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LRB096 20594 ASK 44192 a

1 AMENDMENT TO SENATE BILL 3388

2 AMENDMENT NO. _____. Amend Senate Bill 3388 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Power Agency Act is amended by
5 changing Sections 1-10 and 1-20 and by adding Sections 1-77 and
6 1-78 as follows:

7 (20 ILCS 3855/1-10)

8 Sec. 1-10. Definitions.

9 "Agency" means the Illinois Power Agency.

10 "Agency loan agreement" means any agreement pursuant to
11 which the Illinois Finance Authority agrees to loan the
12 proceeds of revenue bonds issued with respect to a project to
13 the Agency upon terms providing for loan repayment installments
14 at least sufficient to pay when due all principal of, interest
15 and premium, if any, on those revenue bonds, and providing for
16 maintenance, insurance, and other matters in respect of the

1 project.

2 "Authority" means the Illinois Finance Authority.

3 "Clean coal facility" means an electric generating
4 facility that uses primarily coal as a feedstock and that
5 captures and sequesters carbon dioxide emissions at the
6 following levels: at least 50% of the total carbon dioxide
7 emissions that the facility would otherwise emit if, at the
8 time construction commences, the facility is scheduled to
9 commence operation before 2016, at least 70% of the total
10 carbon dioxide emissions that the facility would otherwise emit
11 if, at the time construction commences, the facility is
12 scheduled to commence operation during 2016 or 2017, and at
13 least 90% of the total carbon dioxide emissions that the
14 facility would otherwise emit if, at the time construction
15 commences, the facility is scheduled to commence operation
16 after 2017. The power block of the clean coal facility shall
17 not exceed allowable emission rates for sulfur dioxide,
18 nitrogen oxides, carbon monoxide, particulates and mercury for
19 a natural gas-fired combined-cycle facility the same size as
20 and in the same location as the clean coal facility at the time
21 the clean coal facility obtains an approved air permit. All
22 coal used by a clean coal facility shall have high volatile
23 bituminous rank and greater than 1.7 pounds of sulfur per
24 million btu content, unless the clean coal facility does not
25 use gasification technology and was operating as a conventional
26 coal-fired electric generating facility on June 1, 2009 (the

1 effective date of Public Act 95-1027).

2 "Clean coal SNG brownfield facility" means a facility that
3 (1) has commenced construction by July 1, 2014 on an urban
4 brownfield site in a municipality with at least 1,000,000
5 residents; (2) uses a gasification process to produce
6 substitute natural gas; (3) uses coal as at least 50% of the
7 total feedstock over the term of any sourcing agreement with a
8 utility and the remainder of the feedstock may be either
9 petroleum coke or coal, with all such coal having a high
10 bituminous rank and greater than 1.7 pounds of sulfur per
11 million Btu content; and (4) captures and sequesters at least
12 85% of the total carbon dioxide emissions that the facility
13 would otherwise emit.

14 "Clean coal SNG facility" means a facility that uses a
15 gasification process to produce substitute natural gas, that
16 sequesters at least 90% of the total carbon dioxide emissions
17 that the facility would otherwise emit and that uses petroleum
18 coke or coal as a feedstock, with all such coal having a high
19 bituminous rank and greater than 1.7 pounds of sulfur per
20 million btu content; provided, however, a clean coal SNG
21 brownfield facility shall not be a clean coal SNG facility.

22 "Commission" means the Illinois Commerce Commission.

23 "Costs incurred in connection with the development and
24 construction of a facility" means:

25 (1) the cost of acquisition of all real property,
26 fixtures, and improvements in connection therewith and

1 equipment, personal property, and other property, rights,
2 and easements acquired that are deemed necessary for the
3 operation and maintenance of the facility;

4 (2) financing costs with respect to bonds, notes, and
5 other evidences of indebtedness of the Agency;

6 (3) all origination, commitment, utilization,
7 facility, placement, underwriting, syndication, credit
8 enhancement, and rating agency fees;

9 (4) engineering, design, procurement, consulting,
10 legal, accounting, title insurance, survey, appraisal,
11 escrow, trustee, collateral agency, interest rate hedging,
12 interest rate swap, capitalized interest, contingency, as
13 required by lenders, and other financing costs, and other
14 expenses for professional services; and

15 (5) the costs of plans, specifications, site study and
16 investigation, installation, surveys, other Agency costs
17 and estimates of costs, and other expenses necessary or
18 incidental to determining the feasibility of any project,
19 together with such other expenses as may be necessary or
20 incidental to the financing, insuring, acquisition, and
21 construction of a specific project and starting up,
22 commissioning, and placing that project in operation.

23 "Department" means the Department of Commerce and Economic
24 Opportunity.

25 "Director" means the Director of the Illinois Power Agency.

26 "Demand-response" means measures that decrease peak

1 electricity demand or shift demand from peak to off-peak
2 periods.

3 "Energy efficiency" means measures that reduce the amount
4 of electricity or natural gas required to achieve a given end
5 use.

6 "Electric utility" has the same definition as found in
7 Section 16-102 of the Public Utilities Act.

8 "Facility" means an electric generating unit or a
9 co-generating unit that produces electricity along with
10 related equipment necessary to connect the facility to an
11 electric transmission or distribution system.

12 "Governmental aggregator" means one or more units of local
13 government that individually or collectively procure
14 electricity to serve residential retail electrical loads
15 located within its or their jurisdiction.

16 "Local government" means a unit of local government as
17 defined in Article VII of Section 1 of the Illinois
18 Constitution.

19 "Municipality" means a city, village, or incorporated
20 town.

21 "Person" means any natural person, firm, partnership,
22 corporation, either domestic or foreign, company, association,
23 limited liability company, joint stock company, or association
24 and includes any trustee, receiver, assignee, or personal
25 representative thereof.

26 "Project" means the planning, bidding, and construction of

1 a facility.

2 "Public utility" has the same definition as found in
3 Section 3-105 of the Public Utilities Act.

4 "Real property" means any interest in land together with
5 all structures, fixtures, and improvements thereon, including
6 lands under water and riparian rights, any easements,
7 covenants, licenses, leases, rights-of-way, uses, and other
8 interests, together with any liens, judgments, mortgages, or
9 other claims or security interests related to real property.

10 "Renewable energy credit" means a tradable credit that
11 represents the environmental attributes of a certain amount of
12 energy produced from a renewable energy resource.

13 "Renewable energy resources" includes energy and its
14 associated renewable energy credit or renewable energy credits
15 from wind, solar thermal energy, photovoltaic cells and panels,
16 biodiesel, crops and untreated and unadulterated organic waste
17 biomass, tree waste, hydropower that does not involve new
18 construction or significant expansion of hydropower dams, and
19 other alternative sources of environmentally preferable
20 energy. For purposes of this Act, landfill gas produced in the
21 State is considered a renewable energy resource. "Renewable
22 energy resources" does not include the incineration or burning
23 of tires, garbage, general household, institutional, and
24 commercial waste, industrial lunchroom or office waste,
25 landscape waste other than tree waste, railroad crossties,
26 utility poles, or construction or demolition debris, other than

1 untreated and unadulterated waste wood.

2 "Revenue bond" means any bond, note, or other evidence of
3 indebtedness issued by the Authority, the principal and
4 interest of which is payable solely from revenues or income
5 derived from any project or activity of the Agency.

6 "Sequester" means permanent storage of carbon dioxide only
7 as approved by the Commission pursuant to subsection (h-7) of
8 Section 9-220 of the Public Utilities Act by injecting it into
9 a saline aquifer, a depleted gas reservoir, or an oil
10 reservoir, directly or through an enhanced oil recovery process
11 that may involve intermediate storage, regardless of whether
12 these activities are conducted by a clean coal facility, clean
13 coal SNG facility, clean coal SNG brownfield facility, or a
14 party with which a clean coal facility, clean coal SNG
15 facility, or clean coal SNG brownfield facility has contracted
16 for such purposes in a salt dome.

17 "Sourcing ~~Service~~ agreement" means (i) in the case of an
18 electric utility, an agreement between the owner of a clean
19 coal facility and such electric utility, which agreement shall
20 have terms and conditions meeting the requirements of paragraph
21 (3) of subsection (d) of Section 1-75, ~~and~~ (ii) in the case of
22 an alternative retail electric supplier, an agreement between
23 the owner of a clean coal facility and such alternative retail
24 electric supplier, which agreement shall have terms and
25 conditions meeting the requirements of Section 16-115(d) (5) of
26 the Public Utilities Act, and (iii) in case of a gas utility,

1 an agreement between the owner of a clean coal SNG brownfield
2 facility and the gas utility, which agreement shall have the
3 terms and conditions meeting the requirements of subsection
4 (h-1) of Section 9-220 of the Public Utilities Act.

5 "Substitute natural gas" or "SNG" means a gas manufactured
6 by gasification of hydrocarbon feedstock, which is
7 substantially interchangeable in use and distribution with
8 conventional natural gas.

9 "Total resource cost test" or "TRC test" means a standard
10 that is met if, for an investment in energy efficiency or
11 demand-response measures, the benefit-cost ratio is greater
12 than one. The benefit-cost ratio is the ratio of the net
13 present value of the total benefits of the program to the net
14 present value of the total costs as calculated over the
15 lifetime of the measures. A total resource cost test compares
16 the sum of avoided electric utility costs, representing the
17 benefits that accrue to the system and the participant in the
18 delivery of those efficiency measures, as well as other
19 quantifiable societal benefits, including avoided natural gas
20 utility costs, to the sum of all incremental costs of end-use
21 measures that are implemented due to the program (including
22 both utility and participant contributions), plus costs to
23 administer, deliver, and evaluate each demand-side program, to
24 quantify the net savings obtained by substituting the
25 demand-side program for supply resources. In calculating
26 avoided costs of power and energy that an electric utility

1 would otherwise have had to acquire, reasonable estimates shall
2 be included of financial costs likely to be imposed by future
3 regulations and legislation on emissions of greenhouse gases.

4 (Source: P.A. 95-481, eff. 8-28-07; 95-913, eff. 1-1-09;
5 95-1027, eff. 6-1-09; 96-33, eff. 7-10-09; 96-159, eff.
6 8-10-09; 96-784, eff. 8-28-09; 96-1000, eff. 7-2-10.)

7 (20 ILCS 3855/1-20)

8 Sec. 1-20. General powers of the Agency.

9 (a) The Agency is authorized to do each of the following:

10 (1) Develop electricity procurement plans to ensure
11 adequate, reliable, affordable, efficient, and
12 environmentally sustainable electric service at the lowest
13 total cost over time, taking into account any benefits of
14 price stability, for electric utilities that on December
15 31, 2005 provided electric service to at least 100,000
16 customers in Illinois. The procurement plans shall be
17 updated on an annual basis and shall include electricity
18 generated from renewable resources sufficient to achieve
19 the standards specified in this Act.

20 (2) Conduct competitive procurement processes to
21 procure the supply resources identified in the procurement
22 plan, pursuant to Section 16-111.5 of the Public Utilities
23 Act.

24 (3) Develop electric generation and co-generation
25 facilities that use indigenous coal or renewable

1 resources, or both, financed with bonds issued by the
2 Illinois Finance Authority.

3 (4) Supply electricity from the Agency's facilities at
4 cost to one or more of the following: municipal electric
5 systems, governmental aggregators, or rural electric
6 cooperatives in Illinois.

7 (b) Except as otherwise limited by this Act, the Agency has
8 all of the powers necessary or convenient to carry out the
9 purposes and provisions of this Act, including without
10 limitation, each of the following:

11 (1) To have a corporate seal, and to alter that seal at
12 pleasure, and to use it by causing it or a facsimile to be
13 affixed or impressed or reproduced in any other manner.

14 (2) To use the services of the Illinois Finance
15 Authority necessary to carry out the Agency's purposes.

16 (3) To negotiate and enter into loan agreements and
17 other agreements with the Illinois Finance Authority.

18 (4) To obtain and employ personnel and hire consultants
19 that are necessary to fulfill the Agency's purposes, and to
20 make expenditures for that purpose within the
21 appropriations for that purpose.

22 (5) To purchase, receive, take by grant, gift, devise,
23 bequest, or otherwise, lease, or otherwise acquire, own,
24 hold, improve, employ, use, and otherwise deal in and with,
25 real or personal property whether tangible or intangible,
26 or any interest therein, within the State.

1 (6) To acquire real or personal property, whether
2 tangible or intangible, including without limitation
3 property rights, interests in property, franchises,
4 obligations, contracts, and debt and equity securities,
5 and to do so by the exercise of the power of eminent domain
6 in accordance with Section 1-21; except that any real
7 property acquired by the exercise of the power of eminent
8 domain must be located within the State.

9 (7) To sell, convey, lease, exchange, transfer,
10 abandon, or otherwise dispose of, or mortgage, pledge, or
11 create a security interest in, any of its assets,
12 properties, or any interest therein, wherever situated.

13 (8) To purchase, take, receive, subscribe for, or
14 otherwise acquire, hold, make a tender offer for, vote,
15 employ, sell, lend, lease, exchange, transfer, or
16 otherwise dispose of, mortgage, pledge, or grant a security
17 interest in, use, and otherwise deal in and with, bonds and
18 other obligations, shares, or other securities (or
19 interests therein) issued by others, whether engaged in a
20 similar or different business or activity.

21 (9) To make and execute agreements, contracts, and
22 other instruments necessary or convenient in the exercise
23 of the powers and functions of the Agency under this Act,
24 including contracts with any person, local government,
25 State agency, or other entity; and all State agencies and
26 all local governments are authorized to enter into and do

1 all things necessary to perform any such agreement,
2 contract, or other instrument with the Agency. No such
3 agreement, contract, or other instrument shall exceed 40
4 years.

5 (10) To lend money, invest and reinvest its funds in
6 accordance with the Public Funds Investment Act, and take
7 and hold real and personal property as security for the
8 payment of funds loaned or invested.

9 (11) To borrow money at such rate or rates of interest
10 as the Agency may determine, issue its notes, bonds, or
11 other obligations to evidence that indebtedness, and
12 secure any of its obligations by mortgage or pledge of its
13 real or personal property, machinery, equipment,
14 structures, fixtures, inventories, revenues, grants, and
15 other funds as provided or any interest therein, wherever
16 situated.

17 (12) To enter into agreements with the Illinois Finance
18 Authority to issue bonds whether or not the income
19 therefrom is exempt from federal taxation.

20 (13) To procure insurance against any loss in
21 connection with its properties or operations in such amount
22 or amounts and from such insurers, including the federal
23 government, as it may deem necessary or desirable, and to
24 pay any premiums therefor.

