to accelerate needed infrastructure investment spending to promote safety and reliability and aid job creation. Thus, the inclusion of the repealer cuts against the Attorney General's argument because it makes sense that the section is short-lived even though a gas utility's efforts to improve infrastructure will last longer. The Commission contends that the section was crafted to temporarily restrict the Commission's oversight authority in order to further encourage the necessary infrastructure investment.

¶ 58 We recognize that construing subsection (j) does not require looking beyond the plain language of the statute because there is no ambiguity in what this subsection intends to do. It simply orders the repeal of this section on December 31, 2023. However, in order to address the contentions of the parties, we must consider the motivations behind the enactment of these provisions and specifically, the 10-year lifetime of the section allowing this tariff surcharge. The Legislature enacted section 9-220.3 in response to an accident in California involving outdated gas lines which exploded and caused several deaths. 98th Ill. Gen.

Assem., House Proceedings, May 27, 2012, at 154, 157. (statements of Representative Phelps). The Legislature was thus impressed with a sense of urgency to encourage the gas utilities in Illinois to invest in updating their infrastructure and to do so in a manner that kept costs down. *Id.* at 154-155 (concerns voiced that federal regulation would be imposed mandating infrastructure investment without concern for cost management). Looking at section 9-220.3 as a whole, we see that the Commission was even directed to invoke its emergency rule-making powers to provide that utilities could take advantage of the section's benefits as soon as the emergency rules were in place. See 220 ILCS 5/9-220.3(a)(2) ("The utility may file with the Commission tariffs implementing the provisions of this amendatory Act of the 98th General Assembly after the effective date of the emergency rules authorized by subsection (i)"). Viewing the provisions of section 9-220.3 while keeping in mind the purpose of incentivizing the acceleration of infrastructure investment, we find that the upcoming repeal actually strengthens the conclusion that section 9-220.3 suspends the Commission's obligation to determine the justness and reasonableness of rate changes which are required in all other instances. The limited timeframe under which gas utilities may take advantage of the cost recovery mechanism outlined coincides with the Commission's reading, discussed above, that the provisions of sections 9-220.3 are intended to function as a guarantee rather than a simple possibility of recovering investments on infrastructure. The fact that the SMP will continue past the effective date of this provision, provided that no further action is taken by the Legislature, simply means that the later years of the SMP will be governed by the traditional principles of Commission oversight and traditional rate-making and there will be no additional incentives for spending on infrastructure.

¶ 60 Having considered the plain language of the Act and the purpose behind the enactment of section 9-220.3 in particular, we agree with the Commission's interpretation of the Act and its application in context of the Commission's approval of the SMP. Thus, we find no reason to reverse the Commission's final decision and affirm.

¶ 61 Affirmed.