25 (14) To negotiate and enter into agreements with
26 trustees or receivers appointed by United States

1 bankruptcy courts or federal district courts or in other
2 proceedings involving adjustment of debts and authorize
3 proceedings involving adjustment of debts and authorize
4 legal counsel for the Agency to appear in any such
5 proceedings.

6 (15) To file a petition under Chapter 9 of Title 11 of
7 the United States Bankruptcy Code or take other similar
8 action for the adjustment of its debts.

9 (16) To enter into management agreements for the
10 operation of any of the property or facilities owned by the
11 Agency.

12 (17) To enter into an agreement to transfer and to
13 transfer any land, facilities, fixtures, or equipment of
14 the Agency to one or more municipal electric systems,
15 governmental aggregators, or rural electric agencies or
16 cooperatives, for such consideration and upon such terms as
17 the Agency may determine to be in the best interest of the
18 citizens of Illinois.

19 (18) To enter upon any lands and within any building
20 whenever in its judgment it may be necessary for the
21 purpose of making surveys and examinations to accomplish
22 any purpose authorized by this Act.

23 (19) To maintain an office or offices at such place or
24 places in the State as it may determine.

25 (20) To request information, and to make any inquiry,
26 investigation, survey, or study that the Agency may deem

1 necessary to enable it effectively to carry out the
2 provisions of this Act.

3 (21) To accept and expend appropriations.

4 (22) To engage in any activity or operation that is
5 incidental to and in furtherance of efficient operation to
6 accomplish the Agency's purposes.

7 (23) To adopt, revise, amend, and repeal rules with
8 respect to its operations, properties, and facilities as
9 may be necessary or convenient to carry out the purposes of
10 this Act, subject to the provisions of the Illinois
11 Administrative Procedure Act and Sections 1-22 and 1-35 of
12 this Act.

13 (24) To establish and collect charges and fees as
14 described in this Act.

15 (25) To conduct competitive gasification feedstock
16 procurement processes to procure the feedstocks for the
17 clean coal SNG brownfield facility in accordance with the
18 requirements of Section 1-78 of this Act ~~To manage~~
19 ~~procurement of substitute natural gas from a facility that~~
20 ~~meets the criteria specified in subsection (a) of Section~~
21 ~~1-58 of this Act, on terms and conditions that may be~~
22 ~~approved by the Agency pursuant to subsection (d) of~~
23 ~~Section 1-58 of this Act, to support the operations of~~
24 ~~State agencies and local governments that agree to such~~
25 ~~terms and conditions. This procurement process is not~~
26 ~~subject to the Procurement Code.~~

1 (26) To review, revise, and approve sourcing
2 agreements and mediate and resolve disputes between gas
3 utilities and the clean coal SNG brownfield facility
4 pursuant to subsection (h-1) of Section 9-220 of the Public
5 Utilities Act.

6 (Source: P.A. 95-481, eff. 8-28-07; 96-784, eff. 8-28-09;
7 96-1000, eff. 7-2-10.)

8 (20 ILCS 3855/1-77 new)

9 Sec. 1-77. The Planning and Procurement Bureau; feedstock
10 procurement administrator; qualified expert or expert
11 consulting firm.

12 (a) The Planning and Procurement Bureau shall at least
13 every 5 years beginning in 2015 develop feedstock procurement
14 plans and conduct competitive feedstock procurement processes
15 in accordance with the requirements of Section 1-78 of this
16 Act.

17 (1) The Agency shall at least every 5 years beginning
18 in 2015 issue a request for qualifications for experts or
19 expert consulting firms to develop the feedstock
20 procurement plans in accordance with Section 1-78 of this
21 Act. In order to qualify, an expert or expert consulting
22 firm must have:

23 (A) direct previous experience assembling large
24 scale feedstock supply plans or portfolios for
25 industrial customers;

1 (B) an advanced degree in economics, mathematics,
2 engineering, risk management, or a related area of
3 study;

4 (C) ten years of experience in the energy sector,
5 including managing supply risk;

6 (D) expertise in wholesale feedstock markets,
7 which may be particularized to the specific type of
8 feedstock to be purchased in that procurement event;

9 (E) expertise in credit protocols and familiarity
10 with contract protocols;

11 (F) adequate resources to perform and fulfill the
12 required functions and responsibilities; and

13 (G) the absence of a conflict of interest and
14 inappropriate bias for or against potential bidders or
15 the affected clean coal SNG brownfield facility.

16 (2) The Agency shall at least every 5 years beginning
17 in 2015 issue a request for qualifications for a feedstock
18 procurement administrator to conduct the competitive
19 feedstock procurement processes in accordance with Section
20 1-78 of this Act. In order to qualify, an expert or expert
21 consulting firm must have:

22 (A) direct previous experience administering a
23 large scale competitive feedstock procurement process;

24 (B) an advanced degree in economics, mathematics,
25 engineering, or a related area of study;

26 (C) ten years of experience in the energy sector,

1 including risk management experience;

2 (D) expertise in wholesale feedstock market rules,
3 which may be particularized to the specific type of
4 feedstock to be purchased in that procurement event;

5 (E) expertise in credit and contract protocols;

6 (F) adequate resources to perform and fulfill the
7 required functions and responsibilities; and

8 (G) the absence of a conflict of interest and
9 inappropriate bias for or against potential bidders or
10 the affected clean coal SNG brownfield facility.

11 (3) The Agency shall provide the clean coal SNG
12 brownfield facility and other interested parties with the
13 lists of qualified experts or expert consulting firms
14 identified through the request for qualifications
15 processes that are under consideration to develop the
16 feedstock procurement plans and to serve as the feedstock
17 procurement administrator. The Agency shall also provide
18 the clean coal SNG brownfield facility and other interested
19 parties with each qualified expert's or expert consulting
20 firm's response to the request for qualifications. All
21 information provided under this subparagraph (3) shall
22 also be provided to the Commission. The Agency may provide
23 by rule for fees associated with supplying the information
24 to the clean coal SNG brownfield facility and other
25 interested parties. The clean coal SNG brownfield facility
26 and other interested parties must, within 5 business days

1 after receiving the lists and information, notify the
2 Agency in writing if they object to any experts or expert
3 consulting firms on the lists. Objections shall be based
4 on:

5 (A) failure to satisfy qualification criteria;

6 (B) identification of a conflict of interest; or

7 (C) evidence of inappropriate bias for or against
8 potential bidders or the clean coal SNG brownfield
9 facility.

10 The Agency shall remove an expert or expert consulting
11 firm from the list within 10 days if there is a reasonable
12 basis for an objection and provide the updated list to the
13 clean coal SNG brownfield facility and other interested
14 parties. If the Agency fails to remove an expert or expert
15 consulting firm from a list, then an objecting party may
16 seek review by the Commission within 5 days thereafter by
17 filing a petition, and the Commission shall render a ruling
18 on the petition within 10 days after the filing. There is
19 no right of appeal of the Commission's ruling.

20 (4) The Agency shall, as needed, issue requests for
21 proposals to the qualified experts or expert consulting
22 firms to develop a feedstock procurement plan for the clean
23 coal SNG brownfield facility and to serve as feedstock
24 procurement administrator.

25 (5) The Agency shall select an expert or expert
26 consulting firm to develop feedstock procurement plans

1 based on the proposals submitted and shall award one-year
2 contracts to those selected with an option for the Agency
3 for a one-year renewal.

4 (6) The Agency shall select, with the approval of the
5 Commission, an expert or expert consulting firm to serve as
6 feedstock procurement administrator based on the proposals
7 submitted. If the Commission rejects the Agency's
8 selection within 5 days after being notified of the
9 Agency's selection, then the Agency shall submit another
10 recommendation within 3 days after the Commission's
11 rejection based on the proposals submitted. The Agency
12 shall award at least a one-year contract to the expert or
13 expert consulting firm selected with the Commission's
14 approval with an option for the Agency for renewal for a
15 term equal to the term of the contract.

16 (b) The experts or expert consulting firms retained by the
17 Agency shall, as appropriate, prepare feedstock procurement
18 plans and conduct a competitive feedstock procurement process
19 as prescribed in Section 1-78 of this Act to ensure adequate,
20 reliable, affordable feedstocks, taking into account any
21 benefits of price stability, for the clean coal SNG brownfield
22 facility.

23 (c) The draft procurement plans are subject to public
24 comment pursuant to Section 1-78 of this Act.

25 (d) The Agency shall assess fees to each bidder to recover
26 the costs incurred in connection with the competitive

1 procurement process.

2 (20 ILCS 3855/1-78 new)

3 Sec. 1-78. Feedstock procurement plan; feedstock
4 procurement process.

5 (a) A feedstock procurement plan shall at least every 5
6 years beginning in 2015 be prepared for the clean coal SNG
7 brownfield facility based on the clean coal SNG brownfield
8 facility's projection of feedstock usage and ratios, and
9 consistent with the applicable requirements of the Public
10 Utilities Act and this Act. The plan shall specifically
11 identify the wholesale feedstock products to be procured
12 following plan approval and shall follow all the requirements
13 set forth in this Act, the Public Utilities Act, and all
14 applicable State and federal laws, statutes, rules, or
15 regulations, as well as Commission orders. Nothing in this
16 Section precludes consideration of contracts longer than 5
17 years and related forecast data. Any feedstock procurement
18 occurring in accordance with this plan shall be competitively
19 bid through a request for proposals process. Approval and
20 implementation of the feedstock procurement plan shall be
21 subject to review and approval by the Commission according to
22 the provisions set forth in this Section. A feedstock
23 procurement plan shall include each of the following
24 components:

25 (1) Daily load analysis. This analysis shall include:

1 (A) multi-year historical analysis of hourly
2 loads; and

3 (B) known or projected changes to future loads.

4 (2) Determination of the fuel specifications required
5 for the clean coal SNG brownfield facility, including:

6 (A) coal and petroleum coke mix, as set by the
7 clean coal SNG brownfield facility with coal
8 comprising at least 50% of the total feedstock over the
9 term of any sourcing agreement;

10 (B) volume of each feedstock required;

11 (C) quality standards of each feedstock;

12 (D) delivery requirements, including cost
13 implications; and

14 (E) technical specifications of the clean coal SNG
15 brownfield facility for its feedstocks.

16 (b) The feedstock procurement process shall be
17 administered by a feedstock procurement administrator and
18 monitored by a feedstock procurement monitor.

19 (1) The feedstock procurement administrator shall:

20 (A) design the final feedstock procurement process
21 in accordance with subsection (d) of this Section
22 following Commission approval of the feedstock
23 procurement plan;

24 (B) develop feedstock benchmarks in accordance
25 with subsection (d)(3) to be used to evaluate bids;
26 these benchmarks shall be submitted to the Commission

1 for review and approval on a confidential basis prior
2 to the feedstock procurement event;

3 (C) serve as the interface between the clean coal
4 SNG brownfield facility and coal and petroleum coke
5 suppliers;

6 (D) manage the bidder pre-qualification and
7 registration process;

8 (E) obtain the facility's agreement to the final
9 form of all supply contracts and credit collateral
10 agreements;

11 (F) administer the request for feedstock proposals
12 process;

13 (G) have the discretion to negotiate to determine
14 whether bidders are willing to lower the price of bids
15 that meet the benchmarks approved by the Commission;
16 any post-bid negotiations with bidders shall be
17 limited to price only and shall be completed within 24
18 hours after opening the sealed bids and shall be
19 conducted in a fair and unbiased manner; in conducting
20 the negotiations, there shall be no disclosure of any
21 information derived from proposals submitted by
22 competing bidders; if information is disclosed to any
23 bidder, it shall be provided to all competing bidders;

24 (H) maintain confidentiality of supplier and
25 bidding information in a manner consistent with all
26 applicable laws, rules, regulations, and tariffs;

1 (I) submit a confidential report to the Commission
2 recommending acceptance or rejection of bids;

3 (J) notify the facility of contract counterparties
4 and contract specifics; and

5 (K) administer related contingency feedstock
6 procurement events.

7 (2) The feedstock procurement monitor, who shall be
8 retained by the Commission, shall:

9 (A) monitor interactions among the feedstock
10 procurement administrator, suppliers, and the
11 facility;

12 (B) monitor and report to the Commission on the
13 progress of the feedstock procurement process;

14 (C) provide an independent, confidential report to
15 the Commission regarding the results of the feedstock
16 procurement event;

17 (D) preserve the confidentiality of supplier and
18 bidding information in a manner consistent with all
19 applicable laws, rules, regulations, and tariffs;

20 (E) provide expert advice to the Commission and
21 consult with the feedstock procurement administrator
22 regarding issues related to feedstock procurement
23 process design, rules, protocols, and policy-related
24 matters;

25 (F) consult with the feedstock procurement
26 administrator regarding the development and use of

1 benchmark criteria, standard form contracts, credit
2 policies, and bid documents; and

3 (G) assess compliance with the procurement plans
4 approved by the Commission.

5 (c) The feedstock planning process shall be conducted as
6 follows:

7 (1) Beginning in 2015, the clean coal SNG brownfield
8 facility shall annually provide a range of feedstock
9 requirement forecasts to the Agency by May 15 of each year,
10 or such other date as may be required by the Commission or
11 Agency. The feedstock requirement forecasts shall cover
12 the 5-year feedstock procurement planning period for the
13 next feedstock procurement plan, or such other longer
14 period that the Agency or the Commission may require and
15 shall include daily data representing a high-load,
16 low-load, and expected-load scenario for the load of the
17 utilities required to enter into sourcing agreements with
18 the clean coal SNG brownfield facility. The utility shall
19 provide supporting data and assumptions for each of the
20 scenarios.

21 (2) Beginning in 2015, the Agency shall at least every
22 5 years prepare a feedstock procurement plan by June 15, or
23 such other date as may be required by the Commission. The
24 feedstock procurement plan shall identify the portfolio of
25 feedstocks to be procured. Copies of the feedstock
26 procurement plan shall be posted and made publicly

1 available on the Agency's and Commission's websites, and
2 copies shall also be provided to the clean coal SNG
3 brownfield facility. The clean coal SNG brownfield
4 facility shall have 30 days following the date of posting
5 to provide comment to the Agency on the feedstock
6 procurement plan. Other interested entities also may
7 comment on the feedstock procurement plan. All comments
8 submitted to the Agency shall be specific, supported by
9 data or other detailed analyses, and, if objecting to all
10 or a portion of the feedstock procurement plan, accompanied
11 by specific alternative wording or proposals. All comments
12 shall be posted on the Agency's and Commission's websites.
13 During this 30-day comment period, the Agency shall hold at
14 least one public hearing for the purpose of receiving
15 public comment on the procurement plan. Within 14 days
16 following the end of the 30-day comment period, the Agency
17 shall revise the feedstock procurement plan as necessary
18 based on the comments received, file the feedstock
19 procurement plan with the Commission, and post the
20 feedstock procurement plan on the websites.

21 (3) Within 5 days after the filing of the feedstock
22 procurement plan, any person objecting to the feedstock
23 procurement plan shall file an objection with the
24 Commission. Within 10 days after the filing, the Commission
25 shall determine whether a hearing is necessary. The
26 Commission shall enter its order confirming or modifying

1 the feedstock procurement plan within 90 days after the
2 filing of the feedstock procurement plan by the Agency.

3 (4) The Commission shall approve the feedstock
4 procurement plan, including expressly the forecast used in
5 the feedstock procurement plan, if the Commission
6 determines that it will ensure adequate, reliable, and
7 affordable feedstocks to the clean coal SNG brownfield
8 facility at the lowest total cost over time, taking into
9 account any benefits of price stability.

10 (d) The feedstock procurement process shall include each of
11 the following components:

12 (1) Solicitation, pre qualification, and registration
13 of bidders. The feedstock procurement administrator shall
14 disseminate information to potential bidders to promote a
15 feedstock procurement event, notify potential bidders that
16 the feedstock procurement administrator may enter into a
17 post-bid price negotiation with bidders that meet the
18 applicable benchmarks, provide supply requirements, and
19 otherwise explain the competitive feedstock procurement
20 process. In addition to such other publication as the
21 feedstock procurement administrator determines is
22 appropriate, this information shall be posted on the
23 Agency's and the Commission's websites. The feedstock
24 procurement administrator shall also administer the
25 prequalification process, including evaluation of credit
26 worthiness, compliance with feedstock procurement rules,

1 and agreement to the standard form contract developed
2 pursuant to paragraph (2) of this subsection (d). The
3 feedstock procurement administrator shall then identify
4 and register bidders to participate in the feedstock
5 procurement event.

6 (2) Standard contract forms and credit terms and
7 instruments. The feedstock procurement administrator, in
8 consultation with the clean coal SNG brownfield facility,
9 gas utilities, the Commission, and other interested
10 parties and subject to Commission oversight, shall develop
11 and provide standard contract forms for the supplier
12 contracts that meet generally accepted industry practices.
13 Standard credit terms and instruments that meet generally
14 accepted industry practices shall be similarly developed.
15 The feedstock procurement administrator shall make
16 available to the Commission all written comments it
17 receives on the contract forms, credit terms, or
18 instruments. If the feedstock procurement administrator
19 cannot reach agreement with the applicable clean coal SNG
20 brownfield facility as to the contract terms and
21 conditions, then the feedstock procurement administrator
22 must notify the Commission of any disputed terms and the
23 Commission shall resolve the dispute. The terms of the
24 contracts shall not be subject to negotiation by winning
25 bidders and the bidders must agree to the terms of the
26 contract in advance so that winning bids are selected

1 solely on the basis of price.

2 (3) Establishment of a market-based price benchmark.
3 As part of the development of the feedstock procurement
4 process, the feedstock procurement administrator, in
5 consultation with the Commission staff, Agency staff, and
6 the feedstock procurement monitor, shall establish
7 benchmarks for evaluating the final prices in the contracts
8 for each of the feedstocks that will be procured through
9 the feedstock procurement process. The benchmarks shall be
10 based on price data for similar feedstocks for the same
11 delivery period and same delivery hub or other delivery
12 hubs after adjusting for that difference. The price
13 benchmarks may also be adjusted to take into account
14 differences between the information reflected in the
15 underlying data sources and the specific feedstocks and
16 gasification feedstock procurement process being used to
17 procure for the clean coal SNG brownfield facility. The
18 benchmarks shall be confidential but shall be provided to,
19 and shall be subject to, the Commission's review and
20 approval prior to a feedstock procurement event.

21 (4) Request for proposals. The feedstock procurement
22 administrator shall design and issue a request for
23 proposals to supply coal or petroleum coke in accordance
24 with the clean coal SNG brownfield facility's usage plan,
25 as approved by the Commission. The request for proposals
26 shall set forth a procedure for sealed, binding commitment

1 bidding with pay-as-bid settlement, and provision for
2 selection of bids on the basis of price.

3 (5) A plan for implementing contingencies in the event
4 of supplier default or failure of the feedstock procurement
5 process to fully meet the expected feedstock requirement
6 due to insufficient supplier participation, Commission
7 rejection of results, or any other cause. The plan must be
8 specific to the clean coal SNG brownfield facility's
9 feedstock specifications and requirements.

10 The feedstock procurement process described in this
11 subsection (d) is exempt from the requirements of the Illinois
12 Procurement Code, pursuant to Section 20-10 of that Code.

13 (e) Within 2 business days after opening the sealed bids,
14 the feedstock procurement administrator shall submit a
15 confidential report to the Commission. The report shall contain
16 the results of the bidding for each of the feedstock types
17 along with the feedstock procurement administrator's
18 recommendation for the acceptance and rejection of bids based
19 on the price benchmark criteria and other factors observed in
20 the process. The feedstock procurement monitor also shall
21 submit a confidential report to the Commission within 2
22 business days after opening the sealed bids. The report shall
23 contain the feedstock procurement monitor's assessment of
24 bidder behavior in the process, as well as an assessment of the
25 feedstock procurement administrator's compliance with the
26 feedstock procurement process and rules. The Commission shall

1 review the confidential reports submitted by the feedstock
2 procurement administrator and feedstock procurement monitor
3 and shall accept or reject the recommendations of the feedstock
4 procurement administrator within 2 business days after receipt
5 of the reports.

6 (f) Within 3 business days after the Commission decision
7 approving the results of a feedstock procurement event, the
8 clean coal SNG brownfield facility shall enter into binding
9 contractual arrangements with the winning suppliers using
10 standard form contracts.

11 (g) The names of the successful bidders and the amount of
12 feedstock to be delivered for each contract type and for each
13 contract term shall be made available to the public at the time
14 of Commission approval of a feedstock procurement event. The
15 Commission, the procurement monitor, the feedstock procurement
16 administrator, the Agency, and all participants in the
17 feedstock procurement process shall maintain the
18 confidentiality of all other supplier and bidding information
19 in a manner consistent with all applicable laws, rules,
20 regulations, and tariffs. Confidential information, including
21 the confidential reports submitted by the feedstock
22 procurement administrator and feedstock procurement monitor
23 pursuant to subsection (e) of this Section, shall not be
24 publicly available or discoverable by any party in any
25 proceeding absent a compelling demonstration of need. The
26 reports shall not be admissible in any proceeding other than

1 one for law enforcement purposes.

2 (h) Within 2 business days after a Commission decision
3 approving the results of a feedstock procurement event or such
4 other date as may be required by the Commission from time to
5 time, the clean coal SNG brownfield facility shall file for
6 informational purposes with the Commission its actual or
7 estimated feedstock costs by utility customer reflecting the
8 costs associated with the feedstock procurement.

9 (i) The clean coal SNG brownfield facility shall pay for
10 reasonable costs incurred by the Agency in administering the
11 feedstock procurement events, which costs shall be included in
12 the actual delivered fuel costs of the clean coal SNG
13 brownfield facility. The Agency shall determine the amount owed
14 for each feedstock procurement event, and the clean coal SNG
15 brownfield facility shall pay that amount to the Agency within
16 30 days after being informed by the Agency of the amount owed.
17 Those funds shall be deposited into the Illinois Power Agency
18 Operations Fund, pursuant to Section 1-55 of this Act, to be
19 used to reimburse expenses related to the feedstock
20 procurement.

21 (j) The Commission has the authority to adopt rules to
22 carry out the provisions of this Section. For the public
23 interest, safety, and welfare, the Commission also has the
24 authority to adopt rules to carry out the provisions of this
25 Section on an emergency basis.

26 (k) On or before April 1 of each year, the Commission may

1 hold an informal hearing for the purpose of receiving comments
2 on the prior year's feedstock procurement process and any
3 recommendations for change.

4 Section 7. The Illinois Procurement Code is amended by
5 changing Sections 1-10 and 20-10 as follows:

6 (30 ILCS 500/1-10)

7 Sec. 1-10. Application.

8 (a) This Code applies only to procurements for which
9 contractors were first solicited on or after July 1, 1998. This
10 Code shall not be construed to affect or impair any contract,
11 or any provision of a contract, entered into based on a
12 solicitation prior to the implementation date of this Code as
13 described in Article 99, including but not limited to any
14 covenant entered into with respect to any revenue bonds or
15 similar instruments. All procurements for which contracts are
16 solicited between the effective date of Articles 50 and 99 and
17 July 1, 1998 shall be substantially in accordance with this
18 Code and its intent.

19 (b) This Code shall apply regardless of the source of the
20 funds with which the contracts are paid, including federal
21 assistance moneys. This Code shall not apply to:

22 (1) Contracts between the State and its political
23 subdivisions or other governments, or between State
24 governmental bodies except as specifically provided in

1 this Code.

2 (2) Grants, except for the filing requirements of
3 Section 20-80.

4 (3) Purchase of care.

5 (4) Hiring of an individual as employee and not as an
6 independent contractor, whether pursuant to an employment
7 code or policy or by contract directly with that
8 individual.

9 (5) Collective bargaining contracts.

10 (6) Purchase of real estate, except that notice of this
11 type of contract with a value of more than \$25,000 must be
12 published in the Procurement Bulletin within 7 days after
13 the deed is recorded in the county of jurisdiction. The
14 notice shall identify the real estate purchased, the names
15 of all parties to the contract, the value of the contract,
16 and the effective date of the contract.

17 (7) Contracts necessary to prepare for anticipated
18 litigation, enforcement actions, or investigations,
19 provided that the chief legal counsel to the Governor shall
20 give his or her prior approval when the procuring agency is
21 one subject to the jurisdiction of the Governor, and
22 provided that the chief legal counsel of any other
23 procuring entity subject to this Code shall give his or her
24 prior approval when the procuring entity is not one subject
25 to the jurisdiction of the Governor.

26 (8) Contracts for services to Northern Illinois

1 University by a person, acting as an independent
2 contractor, who is qualified by education, experience, and
3 technical ability and is selected by negotiation for the
4 purpose of providing non-credit educational service
5 activities or products by means of specialized programs
6 offered by the university.

7 (9) Procurement expenditures by the Illinois
8 Conservation Foundation when only private funds are used.

9 (10) Procurement expenditures by the Illinois Health
10 Information Exchange Authority involving private funds
11 from the Health Information Exchange Fund. "Private funds"
12 means gifts, donations, and private grants.

13 (c) This Code does not apply to the electric power
14 procurement process provided for under Section 1-75 of the
15 Illinois Power Agency Act and Section 16-111.5 of the Public
16 Utilities Act.

17 (d) Except for Section 20-160 and Article 50 of this Code,
18 and as expressly required by Section 9.1 of the Illinois
19 Lottery Law, the provisions of this Code do not apply to the
20 procurement process provided for under Section 9.1 of the
21 Illinois Lottery Law.

22 (e) This Code does not apply to the process used by the
23 Capital Development Board to retain a person or entity to
24 assist the Capital Development Board with its duties related to
25 the determination of costs of a clean coal SNG brownfield
26 facility, as defined by Section 1-10 of the Illinois Power

1 Agency Act, as required in subsection (h-3) of Section 9-220 of
2 the Public Utilities Act, including calculating the range of
3 capital costs, the range of operating and maintenance costs, or
4 the sequestration costs or monitoring the construction of clean
5 coal SNG brownfield facility for the full duration of
6 construction.

7 (f) This Code does not apply to the process used by the
8 Illinois Power Agency to retain a mediator to mediate sourcing
9 agreement disputes between gas utilities and the clean coal SNG
10 brownfield facility, as defined in Section 1-10 of the Illinois
11 Power Agency Act, as required under subsection (h-1) of Section
12 9-220 of the Public Utilities Act.

13 (Source: P.A. 95-481, eff. 8-28-07; 95-615, eff. 9-11-07;
14 95-876, eff. 8-21-08; 96-840, eff. 12-23-09; 96-1331, eff.
15 7-27-10.)

16 (30 ILCS 500/20-10)

17 (Text of Section from P.A. 96-159 and 96-588)

18 Sec. 20-10. Competitive sealed bidding; reverse auction.

19 (a) Conditions for use. All contracts shall be awarded by
20 competitive sealed bidding except as otherwise provided in
21 Section 20-5.

22 (b) Invitation for bids. An invitation for bids shall be
23 issued and shall include a purchase description and the
24 material contractual terms and conditions applicable to the
25 procurement.

1 (c) Public notice. Public notice of the invitation for bids
2 shall be published in the Illinois Procurement Bulletin at
3 least 14 days before the date set in the invitation for the
4 opening of bids.

5 (d) Bid opening. Bids shall be opened publicly in the
6 presence of one or more witnesses at the time and place
7 designated in the invitation for bids. The name of each bidder,
8 the amount of each bid, and other relevant information as may
9 be specified by rule shall be recorded. After the award of the
10 contract, the winning bid and the record of each unsuccessful
11 bid shall be open to public inspection.

12 (e) Bid acceptance and bid evaluation. Bids shall be
13 unconditionally accepted without alteration or correction,
14 except as authorized in this Code. Bids shall be evaluated
15 based on the requirements set forth in the invitation for bids,
16 which may include criteria to determine acceptability such as
17 inspection, testing, quality, workmanship, delivery, and
18 suitability for a particular purpose. Those criteria that will
19 affect the bid price and be considered in evaluation for award,
20 such as discounts, transportation costs, and total or life
21 cycle costs, shall be objectively measurable. The invitation
22 for bids shall set forth the evaluation criteria to be used.

23 (f) Correction or withdrawal of bids. Correction or
24 withdrawal of inadvertently erroneous bids before or after
25 award, or cancellation of awards of contracts based on bid
26 mistakes, shall be permitted in accordance with rules. After

1 bid opening, no changes in bid prices or other provisions of
2 bids prejudicial to the interest of the State or fair
3 competition shall be permitted. All decisions to permit the
4 correction or withdrawal of bids based on bid mistakes shall be
5 supported by written determination made by a State purchasing
6 officer.

7 (g) Award. The contract shall be awarded with reasonable
8 promptness by written notice to the lowest responsible and
9 responsive bidder whose bid meets the requirements and criteria
10 set forth in the invitation for bids, except when a State
11 purchasing officer determines it is not in the best interest of
12 the State and by written explanation determines another bidder
13 shall receive the award. The explanation shall appear in the
14 appropriate volume of the Illinois Procurement Bulletin.

15 (h) Multi-step sealed bidding. When it is considered
16 impracticable to initially prepare a purchase description to
17 support an award based on price, an invitation for bids may be
18 issued requesting the submission of unpriced offers to be
19 followed by an invitation for bids limited to those bidders
20 whose offers have been qualified under the criteria set forth
21 in the first solicitation.

22 (i) Alternative procedures. Notwithstanding any other
23 provision of this Act to the contrary, the Director of the
24 Illinois Power Agency may create alternative bidding
25 procedures to be used in procuring professional services under
26 subsection (a) of Section 1-75 and subsection (d) of Section

1 1-78 ~~1-75(a)~~ of the Illinois Power Agency Act and Section
2 16-111.5(c) of the Public Utilities Act and to procure
3 renewable energy resources under Section 1-56 of the Illinois
4 Power Agency Act. These alternative procedures shall be set
5 forth together with the other criteria contained in the
6 invitation for bids, and shall appear in the appropriate volume
7 of the Illinois Procurement Bulletin.

8 (j) Reverse auction. Notwithstanding any other provision
9 of this Section and in accordance with rules adopted by the
10 Director of Central Management Services as chief procurement
11 officer, a State purchasing officer under that chief
12 procurement officer's jurisdiction may procure supplies or
13 services through a competitive electronic auction bidding
14 process after the purchasing officer explains in writing to the
15 chief procurement officer his or her determination that the use
16 of such a process will be in the best interest of the State.
17 The chief procurement officer shall publish that determination
18 in his or her next volume of the Illinois Procurement Bulletin.

19 An invitation for bids shall be issued and shall include
20 (i) a procurement description, (ii) all contractual terms,
21 whenever practical, and (iii) conditions applicable to the
22 procurement, including a notice that bids will be received in
23 an electronic auction manner.

24 Public notice of the invitation for bids shall be given in
25 the same manner as provided in subsection (c).

26 Bids shall be accepted electronically at the time and in

1 the manner designated in the invitation for bids. During the
2 auction, a bidder's price shall be disclosed to other bidders.
3 Bidders shall have the opportunity to reduce their bid prices
4 during the auction. At the conclusion of the auction, the
5 record of the bid prices received and the name of each bidder
6 shall be open to public inspection.

7 After the auction period has terminated, withdrawal of bids
8 shall be permitted as provided in subsection (f).

9 The contract shall be awarded within 60 days after the
10 auction by written notice to the lowest responsible bidder, or
11 all bids shall be rejected except as otherwise provided in this
12 Code. Extensions of the date for the award may be made by
13 mutual written consent of the State purchasing officer and the
14 lowest responsible bidder.

15 This subsection does not apply to (i) procurements of
16 professional and artistic services, including but not limited
17 to telecommunications services, communications services,
18 Internet services, and information services, and (ii)
19 contracts for construction projects.

20 (Source: P.A. 95-481, eff. 8-28-07; 96-159, eff. 8-10-09;
21 96-588, eff. 8-18-09; revised 10-5-10.)

22 (Text of Section from P.A. 96-159 and 96-795)

23 Sec. 20-10. Competitive sealed bidding; reverse auction.

24 (a) Conditions for use. All contracts shall be awarded by
25 competitive sealed bidding except as otherwise provided in

1 Section 20-5.

2 (b) Invitation for bids. An invitation for bids shall be
3 issued and shall include a purchase description and the
4 material contractual terms and conditions applicable to the
5 procurement.

6 (c) Public notice. Public notice of the invitation for bids
7 shall be published in the Illinois Procurement Bulletin at
8 least 14 days before the date set in the invitation for the
9 opening of bids.

10 (d) Bid opening. Bids shall be opened publicly in the
11 presence of one or more witnesses at the time and place
12 designated in the invitation for bids. The name of each bidder,
13 the amount of each bid, and other relevant information as may
14 be specified by rule shall be recorded. After the award of the
15 contract, the winning bid and the record of each unsuccessful
16 bid shall be open to public inspection.

17 (e) Bid acceptance and bid evaluation. Bids shall be
18 unconditionally accepted without alteration or correction,
19 except as authorized in this Code. Bids shall be evaluated
20 based on the requirements set forth in the invitation for bids,
21 which may include criteria to determine acceptability such as
22 inspection, testing, quality, workmanship, delivery, and
23 suitability for a particular purpose. Those criteria that will
24 affect the bid price and be considered in evaluation for award,
25 such as discounts, transportation costs, and total or life
26 cycle costs, shall be objectively measurable. The invitation

1 for bids shall set forth the evaluation criteria to be used.

2 (f) Correction or withdrawal of bids. Correction or
3 withdrawal of inadvertently erroneous bids before or after
4 award, or cancellation of awards of contracts based on bid
5 mistakes, shall be permitted in accordance with rules. After
6 bid opening, no changes in bid prices or other provisions of
7 bids prejudicial to the interest of the State or fair
8 competition shall be permitted. All decisions to permit the
9 correction or withdrawal of bids based on bid mistakes shall be
10 supported by written determination made by a State purchasing
11 officer.

12 (g) Award. The contract shall be awarded with reasonable
13 promptness by written notice to the lowest responsible and
14 responsive bidder whose bid meets the requirements and criteria
15 set forth in the invitation for bids, except when a State
16 purchasing officer determines it is not in the best interest of
17 the State and by written explanation determines another bidder
18 shall receive the award. The explanation shall appear in the
19 appropriate volume of the Illinois Procurement Bulletin. The
20 written explanation must include:

- 21 (1) a description of the agency's needs;
- 22 (2) a determination that the anticipated cost will be
23 fair and reasonable;
- 24 (3) a listing of all responsible and responsive
25 bidders; and
- 26 (4) the name of the bidder selected, pricing, and the

1 reasons for selecting that bidder.

2 Each chief procurement officer may adopt guidelines to
3 implement the requirements of this subsection (g).

4 The written explanation shall be filed with the Legislative
5 Audit Commission and the Procurement Policy Board and be made
6 available for inspection by the public within 30 days after the
7 agency's decision to award the contract.

8 (h) Multi-step sealed bidding. When it is considered
9 impracticable to initially prepare a purchase description to
10 support an award based on price, an invitation for bids may be
11 issued requesting the submission of unpriced offers to be
12 followed by an invitation for bids limited to those bidders
13 whose offers have been qualified under the criteria set forth
14 in the first solicitation.

15 (i) Alternative procedures. Notwithstanding any other
16 provision of this Act to the contrary, the Director of the
17 Illinois Power Agency may create alternative bidding
18 procedures to be used in procuring professional services under
19 subsection (a) of Section 1-75 and subsection (d) of Section
20 1-78 ~~1-75(a)~~ of the Illinois Power Agency Act and Section
21 16-111.5(c) of the Public Utilities Act and to procure
22 renewable energy resources under Section 1-56 of the Illinois
23 Power Agency Act. These alternative procedures shall be set
24 forth together with the other criteria contained in the
25 invitation for bids, and shall appear in the appropriate volume
26 of the Illinois Procurement Bulletin.

1 (j) Reverse auction. Notwithstanding any other provision
2 of this Section and in accordance with rules adopted by the
3 chief procurement officer, that chief procurement officer may
4 procure supplies or services through a competitive electronic
5 auction bidding process after the chief procurement officer
6 determines that the use of such a process will be in the best
7 interest of the State. The chief procurement officer shall
8 publish that determination in his or her next volume of the
9 Illinois Procurement Bulletin.

10 An invitation for bids shall be issued and shall include
11 (i) a procurement description, (ii) all contractual terms,
12 whenever practical, and (iii) conditions applicable to the
13 procurement, including a notice that bids will be received in
14 an electronic auction manner.

15 Public notice of the invitation for bids shall be given in
16 the same manner as provided in subsection (c).

17 Bids shall be accepted electronically at the time and in
18 the manner designated in the invitation for bids. During the
19 auction, a bidder's price shall be disclosed to other bidders.
20 Bidders shall have the opportunity to reduce their bid prices
21 during the auction. At the conclusion of the auction, the
22 record of the bid prices received and the name of each bidder
23 shall be open to public inspection.

24 After the auction period has terminated, withdrawal of bids
25 shall be permitted as provided in subsection (f).

26 The contract shall be awarded within 60 days after the

1 auction by written notice to the lowest responsible bidder, or
2 all bids shall be rejected except as otherwise provided in this
3 Code. Extensions of the date for the award may be made by
4 mutual written consent of the State purchasing officer and the
5 lowest responsible bidder.

6 This subsection does not apply to (i) procurements of
7 professional and artistic services, (ii) telecommunications
8 services, communication services, and information services,
9 and (iii) contracts for construction projects.

10 (Source: P.A. 95-481, eff. 8-28-07; 96-159, eff. 8-10-09;
11 96-795, eff. 7-1-10 (see Section 5 of P.A. 96-793 for the
12 effective date of changes made by P.A. 96-795); revised
13 10-5-10.)

14 Section 10. The Public Utilities Act is amended by changing
15 Sections 3-101 and 9-220 and by adding Section 3-123 as
16 follows:

17 (220 ILCS 5/3-101) (from Ch. 111 2/3, par. 3-101)

18 Sec. 3-101. Definitions. Unless otherwise specified, the
19 terms set forth in Sections 3-102 through 3-123 ~~3-121~~ are used
20 in this Act as therein defined.

21 (Source: P.A. 84-617; 84-1118.)

22 (220 ILCS 5/3-123 new)

23 Sec. 3-123. Clean coal SNG brownfield facility; sequester;

1 SNG facility; sourcing agreement; substitute natural gas or
2 SNG. As used in this Act:

3 "Clean coal SNG brownfield facility" shall have the same
4 meaning as provided in Section 1-10 of the Illinois Power
5 Agency Act.

6 "Sequester" shall have the same meaning as provided in
7 Section 1-10 of the Illinois Power Agency Act.

8 "SNG facility" means a facility that produces substitute
9 natural gas from feedstock that includes coal through a
10 gasification process, including a clean coal facility, the
11 clean coal SNG brownfield facility, and the facility described
12 in subsection (h) of Section 9-220 of this Act.

13 "Sourcing agreement" means an agreement between the owner
14 of a clean coal SNG brownfield facility and the gas utility
15 that has the terms and conditions meeting the requirements of
16 subsection (h-1) of Section 9-220 of this Act.

17 "Substitute natural gas" or "SNG" shall have the same
18 meaning as provided in Section 1-10 of the Illinois Power
19 Agency Act.

20 (220 ILCS 5/9-220) (from Ch. 111 2/3, par. 9-220)

21 Sec. 9-220. Rate changes based on changes in fuel costs.

22 (a) Notwithstanding the provisions of Section 9-201, the
23 Commission may authorize the increase or decrease of rates and
24 charges based upon changes in the cost of fuel used in the
25 generation or production of electric power, changes in the cost

1 of purchased power, or changes in the cost of purchased gas
2 through the application of fuel adjustment clauses or purchased
3 gas adjustment clauses. The Commission may also authorize the
4 increase or decrease of rates and charges based upon
5 expenditures or revenues resulting from the purchase or sale of
6 emission allowances created under the federal Clean Air Act
7 Amendments of 1990, through such fuel adjustment clauses, as a
8 cost of fuel. For the purposes of this paragraph, cost of fuel
9 used in the generation or production of electric power shall
10 include the amount of any fees paid by the utility for the
11 implementation and operation of a process for the
12 desulfurization of the flue gas when burning high sulfur coal
13 at any location within the State of Illinois irrespective of
14 the attainment status designation of such location; but shall
15 not include transportation costs of coal (i) except to the
16 extent that for contracts entered into on and after the
17 effective date of this amendatory Act of 1997, the cost of the
18 coal, including transportation costs, constitutes the lowest
19 cost for adequate and reliable fuel supply reasonably available
20 to the public utility in comparison to the cost, including
21 transportation costs, of other adequate and reliable sources of
22 fuel supply reasonably available to the public utility, or (ii)
23 except as otherwise provided in the next 3 sentences of this
24 paragraph. Such costs of fuel shall, when requested by a
25 utility or at the conclusion of the utility's next general
26 electric rate proceeding, whichever shall first occur, include

1 transportation costs of coal purchased under existing coal
2 purchase contracts. For purposes of this paragraph "existing
3 coal purchase contracts" means contracts for the purchase of
4 coal in effect on the effective date of this amendatory Act of
5 1991, as such contracts may thereafter be amended, but only to
6 the extent that any such amendment does not increase the
7 aggregate quantity of coal to be purchased under such contract.
8 Nothing herein shall authorize an electric utility to recover
9 through its fuel adjustment clause any amounts of
10 transportation costs of coal that were included in the revenue
11 requirement used to set base rates in its most recent general
12 rate proceeding. Cost shall be based upon uniformly applied
13 accounting principles. Annually, the Commission shall initiate
14 public hearings to determine whether the clauses reflect actual
15 costs of fuel, gas, power, or coal transportation purchased to
16 determine whether such purchases were prudent, and to reconcile
17 any amounts collected with the actual costs of fuel, power,
18 gas, or coal transportation prudently purchased. In each such
19 proceeding, the burden of proof shall be upon the utility to
20 establish the prudence of its cost of fuel, power, gas, or coal
21 transportation purchases and costs. The Commission shall issue
22 its final order in each such annual proceeding for an electric
23 utility by December 31 of the year immediately following the
24 year to which the proceeding pertains, provided, that the
25 Commission shall issue its final order with respect to such
26 annual proceeding for the years 1996 and earlier by December

1 31, 1998.

2 (b) A public utility providing electric service, other than
3 a public utility described in subsections (e) or (f) of this
4 Section, may at any time during the mandatory transition period
5 file with the Commission proposed tariff sheets that eliminate
6 the public utility's fuel adjustment clause and adjust the
7 public utility's base rate tariffs by the amount necessary for
8 the base fuel component of the base rates to recover the public
9 utility's average fuel and power supply costs per kilowatt-hour
10 for the 2 most recent years for which the Commission has issued
11 final orders in annual proceedings pursuant to subsection (a),
12 where the average fuel and power supply costs per kilowatt-hour
13 shall be calculated as the sum of the public utility's prudent
14 and allowable fuel and power supply costs as found by the
15 Commission in the 2 proceedings divided by the public utility's
16 actual jurisdictional kilowatt-hour sales for those 2 years.
17 Notwithstanding any contrary or inconsistent provisions in
18 Section 9-201 of this Act, in subsection (a) of this Section or
19 in any rules or regulations promulgated by the Commission
20 pursuant to subsection (g) of this Section, the Commission
21 shall review and shall by order approve, or approve as
22 modified, the proposed tariff sheets within 60 days after the
23 date of the public utility's filing. The Commission may modify
24 the public utility's proposed tariff sheets only to the extent
25 the Commission finds necessary to achieve conformance to the
26 requirements of this subsection (b). During the 5 years

1 following the date of the Commission's order, but in any event
2 no earlier than January 1, 2007, a public utility whose fuel
3 adjustment clause has been eliminated pursuant to this
4 subsection shall not file proposed tariff sheets seeking, or
5 otherwise petition the Commission for, reinstatement of a fuel
6 adjustment clause.

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

1 requirements of this subsection are met. The Commission shall
2 not conduct the annual hearings specified in the last 3
3 sentences of subsection (a) of this Section for the utility for
4 the period that the factor established pursuant to this
5 subsection is in effect.

6 (d) A public utility providing electric service, or a
7 public utility providing gas service may file with the
8 Commission proposed tariff sheets that eliminate the public
9 utility's fuel or purchased gas adjustment clause and adjust
10 the public utility's base rate tariffs to provide for recovery
11 of power supply costs or gas supply costs that would have been
12 recovered through such clause; provided, that the provisions of
13 this subsection (d) shall not be available to a public utility
14 described in subsections (e) or (f) of this Section to
15 eliminate its fuel adjustment clause. Notwithstanding any
16 contrary or inconsistent provisions in Section 9-201 of this
17 Act, in subsection (a) of this Section, or in any rules or
18 regulations promulgated by the Commission pursuant to
19 subsection (g) of this Section, the Commission shall review and
20 shall by order approve, or approve as modified in the
21 Commission's order, the proposed tariff sheets within 240 days
22 after the date of the public utility's filing. The Commission's
23 order shall approve rates and charges that the Commission,
24 based on information in the public utility's filing or on the
25 record if a hearing is held by the Commission, finds will
26 recover the reasonable, prudent and necessary jurisdictional

1 power supply costs or gas supply costs incurred or to be
2 incurred by the public utility during a 12 month period found
3 by the Commission to be appropriate for these purposes,
4 provided, that such period shall be either (i) a 12 month
5 historical period occurring during the 15 months ending on the
6 date of the public utility's filing, or (ii) a 12 month future
7 period ending no later than 15 months following the date of the
8 public utility's filing. The public utility shall include with
9 its tariff filing information showing both (1) its actual
10 jurisdictional power supply costs or gas supply costs for a 12
11 month historical period conforming to (i) above and (2) its
12 projected jurisdictional power supply costs or gas supply costs
13 for a future 12 month period conforming to (ii) above. If the
14 Commission's order requires modifications in the tariff sheets
15 filed by the public utility, the public utility shall have 7
16 days following the date of the order to notify the Commission
17 whether the public utility will implement the modified tariffs
18 or elect to continue its fuel or purchased gas adjustment
19 clause in force as though no order had been entered. The
20 Commission's order shall provide for any reconciliation of
21 power supply costs or gas supply costs, as the case may be, and
22 associated revenues through the date that the public utility's
23 fuel or purchased gas adjustment clause is eliminated. During
24 the 5 years following the date of the Commission's order, a
25 public utility whose fuel or purchased gas adjustment clause
26 has been eliminated pursuant to this subsection shall not file

1 proposed tariff sheets seeking, or otherwise petition the
2 Commission for, reinstatement or adoption of a fuel or
3 purchased gas adjustment clause. Nothing in this subsection (d)
4 shall be construed as limiting the Commission's authority to
5 eliminate a public utility's fuel adjustment clause or
6 purchased gas adjustment clause in accordance with any other
7 applicable provisions of this Act.

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

1 shall issue an order within 45 days after the date of the
2 public utility's filing approving or approving as modified such
3 tariff sheet. If the fuel adjustment clause is eliminated
4 pursuant to this subsection, the Commission shall not conduct
5 the annual hearings specified in the last 3 sentences of
6 subsection (a) of this Section for the utility for any period
7 after December 31, 1996 and prior to any reinstatement of such
8 clause. A public utility whose fuel adjustment clause has been
9 eliminated pursuant to this subsection shall not file a
10 proposed tariff sheet seeking, or otherwise petition the
11 Commission for, reinstatement of the fuel adjustment clause
12 prior to January 1, 2007.

13 (f) Notwithstanding any contrary or inconsistent
14 provisions in Section 9-201 of this Act, in subsection (a) of
15 this Section, or in any rules or regulations promulgated by the
16 Commission pursuant to subsection (g) of this Section, a public
17 utility providing electric service to more than 500,000
18 customers but fewer than 1,000,000 customers in this State may,
19 within the first 6 months after the effective date of this
20 amendatory Act of 1997, file with the Commission proposed
21 tariff sheets that eliminate, effective January 1, 1997, the
22 public utility's fuel adjustment clause and adjust its base
23 rates by the amount necessary for the base fuel component of
24 the base rates to recover 91% of the public utility's average
25 fuel and power supply costs for the 2 most recent years for
26 which the Commission, as of January 1, 1997, has issued final

1 orders in annual proceedings pursuant to subsection (a), where
2 the average fuel and power supply costs per kilowatt-hour shall
3 be calculated as the sum of the public utility's prudent and
4 allowable fuel and power supply costs as found by the
5 Commission in the 2 proceedings divided by the public utility's
6 actual jurisdictional kilowatt-hour sales for those 2 years,
7 provided, that such tariff sheets shall be effective upon
8 filing. To the extent the application of the fuel adjustment
9 clause had resulted in net charges to customers after January
10 1, 1997, the utility shall also file a tariff sheet that
11 provides for a refund stated on a per kilowatt-hour basis of
12 such charges over a period not to exceed 6 months. Provided
13 however, that such refund shall not include the proportional
14 amounts of taxes paid under the Use Tax Act, Service Use Tax
15 Act, Service Occupation Tax Act, and Retailers' Occupation Tax
16 Act on fuel used in generation. The Commission shall issue an
17 order within 45 days after the date of the public utility's
18 filing approving or approving as modified such tariff sheet. If
19 the fuel adjustment clause is eliminated pursuant to this
20 subsection, the Commission shall not conduct the annual
21 hearings specified in the last 3 sentences of subsection (a) of
22 this Section for the utility for any period after December 31,
23 1996 and prior to any reinstatement of such clause. A public
24 utility whose fuel adjustment clause has been eliminated
25 pursuant to this subsection shall not file a proposed tariff
26 sheet seeking, or otherwise petition the Commission for,

1 reinstatement of the fuel adjustment clause prior to January 1,
2 2007.

3 (g) The Commission shall have authority to promulgate rules
4 and regulations to carry out the provisions of this Section.

5 (h) Any Illinois gas utility may enter into a contract on
6 or before March 31, 2011 for up to 10 years of supply with any
7 company for the purchase of substitute natural gas (SNG)
8 produced from coal through the gasification process if the
9 company has commenced construction of a coal gasification
10 facility by July 1, 2012 in Jefferson County and commencement
11 of construction shall mean that material physical site work has
12 occurred, such as site clearing and excavation, water runoff
13 prevention, water retention reservoir preparation, or
14 foundation development. The contract shall contain the
15 following provisions: (i) the only coal to be used in the
16 gasification process has high volatile bituminous rank and
17 greater than 1.7 pounds of sulfur per million Btu content; (ii)
18 at the time the contract term commences, the price per million
19 Btu may not exceed \$7.95 in 2008 dollars, adjusted annually
20 based on the change in the Annual Consumer Price Index for All
21 Urban Consumers for the Midwest Region as published in April by
22 the United States Department of Labor, Bureau of Labor
23 Statistics (or a suitable Consumer Price Index calculation if
24 this Consumer Price Index is not available) for the previous
25 calendar year; provided that the price per million Btu shall
26 not exceed \$9.95 at any time during the contract; (iii) the

1 utility's aggregate long-term supply contracts for the
2 purchase of SNG does not exceed 25% of the annual system supply
3 requirements of the utility as of 2008 and the quantity of SNG
4 supplied to a utility may not exceed 16 million MMBtus; and
5 (iv) contract costs pursuant to subsection (h-10) of this
6 Section shall not include any lobbying expenses, charitable
7 contributions, advertising, organizational memberships, or
8 marketing expenses per year.

9 (h-1) Any Illinois gas utility may enter into a sourcing
10 agreement for up to 30 years of supply with the clean coal SNG
11 brownfield facility if the clean coal SNG brownfield facility
12 has commenced construction. Any gas utility that is providing
13 service to more than 150,000 customers on the effective date of
14 this amendatory Act of the 96th General Assembly shall either
15 elect to file biennial rate proceedings before the Commission
16 in the years 2011, 2013, and 2015 or enter into a sourcing
17 agreement or sourcing agreements with a clean coal SNG
18 brownfield facility for 30 years for either (i) 43,500,000,000
19 cubic feet per year times a percentage calculated by dividing
20 100 by the number of utilities entering into sourcing
21 agreements with the clean coal SNG brownfield facility or (ii)
22 such lesser amount as may be available from the clean coal SNG
23 brownfield facility.

24 Provided, however, that the Illinois Power Agency may
25 allocate the purchase obligations more proportionately based
26 upon total therms sold to ultimate customers, if it is

1 demonstrated with certainty that such alternative allocation
2 will not result in adverse consolidation, derivative, or lease
3 impacts to the balance sheet or income statement of any
4 purchasing utility. In any event, no utility shall be required
5 to purchase more than 42% of the projected annual output of the
6 clean coal SNG brownfield facility, with the remainder of such
7 utility's obligation to be divided proportionately between the
8 other utilities.

9 A gas utility electing to file biennial rate proceedings
10 before the Commission must file a notice of its election with
11 the Commission within 60 days after the effective date of this
12 amendatory Act of the 96th General Assembly or its right to
13 make the election is irrevocably waived. A gas utility electing
14 to file biennial rate proceedings shall make such filings no
15 later than August 1 of the years 2011, 2013, and 2015,
16 consistent with all requirements of 83 Ill. Adm. Code 255 and
17 285 as though the gas utility were filing for an increase in
18 its rates, without regard to whether such filing would produce
19 an increase, a decrease, or no change in the gas utility's
20 rates, and the Commission shall review the gas utility's filing
21 and shall issue its order in accordance with the provisions of
22 Section 9-201 of this Act.

23 Within 15 days after the effective date of this amendatory
24 Act of the 96th General Assembly, the owner of the clean coal
25 SNG brownfield facility shall submit to the Illinois Power
26 Agency and each gas utility that is providing service to more

1 than 150,000 customers on the effective date of this amendatory
2 Act of the 96th General Assembly a copy of a draft sourcing
3 agreement. Within 45 days after receipt of the draft sourcing
4 agreement, each such gas utility shall provide the Illinois
5 Power Agency and the owner of a clean coal SNG brownfield
6 facility with its comments and recommended revisions to the
7 draft sourcing agreement. Within 15 days after the receipt of
8 the gas utility's comments and recommended revisions, the owner
9 of the clean coal SNG brownfield facility shall submit its
10 responsive comments and a further revised draft of the sourcing
11 agreement to the Illinois Power Agency. The Illinois Power
12 Agency shall review the draft sourcing agreement and comments.

13 If the parties to the sourcing agreement do not agree on
14 the terms therein, then the Illinois Power Agency shall retain
15 an independent mediator to mediate the dispute between the
16 parties. If the parties are in agreement on the terms of the
17 sourcing agreement, the Illinois Power Agency shall approve the
18 final draft sourcing agreement. If after mediation the parties
19 have failed to come to agreement, then the Illinois Power
20 Agency shall revise the draft sourcing agreement as necessary
21 to confirm that the final draft sourcing agreement contains
22 only terms that are reasonable and equitable. The Illinois
23 Power Agency shall adopt and make public a policy detailing the
24 process for retaining a mediator under this subsection (h-1).
25 Any mediator retained to assist with calculating the range of
26 capital costs or operations and maintenance costs shall be

1 retained no later than 90 days after the effective date of this
2 amendatory Act of the 96th General Assembly.

3 Upon approval of a final draft agreement, the Illinois
4 Power Agency shall submit the final draft agreement to the
5 Capital Development Board and the Commission no later than 90
6 days after the effective date of this amendatory Act of the
7 96th General Assembly. The gas utility and the clean coal SNG
8 brownfield facility shall pay a reasonable fee as required by
9 the Illinois Power Agency for its services under this
10 subsection (h-1) and shall pay the mediator's reasonable fees,
11 if any. The Illinois Power Agency shall adopt and make public a
12 policy detailing the process for retaining a mediator under
13 this Section.

14 The sourcing agreement between a gas utility and the clean
15 coal SNG brownfield facility shall contain the following
16 provisions:

17 (1) Any and all coal used in the gasification process
18 must be coal that has high volatile bituminous rank and
19 greater than 1.7 pounds of sulfur per million Btu content.

20 (2) Coal and petroleum coke are feedstocks for the
21 gasification process, with coal comprising at least 50% of
22 the total feedstock over the term of the sourcing agreement
23 and with the feedstocks to be procured in accordance with
24 requirements of Section 1-78 of the Illinois Power Agency
25 Act.

26 (3) The sourcing agreement once entered into

1 terminates no more than 30 years after the commencement of
2 the commercial production of SNG at the clean coal SNG
3 brownfield facility.

4 (4) The clean coal SNG brownfield facility guarantees a
5 minimum of \$100,000,000 in consumer savings, calculated in
6 real 2010 dollars at the conclusion of the term of the
7 sourcing agreement by comparing the delivered SNG price to
8 the Chicago City-gate price on a weighted daily basis for
9 each day over the entire term of the sourcing agreement, to
10 be provided in accordance with subsection (h-2) of this
11 Section.

12 (5) Prior to the clean coal SNG brownfield facility
13 issuing a notice to proceed to construction, the clean coal
14 SNG brownfield facility shall establish a consumer
15 protection reserve account for the benefit of the customers
16 of the utilities that have entered into sourcing agreements
17 with the clean coal SNG brownfield facility pursuant to
18 this subsection (h-1), with cash principal in the amount of
19 \$150,000,000. This cash principal shall only be
20 recoverable through the consumer protection reserve
21 account and not as a cost to be recovered in the delivered
22 SNG price pursuant to subsection (h-3) of this Section. The
23 consumer protection reserve account shall be maintained
24 and administered by an independent trustee that is mutually
25 agreed upon by the clean coal SNG brownfield facility, the
26 utilities, and the Commission in an interest-bearing

1 account in accordance with subsection (h-2) of this
2 Section.

3 (6) The clean coal SNG brownfield facility shall
4 identify and sell economically viable by-products produced
5 by the facility.

6 (7) 50% of all additional net revenue, defined as
7 miscellaneous net revenue after cost allowance for costs
8 associated with additional net revenue that are not
9 otherwise recoverable pursuant to subsection (h-3) of this
10 Section, including net revenue from sales of substitute
11 natural gas derived from the facility above the nameplate
12 capacity of the facility and other by-products produced by
13 the facility, shall be credited to the consumer protection
14 reserve account pursuant to subsection (h-2) of this
15 Section.

16 (8) The delivered SNG price per million btu to be paid
17 monthly by the utility to the clean coal SNG brownfield
18 facility, which shall be based only upon the following: (A)
19 a capital recovery charge, operations and maintenance
20 costs, and sequestration costs, only to the extent approved
21 by the Commission pursuant to paragraphs (1), (2), and (3)
22 of subsection (h-3) of this Section; (B) the actual
23 delivered and processed fuel costs pursuant to paragraph
24 (4) of subsection (h-3) of this Section; (C) actual costs
25 of SNG transportation pursuant to paragraph (6) of
26 subsection (h-3) of this Section; (D) certain taxes and

1 fees imposed by the federal government, the State, or any
2 unit of local government as provided in paragraph (6) of
3 subsection (h-3) of this Section; and (E) the credit, if
4 any, from the consumer protection reserve account pursuant
5 to subsection (h-2) of this Section. The delivered SNG
6 price per million Btu shall proportionately reflect these
7 elements over the term of the sourcing agreement.

8 (9) A formula to translate the recoverable costs and
9 charges under subsection (h-3) of this Section into the
10 delivered SNG price per million btu.

11 (10) Title to the SNG shall pass at a
12 mutually-agreeable point in Illinois, and may provide
13 that, rather than the utility taking title to the SNG, a
14 mutually-agreed upon third-party gas marketer pursuant to
15 a contract approved by the Illinois Power Agency or its
16 designee, may take title to the SNG pursuant to an
17 agreement between the utility, the owner of the clean coal
18 SNG brownfield facility, and the third-party gas marketer.

19 (11) A utility may exit the sourcing agreement without
20 penalty if the clean coal SNG brownfield facility does not
21 commence construction by July 1, 2014.

22 (12) A utility is responsible to pay only the
23 Commission determined unit price cost of SNG that is
24 purchased by the utility. Nothing in the sourcing agreement
25 will obligate a utility to invest capital in a clean coal
26 SNG brownfield facility.

1 (13) The quality of SNG must, at a minimum, be
2 equivalent to the equality required for an interstate
3 pipeline gas before a utility is required to accept and pay
4 for SNG gas.

5 (14) Nothing in the sourcing agreement will require a
6 utility to construct any facilities to accept delivery of
7 SNG. Provided, however, if a utility is required by law or
8 otherwise elects to connect the clean coal SNG brownfield
9 facility to an interstate pipeline, then the utility shall
10 be entitled to recover pursuant to its tariffs all just and
11 reasonable costs that are prudently incurred. Any costs
12 incurred by the utility to receive, deliver, manage, or
13 otherwise accommodate purchases under the SNG sourcing
14 agreement will be fully recoverable through a utility's
15 purchased gas adjustment clause rider mechanism.

16 (15) Remedies for the clean coal SNG brownfield
17 facility's failure to deliver a designated amount for a
18 designated period.

19 For the purposes of this subsection (h-1), in any given
20 year, the net increase in the prices paid in connection with
21 gas service by residential customers due to the costs of the
22 SNG purchased pursuant to a sourcing agreement under this
23 subsection (h-1) shall be limited to:

24 (A) in 2010, no more than 0.5% of the amount paid per
25 million Btu by those customers during the year ending May
26 31, 2009;

1 (B) in 2011, the greater of an additional 0.5% of the
2 amount paid per million btu by those customers during the
3 year ending May 31, 2010 or 1% of the amount paid per
4 million btu by those customers during the year ending May
5 31, 2009;

6 (C) in 2012, the greater of an additional 0.5% of the
7 amount paid per million btu by those customers during the
8 year ending May 31, 2011 or 1.5% of the amount paid per
9 million btu during the year ending May 31, 2009;

10 (D) in 2013, the greater of an additional 0.5% of the
11 amount paid per million btu by those customers during the
12 year ending May 2012 or 2% of the amount paid per million
13 btu by those customers during the year ending May 31, 2009;
14 and

15 (E) thereafter, the estimated average net increase due
16 to the cost of these resources included in the amounts paid
17 by residential customers in connection with gas service
18 shall be no more than the greater of (i) 2.015% of the
19 amount paid per million btu by those customers during the
20 year ending May 31, 2009 or (ii) the incremental amount per
21 million btu paid for these resources in 2013. Any increase
22 over these limits in prices in connection with gas service
23 shall be spread evenly among commercial and industrial
24 customers who purchase gas directly from the utility or
25 have gas delivered by the utility. These requirements may
26 be altered only as provided by statute. No later than June

1 30, 2016, the Commission shall review the limitation on the
2 total amount paid under sourcing agreements, if any, with
3 the clean coal SNG brownfield facility pursuant to this
4 subsection (h-1) and report to the General Assembly its
5 findings as to the effect of the limitation on the clean
6 coal SNG brownfield facility, gas utilities, and
7 customers.

8 (h-2) Consumer protection reserve account. The clean coal
9 SNG brownfield facility shall guarantee a minimum of
10 \$100,000,000 in consumer savings, calculated in real 2010
11 dollars at the conclusion of the term of the sourcing agreement
12 by comparing the delivered SNG price to the Chicago City-gate
13 price on a weighted daily basis for each day over the entire
14 term of the sourcing agreement. Prior to the clean coal SNG
15 brownfield facility issuing a notice to proceed to
16 construction, the clean coal SNG brownfield facility shall
17 establish a consumer protection reserve account for the benefit
18 of the retail customers of the utilities that have entered into
19 sourcing agreements with the clean coal SNG brownfield facility
20 pursuant to subsection (h-1), with cash principal in the amount
21 of \$150,000,000. Such cash principal shall only be recovered
22 through the consumer protection reserve account and not as a
23 cost to be recovered in the delivered SNG price pursuant to
24 subsection (h-3) of this Section. The consumer protection
25 reserve account shall be maintained and administered by an
26 independent trustee that is mutually agreed upon by the clean

1 coal SNG brownfield facility, the utilities, and the Commission
2 in an interest-bearing account in accordance with the
3 following:

4 (1) The clean coal SNG brownfield facility monthly
5 shall calculate the difference between the monthly
6 delivered SNG price and the Chicago City-gate price, by
7 comparing the delivered SNG price, which shall include the
8 cost of transportation to the delivery point, if any, to
9 the Chicago City-gate price on a weighted daily basis for
10 each day of the prior month based upon a mutually-agreed
11 upon published index.

12 (2) During the first 2 years of operation of the
13 facility:

14 (A) to the extent the monthly delivered SNG price,
15 is greater than the Chicago City-gate price, the
16 consumer protection reserve account shall be used to
17 provide a credit to reduce the SNG price by an amount
18 equal to the difference between the monthly delivered
19 SNG price and the Chicago City-gate price; and

20 (B) to the extent the monthly delivered SNG price
21 is less than or equal to the Chicago City-gate price,
22 the utility shall credit the difference between the
23 monthly delivered SNG price and the monthly Chicago
24 City-gate price, if any, to the consumer protection
25 reserve account. Such credit issued pursuant to this
26 paragraph (B) shall be deemed prudent and reasonable

1 and not subject to a Commission prudence review;

2 (3) After 2 years of operation of the facility, and
3 monthly, on an on-going basis, thereafter:

4 (A) to the extent that the monthly delivered SNG
5 price is less than or equal to the Chicago City-gate
6 price, calculated using the weighted average of the
7 daily Chicago City-gate price on a daily basis over the
8 entire month, the utility shall credit the difference,
9 if any, to the consumer protection reserve account.
10 Such credit issued pursuant to this subparagraph (A)
11 shall be deemed prudent and reasonable and not subject
12 to a Commission prudence review;

13 (B) any amounts in the consumer protection reserve
14 account in excess of \$100,000,000 shall be distributed
15 to the clean coal SNG brownfield facility; provided,
16 however, that under no circumstances shall the total
17 cumulative amount distributed to the clean coal SNG
18 brownfield facility under this subparagraph (B) exceed
19 \$150,000,000;

20 (C) to the extent the monthly delivered SNG price
21 is greater than the Chicago City-gate price, after
22 distributing the amounts pursuant to subparagraph (B)
23 of this paragraph (3), if any, the consumer protection
24 reserve account shall be used to provide a credit to
25 reduce the SNG price by an amount equal to the
26 difference between the monthly delivered SNG price and

1 the Chicago City-gate price;

2 (D) if retail customers have realized net consumer
3 savings, calculated by comparing the delivered SNG
4 price to the weighted average of the daily Chicago
5 City-gate price on a daily basis over the entire term
6 of the sourcing agreement to date, then after
7 distributing the amounts pursuant to subparagraphs (B)
8 and (C) of this paragraph (3), 50% of any additional
9 amounts in the consumer protection reserve account in
10 excess of \$100,000,000 shall be distributed to the
11 clean coal SNG brownfield facility, with the remaining
12 50% of any such additional amounts being credited to
13 retail customers; provided, however, that if retail
14 customers have not realized such net consumer savings,
15 no such distribution shall be made to the clean coal
16 SNG brownfield facility, and 100% of such additional
17 amounts shall be credited to the retail customers to
18 the extent the consumer protection reserve account
19 exceeds \$100,000,000.

20 (4) 50% of all additional net revenue, defined as
21 miscellaneous net revenue after cost allowance for costs
22 associated with additional net revenue that are not
23 otherwise recoverable pursuant to subsection (h-3) of this
24 Section, including net revenue from sales of substitute
25 natural gas derived from the facility above the nameplate
26 capacity of the facility and other by-products produced by

1 the facility, shall be credited to the consumer protection
2 reserve account.

3 (5) At the conclusion of the term of the sourcing
4 agreement, to the extent retail customers have not saved
5 the minimum of \$100,000,000 in consumer savings as
6 guaranteed in this subsection (h-2), amounts in the
7 consumer protection reserve account shall be credited to
8 retail customers to the extent the retail customers have
9 saved the minimum of \$100,000,000; 50% of any additional
10 amounts in the consumer protection reserve account shall be
11 distributed to the company, and the remaining 50% shall be
12 distributed to retail customers.

13 (6) If, at the conclusion of the term of the sourcing
14 agreement, the customers have not saved the minimum
15 \$100,000,000 in savings as guaranteed in this subsection
16 (h-2) and the consumer protection reserve account has been
17 depleted, then the clean coal SNG brownfield facility shall
18 be liable for any remaining amount owed to the retail
19 customers to the extent that the customers are provided
20 with the \$100,000,000 in savings as guaranteed in this
21 subsection (h-2). The retail customers shall have first
22 priority in recovering that debt above any creditors,
23 except the original senior secured lender to the extent
24 that the original senior secured lender has any senior
25 secured debt outstanding, including any clean coal SNG
26 brownfield facility parent companies or affiliates.

1 (7) The clean coal SNG brownfield facility, the
2 utilities, and the trustee shall work together to take
3 commercially reasonable steps to minimize the tax impact of
4 these transactions, while preserving the consumer
5 benefits.

6 (8) The clean coal SNG brownfield facility shall each
7 month, starting in the facility's first year of commercial
8 operation, file with the Commission, in such form as the
9 Commission shall require, a report as to the consumer
10 protection reserve account. The monthly report must
11 contain the following information:

12 (A) the extent the monthly delivered SNG price is
13 greater than, less than, or equal to the Chicago
14 City-gate price;

15 (B) the amount credited or debited to the consumer
16 protection reserve account during the month;

17 (C) the amounts credited to consumers and
18 distributed to the clean coal SNG brownfield facility
19 during the month;

20 (D) the total amount of the consumer protection
21 reserve account at the beginning and end of the month;

22 (E) the total amount of consumer savings to date;
23 and

24 (F) any other additional information the
25 Commission shall require.

26 When any report is erroneous or defective or appears to

1 the Commission to be erroneous or defective, the Commission
2 may notify the clean coal SNG brownfield facility to amend
3 the report within 30 days, and, before or after the
4 termination of the 30-day period, the Commission may
5 examine the trustee of the consumer protection reserve
6 account or the officers, agents, employees, books,
7 records, or accounts of the clean coal SNG brownfield
8 facility and correct such items in the report as upon such
9 examination the Commission may find defective or
10 erroneous. All reports shall be under oath.

11 All reports made to the Commission by the clean coal
12 SNG brownfield and the contents of the reports shall be
13 open to public inspection and shall be deemed a public
14 record under the Freedom of Information Act. Such reports
15 shall be preserved in the office of the Commission. The
16 Commission shall publish an annual summary of the reports
17 prior to February 1 of the following year. The annual
18 summary shall be made available to the public on the
19 Commission's website and shall be submitted to the General
20 Assembly.

21 Any facility that fails to file a report required under
22 this paragraph (8) to the Commission within the time
23 specified or to make specific answer to any question
24 propounded by the Commission within 30 days from the time
25 it is lawfully required to do so, or within such further
26 time not to exceed 90 days as may in its discretion be

1 allowed by the Commission, shall pay a penalty of \$500 to
2 the Commission for each day it is in default.

3 Any person who willfully makes any false report to the
4 Commission or to any member, officer, or employee thereof,
5 any person who willfully in a report withholds or fails to
6 provide material information to which the Commission is
7 entitled under this paragraph (8) and which information is
8 either required to be filed by statute, rule, regulation,
9 order, or decision of the Commission or has been requested
10 by the Commission, and any person who willfully aids or
11 abets such person shall be guilty of a Class A misdemeanor.

12 (h-3) Recoverable costs and revenue by the clean coal SNG
13 brownfield facility.

14 (1) A capital recovery charge approved by the
15 Commission shall be recoverable by the clean coal SNG
16 brownfield facility under a sourcing agreement. The
17 capital recovery charge shall be comprised of capital costs
18 and a reasonable rate of return. "Capital costs" means
19 costs to be incurred in connection with the construction
20 and development of a facility, as defined Section 1-10 of
21 the Illinois Power Agency Act, and such other costs as the
22 Capital Development Board deems appropriate to be
23 recovered in the capital recovery charge.

24 (A) Capital costs. The Capital Development Board
25 shall calculate a range of capital costs that it
26 believes would be reasonable for the clean coal SNG

1 brownfield facility to recover under the sourcing
2 agreement. In making this determination, the Capital
3 Development Board shall review the final draft of the
4 sourcing agreement and the rate of return approved by
5 the Commission. In addition, the Capital development
6 Board may: (i) review the facility cost report, if any,
7 of the clean coal SNG brownfield facility; (ii) consult
8 as much as it deems necessary with the clean coal SNG
9 brownfield facility; and (iii) conduct whatever
10 research and investigation it deems necessary.

11 The Capital Development Board shall retain an engineering
12 expert to assist in determining both the range of
13 capital costs and the range of operations and
14 maintenance costs that it believes would be reasonable
15 for the clean coal SNG brownfield facility to recover
16 under the sourcing agreement. Provided, however, that
17 such expert shall: (i) not have been involved in the
18 clean coal SNG brownfield facility's facility cost
19 report, if any, (ii) not own or control any direct or
20 indirect interest in the initial clean coal facility;
21 and (iii) have no contractual relationship with the
22 clean coal SNG brownfield facility. In order to qualify
23 as an independent expert, a person or company must
24 have:

25 (i) direct previous experience conducting
26 front-end engineering and design studies for

1 large-scale energy facilities and administering
2 large-scale energy operations and maintenance
3 contracts, which may be particularized to the
4 specific type of financing associated with the
5 clean coal SNG brownfield facility;

6 (ii) an advanced degree in economics,
7 mathematics, engineering, or a related area of
8 study;

9 (iii) ten years of experience in the energy
10 sector, including construction and risk management
11 experience;

12 (iv) expertise in assisting companies with
13 obtaining financing for large-scale energy
14 projects, which may be particularized to the
15 specific type of financing associated with the
16 clean coal SNG brownfield facility;

17 (v) expertise in operations and maintenance
18 which may be particularized to the specific type of
19 operations and maintenance associated with the
20 clean coal SNG brownfield facility;

21 (vi) expertise in credit and contract
22 protocols;

23 (vii) adequate resources to perform and
24 fulfill the required functions and
25 responsibilities; and

26 (viii) the absence of a conflict of interest

1 and inappropriate bias for or against an affected
2 gas utility or the clean coal SNG brownfield
3 facility.

4 The clean coal SNG brownfield facility and the
5 Illinois Power Agency shall cooperate with the Capital
6 Development Board in any investigation it deems
7 necessary. The Capital Development Board shall make
8 its final determination of the range of capital costs
9 confidentially and shall submit that range to the
10 Commission in a confidential filing within 120 days
11 after the effective date of this amendatory Act of the
12 96th General Assembly. The clean coal SNG brownfield
13 facility shall submit to the Commission its estimate of
14 the capital costs to be recovered under the sourcing
15 agreement. Only after the clean coal SNG brownfield
16 facility has submitted this estimate shall the
17 Commission publicly announce the range of capital
18 costs submitted by the Capital Development Board.

19 In the event that the estimate submitted by the
20 clean coal SNG brownfield facility is within or below
21 the range submitted by the Capital Development Board,
22 the clean coal SNG brownfield facility's estimate
23 shall be approved by the Commission as the amount of
24 capital costs to be recovered under the sourcing
25 agreement. In the event that the estimate submitted by
26 the clean coal SNG brownfield facility is above the

1 range submitted by the Capital Development Board, the
2 amount of capital costs at the lowest end of the range
3 submitted by the Capital Development Board shall be
4 approved by the Commission as the amount of capital
5 costs to be recovered under the sourcing agreement.
6 Within 15 days after the Capital Development Board has
7 submitted its range and the clean coal SNG brownfield
8 facility has submitted its estimate, the Commission
9 shall approve the capital costs for the clean coal SNG
10 brownfield facility.

11 The Capital Development Board shall monitor the
12 construction of the clean coal SNG brownfield facility
13 for the full duration of construction to assess
14 potential cost overruns. The Capital Development
15 Board, in its discretion, may retain an expert to
16 facilitate such monitoring. The clean coal SNG
17 brownfield facility shall pay a reasonable fee as
18 required by the Capital Development Board for the
19 Capital Development Board's services under this
20 subsection (h-3) to be deposited into the Capital
21 Development Board Revolving Fund, and such fee shall
22 not be passed through to a utility or its customers. If
23 an expert is retained by the Capital Development Board
24 for monitoring of construction, then the clean coal SNG
25 brownfield facility must pay for the expert's
26 reasonable fees and such costs shall not be passed

1 through to a utility or its customers.

2 (B) Rate of Return. No later than 30 days after the
3 date on which the Illinois Power Agency submits a final
4 draft sourcing agreement, the Commission shall hold a
5 public hearing to determine the rate of return to be
6 recovered under the sourcing agreement. Rate of return
7 shall be comprised of the clean coal SNG brownfield
8 facility's actual cost of debt, including
9 mortgage-style amortization, and a reasonable return
10 on equity. The Commission shall post notice of the
11 hearing on its website no later than 10 days prior to
12 the date of the hearing. The Commission shall provide
13 the public and all interested parties, including the
14 gas utilities, the Attorney General, and the Illinois
15 Power Agency, an opportunity to be heard.

16 In determining the return on equity, the
17 Commission shall select a commercially reasonable
18 return on equity taking into account the return on
19 equity being received by developers of similar
20 facilities in or outside of Illinois, the need to
21 balance an incentive for clean-coal technology with
22 the need to protect ratepayers from high gas prices,
23 the risks being borne by the clean coal SNG brownfield
24 facility in the final draft sourcing agreement, and any
25 other information that the Commission may deem
26 relevant. The Commission may establish a return on

1 equity that varies with the amount of savings, if any,
2 to customers during the term of the sourcing agreement,
3 comparing the delivered SNG price to a daily weighted
4 average price of natural gas, based upon an index. The
5 Illinois Power Agency shall recommend a return on
6 equity to the Commission using the same criteria.
7 Within 60 days after receiving the final draft sourcing
8 agreement from the Illinois Power Agency, the
9 Commission shall approve the rate of return for the
10 clean coal brownfield facility. Within 30 days after
11 obtaining debt financing for the clean coal SNG
12 brownfield facility, the clean coal SNG brownfield
13 facility shall file a notice with the Commission
14 identifying the actual cost of debt.

15 (2) Operations and maintenance costs approved by the
16 Commission shall be recoverable by the clean coal SNG
17 brownfield facility under the sourcing agreement. The
18 operations and maintenance costs mean costs that have been
19 incurred for the administration, supervision, operation,
20 maintenance, preservation, and protection of the clean
21 coal SNG brownfield facility's physical plant.

22 The Capital Development Board shall calculate a range
23 of operations and maintenance costs that it believes would
24 be reasonable for the clean coal SNG brownfield facility to
25 recover under the sourcing agreement. In making this
26 determination, the Capital Development Board shall review

1 the final draft of the sourcing agreement and the rate of
2 return approved by the Commission. In addition, the Capital
3 Development Board may: (i) review the facility cost report,
4 if any, of the clean coal SNG brownfield facility; (ii)
5 consult as much as it deems necessary with the clean coal
6 SNG brownfield facility; and (iii) conduct whatever
7 research and investigation it deems necessary. As set forth
8 in subparagraph (A) of paragraph (1) of this subsection
9 (h-3), the Capital Development Board shall retain an
10 independent engineering expert to assist in determining
11 both the range of operations and maintenance costs that it
12 believes would be reasonable for the clean coal SNG
13 brownfield to recover under the sourcing agreement. The
14 clean coal SNG brownfield facility and the Illinois Power
15 Agency shall cooperate with the Capital Development Board
16 in any investigation it deems necessary. The Capital
17 Development Board shall make its final determination of the
18 range of operations and maintenance costs confidentially
19 and shall submit that range to the Commission in a
20 confidential filing within 120 days after the effective
21 date of this amendatory Act of the 96th General Assembly.

22 The clean coal SNG brownfield facility shall submit to
23 the Commission its estimate of the operations and
24 maintenance costs to be recovered under the sourcing
25 agreement. Only after the clean coal SNG brownfield
26 facility has submitted this estimate shall the Commission

1 publicly announce the range of operations and maintenance
2 costs submitted by the Capital Development Board. In the
3 event that the estimate submitted by the clean coal SNG
4 brownfield facility is within or below the range submitted
5 by the Capital Development Board, the clean coal SNG
6 brownfield facility's estimate shall be approved by the
7 Commission as the amount of operations and maintenance
8 costs to be recovered under the sourcing agreement. In the
9 event that the estimate submitted by the clean coal SNG
10 brownfield facility is above the range submitted by the
11 Capital Development Board, the amount of operations and
12 maintenance costs at the lowest end of the range submitted
13 by the Capital Development Board shall be approved by the
14 Commission as the amount of operations and maintenance
15 costs to be recovered under the sourcing agreement. Within
16 15 days after the Capital Development Board has submitted
17 its range and the clean coal SNG brownfield facility has
18 submitted its estimate, the Commission shall approve the
19 operations and maintenance costs for the clean coal SNG
20 brownfield facility.

21 The clean coal SNG brownfield facility shall pay for
22 the independent engineering expert's reasonable fees and
23 such costs shall not be passed through to a utility or its
24 customers. The clean coal SNG brownfield facility shall pay
25 a reasonable fee as required by the Capital Development
26 Board for the Capital Development Board's services under

1 this subsection (h-3) to be deposited into the Capital
2 Development Board Revolving Fund, and such fee shall not be
3 passed through to a utility or its customers.

4 (3) Sequestration costs approved by the Commission
5 shall be recoverable by the clean coal SNG brownfield
6 facility. "Sequestration costs" means costs to be incurred
7 by the clean coal SNG brownfield facility in accordance
8 with its Commission-approved carbon capture and
9 sequestration plan to:

10 (A) capture carbon dioxide;

11 (B) build, operate, and maintain a sequestration
12 site in which carbon dioxide may be injected;

13 (C) build, operate, and maintain a carbon dioxide
14 pipeline; and

15 (D) transport the carbon dioxide to the
16 sequestration site or a pipeline.

17 The Commission shall assess the prudence of the
18 sequestration costs for the clean coal SNG brownfield
19 facility before construction commences at the
20 sequestration site or pipeline. Any revenues the clean coal
21 SNG brownfield facility receives as a result of the
22 capture, transportation, or sequestration of carbon
23 dioxide shall be first credited against all sequestration
24 costs, with the positive balance, if any, treated as
25 additional net revenue.

26 The Commission may, in its discretion, retain an expert

1 to assist in its review of sequestration costs. The clean
2 coal SNG brownfield facility shall pay for the expert's
3 reasonable fees if an expert is retained by the Commission,
4 and such costs shall not be passed through to a utility or
5 its customers. Once made, the Commission's determination
6 of the amount of recoverable sequestration costs shall not
7 be increased unless the clean coal SNG brownfield facility
8 can show by clear and convincing evidence that (i) the
9 costs were not reasonably foreseeable; (ii) the costs were
10 due to circumstances beyond the clean coal SNG brownfield
11 facility's control; and (iii) the clean coal SNG brownfield
12 facility took all reasonable steps to mitigate the costs.
13 If the Commission determines that sequestration costs may
14 be increased, the Commission shall provide for notice and a
15 public hearing for approval of the increased sequestration
16 costs.

17 (4) Actual delivered and processed fuel costs shall be
18 set by the Illinois Power Agency through a SNG feedstock
19 procurement, pursuant to Sections 1-20, 1-77, and 1-78 of
20 the Illinois Power Agency Act, to be performed at least
21 every 5 years and purchased by the clean coal SNG
22 brownfield facility pursuant to feedstock procurement
23 contracts developed by the Illinois Power Agency, with coal
24 comprising at least 50% of the total feedstock over the
25 term of the sourcing agreement and petroleum coke
26 comprising the remainder of the SNG feedstock. If the

1 Commission fails to approve a feedstock procurement plan or
2 fails to approve the results of a feedstock procurement
3 event, then the fuel shall be purchased by the company
4 month-by-month on the spot market and those actual
5 delivered and processed fuel costs shall be recoverable
6 under the sourcing agreement. If a supplier defaults under
7 the terms of a procurement contract, then the Illinois
8 Power Agency shall immediately initiate a feedstock
9 procurement process to obtain a replacement supply, and,
10 prior to the conclusion of that process, fuel shall be
11 purchased by the company month-by-month on the spot market
12 and those actual delivered and processed fuel costs shall
13 be recoverable under the sourcing agreement.

14 (5) Taxes and fees imposed by the federal government,
15 the State, or any unit of local government applicable to
16 the clean coal SNG brownfield facility, excluding income
17 tax, shall be recoverable by the clean coal SNG brownfield
18 facility under the sourcing agreement to the extent such
19 taxes and fees were not applicable to the facility on the
20 date of this amendatory Act of the 96th General Assembly.

21 (6) The actual transportation costs, in accordance
22 with the applicable utility's tariffs, and third-party
23 marketer costs incurred by the company, if any, associated
24 with transporting the SNG from the clean coal SNG
25 brownfield facility to the Chicago City-gate to sell such
26 SNG into the natural gas markets shall be recoverable under

1 the sourcing agreement.

2 (7) Unless otherwise provided, within 30 days after a
3 decision of the Commission on recoverable costs under this
4 Section, any interested party to the Commission's decision
5 may apply for a rehearing with respect to the decision. The
6 Commission shall receive and consider the application for
7 rehearing and shall grant or deny the application in whole
8 or in part within 20 days after the date of the receipt of
9 the application by the Commission. If no rehearing is
10 applied for within the required 30 days or an application
11 for rehearing is denied, then the Commission decision shall
12 be final. If an application for rehearing is granted, then
13 the Commission shall hold a rehearing within 30 days after
14 granting the application. The decision of the Commission
15 upon rehearing shall be final.

16 Any person affected by a decision of the Commission
17 under this subsection (h-3) may have the decision reviewed
18 only under and in accordance with the Administrative Review
19 Law. Unless otherwise provided, the provisions of the
20 Administrative Review Law, all amendments and
21 modifications to that Law, and the rules adopted pursuant
22 to that Law shall apply to and govern all proceedings for
23 the judicial review of final administrative decisions of
24 the Commission under this subsection (h-3). The term
25 "administrative decision" is defined as in Section 3-101 of
26 the Code of Civil Procedure.

1 (8) The Capital Development Board shall adopt and make
2 public a policy detailing the process for retaining experts
3 under this Section. Any experts retained to assist with
4 calculating the range of capital costs or operations and
5 maintenance costs shall be retained no later than 45 days
6 after the effective date of this amendatory Act of the 96th
7 General Assembly.

8 (h-4) No later than 60 days after the Illinois Power Agency
9 submits the final draft sourcing agreement pursuant to
10 subsection (h-1), the Commission shall approve a sourcing
11 agreement containing the capital costs, rate of return, and
12 operations and maintenance costs. Once the sourcing agreement
13 is approved, then the gas utility subject to that sourcing
14 agreement shall have 45 days after the date of the Commission's
15 approval to enter into the sourcing agreement.

16 (h-5) The Attorney General, on behalf of the people of the
17 State of Illinois, may specifically enforce the requirements of
18 this subsection (h-5). All contracts under subsection (h) of
19 this Act and all sourcing agreements under subsection (h-1) of
20 this Act, regardless of duration, shall require the owner of
21 any facility supplying SNG under the contract or sourcing
22 agreement to provide documentation to the Commission each year,
23 starting in the facility's first year of commercial operation,
24 accurately reporting the quantity of carbon dioxide emissions
25 from the facility that have been captured and sequestered and
26 reporting any quantities of carbon dioxide released from the

1 site or sites at which carbon dioxide emissions were
2 sequestered in prior years, based on continuous monitoring of
3 those sites. If, in any year, the owner of the facility
4 described in subsection (h) of this Act fails to demonstrate
5 that the ~~SNG~~ facility captured and sequestered at least 90% of
6 the total carbon dioxide emissions that the facility would
7 otherwise emit or that sequestration of emissions from prior
8 years has failed, resulting in the release of carbon dioxide
9 into the atmosphere, then the owner of the facility must offset
10 excess emissions. Any such carbon dioxide offsets must be
11 permanent, additional, verifiable, real, located within the
12 State of Illinois, and legally and practicably enforceable;
13 provided that the owner of the facility described in subsection
14 (h) of this Act shall not be obligated to acquire carbon
15 dioxide emission offsets to the extent that the cost of
16 acquiring such offsets would exceed \$40 million in any given
17 year. No costs of any purchases of carbon offsets may be
18 recovered from a utility or its customers. All carbon offsets
19 purchased for this purpose must be permanently retired.

20 If, in any year, the owner of a clean coal SNG brownfield
21 facility fails to demonstrate that the clean coal SNG
22 brownfield facility captured and sequestered at least 85% of
23 the total carbon dioxide emissions that the facility would
24 otherwise emit, then the owner of the clean coal SNG brownfield
25 facility must pay a penalty of \$20 per ton of excess carbon
26 emissions up to \$20,000,000, which shall be deposited into the

1 Energy Efficiency Trust Fund and distributed pursuant to
2 subsection (b) of Section 6-6 of the Renewable Energy, Energy
3 Efficiency, and Coal Resources Development Law of 1997.
4 Provided, however, to the extent that the owner of the clean
5 coal SNG brownfield facility can demonstrate that the failure
6 was as a result of acts of God (including fire, flood,
7 earthquake, tornado, lightning, hurricane, or other natural
8 disaster); any amendment, modification, or abrogation of any
9 applicable law or regulation that would prevent performance;
10 war; invasion; act of foreign enemies; hostilities (regardless
11 of whether war is declared); civil war; rebellion; revolution;
12 insurrection; military or usurped power or confiscation;
13 terrorist activities; civil disturbances; riots;
14 nationalization; sabotage; blockage; or embargo, the owner of
15 the clean coal SNG brownfield facility shall not be subject to
16 a penalty if and only if (i) it promptly provides notice of its
17 failure to the Commission; (ii) as soon as practicable and
18 consistent with any order or direction from the Commission, it
19 submits to the Commission proposed modifications to its carbon
20 capture and sequestration plan; and (iii) it carries out its
21 proposed modifications in the manner and time directed by the
22 Commission. If the Commission finds that the facility has not
23 satisfied each of these requirements, then the facility shall
24 be subject to the penalty. If the owner of a clean coal SNG
25 brownfield facility demonstrates that the clean coal SNG
26 brownfield facility captured and sequestered more than 85% of

1 the total carbon emissions that the facility would otherwise
2 emit, the owner of the clean coal SNG brownfield facility may
3 credit such additional amounts to reduce the amount of any
4 future penalty to be paid. The penalty resulting from the
5 failure to capture and sequester at least the minimum amount of
6 carbon dioxide shall not be passed on to a utility or its
7 customers.

8 In addition to any penalty for the clean coal SNG
9 brownfield facility's failure to capture and sequester at least
10 its minimum sequestration requirement, the Attorney General,
11 on behalf of the People of the State of Illinois, shall bring
12 an action for specific performance of this subsection (h-5).
13 Such action may be filed in any circuit court in Illinois. By
14 entering into a sourcing agreement pursuant to subsection (h-1)
15 of this Section, the clean coal SNG brownfield facility agrees
16 to waive any objections to venue or to the jurisdiction of the
17 court with regard to the Attorney General's action for specific
18 performance under this subsection (h-5).

19 In addition, carbon dioxide emission credits equivalent to
20 50% of the amount of credits associated with the required
21 sequestration of carbon dioxide from the facility must be
22 permanently retired. Compliance with the sequestration
23 requirements and the offset purchase requirements specified in
24 this subsection (h-5) for the facility described in subsection
25 (h) of this Act shall be assessed annually by an independent
26 expert retained by the owner of the ~~SNG~~ facility described in

1 subsection (h) of this Act, with the advance written approval
2 of the Attorney General. Compliance with the sequestration
3 requirements and penalty requirements specified in this
4 subsection (h-5) for the clean coal SNG brownfield facility
5 shall be assessed annually by the Commission, which may in its
6 discretion retain an expert to facilitate its assessment. If an
7 expert is retained by the Commission, then the clean coal SNG
8 brownfield facility shall pay for the expert's reasonable fees,
9 and such costs shall not be passed through to a utility or its
10 customers. A SNG facility operating pursuant to this subsection
11 (h-5) shall not forfeit its designation as a clean coal SNG
12 facility or a clean coal SNG brownfield facility if the
13 facility fails to fully comply with the applicable carbon
14 sequestration requirements in any given year, provided the
15 requisite offsets are purchased or requisite penalties are
16 paid.

17 Responsibility for compliance with the sequestration
18 requirements specified in this subsection (h-5) for the clean
19 coal SNG brownfield facility shall reside solely with the clean
20 coal SNG brownfield facility regardless of whether the facility
21 has contracted with another party to capture, transport, or
22 sequester carbon dioxide.

23 (h-7) Sequestration permitting, oversight, and
24 investigations.

25 (1) No clean coal facility or clean coal SNG brownfield
26 facility may transport or sequester carbon dioxide unless

1 the Commission approves the method of carbon dioxide
2 transportation or sequestration. Such approval shall be
3 required regardless of whether the facility has contracted
4 with another to transport or sequester the carbon dioxide.
5 Nothing in this subsection (h-7) shall release the owner or
6 operator of a carbon dioxide sequestration site or carbon
7 dioxide pipeline from any other permitting requirements
8 under applicable State and federal laws, statutes, rules,
9 or regulations.

10 (2) The Commission shall review carbon dioxide
11 transportation and sequestration methods proposed by a
12 clean coal facility or a clean coal SNG brownfield facility
13 and shall approve those methods it deems reasonable and
14 cost-effective. For purposes of this review,
15 "cost-effective" means a commercially reasonable price for
16 similar carbon dioxide transportation or sequestration
17 techniques. In determining whether sequestration is
18 reasonable and cost-effective, the Commission may consult
19 with the Illinois State Geological Survey and retain third
20 parties to assist in its determination, provided that such
21 third parties shall not own or control any direct or
22 indirect interest in the facility that is proposing the
23 carbon dioxide transportation or the carbon dioxide
24 sequestration method and shall have no contractual
25 relationship with that facility. If a third party is
26 retained by the Commission, then the facility proposing the

1 carbon dioxide transportation or sequestration method
2 shall pay for the expert's reasonable fees, and these costs
3 shall not be passed through to a utility or its customers.

4 No later than 6 months prior to the date upon which the
5 owner intends to commence construction of a clean coal
6 facility or the clean coal SNG brownfield facility, the
7 owner of the facility shall file with the Commission a
8 carbon dioxide transportation or sequestration plan. The
9 Commission shall hold a public hearing within 30 days after
10 receipt of the facility's carbon dioxide transportation or
11 sequestration plan. The Commission shall post notice of the
12 review on its website upon submission of a carbon dioxide
13 transportation or sequestration method and shall accept
14 written public comments. The Commission shall take the
15 comments into account when making its decision.

16 The Commission may not approve a carbon dioxide
17 sequestration method if the owner or operator of the
18 sequestration site has not received (i) an Underground
19 Injection Control permit from the Illinois Environmental
20 Protection Agency pursuant to the Environmental Protection
21 Act; (ii) an Underground Injection Control permit from the
22 Illinois Department of Natural Resources pursuant to the
23 Illinois Oil and Gas Act; or (iii) a permit similar to
24 items (i) or (ii) from the state in which the sequestration
25 site is located if the sequestration will take place
26 outside of Illinois. The Commission shall approve or deny

1 the carbon dioxide transportation or sequestration method
2 within 90 days after the receipt of all required
3 information.

4 (3) At least annually, the Illinois Environmental
5 Protection Agency shall inspect all carbon dioxide
6 sequestration sites in Illinois. The Illinois
7 Environmental Protection Agency may, as often as deemed
8 necessary, monitor and conduct investigations of those
9 sites. The owner or operator of the sequestration site must
10 cooperate with the Illinois Environmental Protection
11 Agency investigations of carbon dioxide sequestration
12 sites.

13 If the Illinois Environmental Protection Agency
14 determines at any time a site creates conditions that
15 warrant the issuance of a seal order under Section 34 of
16 the Environmental Protection Act, then the Illinois
17 Environmental Protection Agency shall seal the site
18 pursuant to the Environmental Protection Act. If the
19 Illinois Environmental Protection Agency determines at any
20 time a carbon dioxide sequestration site creates
21 conditions that warrant the institution of a civil action
22 for an injunction under Section 43 of the Environmental
23 Protection Act, then the Illinois Environmental Protection
24 Agency shall request the State's Attorney or the Attorney
25 General institute such action. The Illinois Environmental
26 Protection Agency shall provide notice of any such actions

1 as soon as possible on its website. The SNG facility shall
2 incur all reasonable costs associated with any such
3 inspection or monitoring of the sequestration sites, and
4 these costs shall not be recoverable from utilities or
5 their customers.

6 (4) At least annually, the Commission shall inspect all
7 carbon dioxide pipelines in Illinois that transport carbon
8 dioxide to ensure the safety and feasibility of those
9 pipelines. The Commission may, as often as deemed
10 necessary, monitor and conduct investigations of those
11 pipelines. The owner or operator of the pipeline must
12 cooperate with the Commission investigations of the carbon
13 dioxide pipelines.

14 If the Commission determines at any time that a carbon
15 dioxide pipeline creates conditions that warrant the
16 issuance of a seal order under Section 34 of the
17 Environmental Protection Act, then the Commission shall
18 notify the Illinois Environmental Protection Agency of
19 such conditions. If the Commission determines at any time a
20 carbon dioxide pipeline creates conditions that warrant
21 the institution of a civil action for an injunction under
22 Section 43 of the Environmental Protection Act, then the
23 Commission shall request the State's Attorney or the
24 Attorney General institute such action. The Commission
25 shall provide notice of any such actions as soon as
26 possible on its website. The SNG facility shall incur all

1 reasonable costs associated with any such inspection or
2 monitoring of the sequestration sites, and these costs
3 shall not be recoverable from a utility or its customers.

4 (h-9) The clean coal SNG brownfield facility shall have the
5 right to recover prudently incurred increased costs or reduced
6 revenue resulting from any new or amendatory legislation or
7 other action. The State of Illinois pledges that the State will
8 not enact any law or take any action to:

9 (1) break, or repeal the authority for, sourcing
10 agreements approved by the Commission and entered into
11 between public utilities and the clean coal SNG brownfield
12 facility;

13 (2) deny public utilities full cost recovery for their
14 costs incurred under those sourcing agreements; or

15 (3) deny the clean coal SNG brownfield facility full
16 cost and revenue recovery as provided under those sourcing
17 agreements that are recoverable pursuant to subsection
18 (h-3) of this Section.

19 These pledges are for the benefit of the parties to those
20 sourcing agreements and the issuers and holders of bonds or
21 other obligations issued or incurred to finance or refinance
22 the clean coal SNG brownfield facility. The clean coal SNG
23 brownfield facility is authorized to include and refer to these
24 pledges in any financing agreement into which it may enter in
25 regard to those sourcing agreements.

26 The State of Illinois retains and reserves all other rights

1 to enact new or amendatory legislation or take any other
2 action, without impairment of the right of the clean coal SNG
3 brownfield facility to recover prudently incurred increased
4 costs or reduced revenue resulting from the new or amendatory
5 legislation or other action, including, but not limited to,
6 such legislation or other action that would (i) directly or
7 indirectly raise the costs the clean coal SNG brownfield
8 facility must incur; (ii) directly or indirectly place
9 additional restrictions, regulations, or requirements on the
10 clean coal SNG brownfield facility; (iii) prohibit
11 sequestration in general or prohibit a specific sequestration
12 method or project; or (iv) increase minimum sequestration
13 requirements for the clean coal SNG brownfield facility to the
14 extent technically feasible. The clean coal SNG brownfield
15 facility shall have the right to recover prudently incurred
16 increased costs or reduced revenue resulting from the new or
17 amendatory legislation or other action as described in this
18 subsection (h-9).

19 (h-10) Contract costs for SNG incurred by an Illinois gas
20 utility are reasonable and prudent and recoverable through the
21 purchased gas adjustment clause and are not subject to review
22 or disallowance by the Commission. Contract costs are costs
23 incurred by the utility under the terms of a contract that
24 incorporates the terms stated in subsection (h) of this Section
25 as confirmed in writing by the Illinois Power Agency as set
26 forth in subsection (h-20) of this Section, which confirmation

1 shall be deemed conclusive, or as a consequence of or condition
2 to its performance under the contract, including (i) amounts
3 paid for SNG under the SNG contract and (ii) costs of
4 transportation and storage services of SNG purchased from
5 interstate pipelines under federally approved tariffs. Any
6 contract, the terms of which have been confirmed in writing by
7 the Illinois Power Agency as set forth in subsection (h-20) of
8 this Section and the performance of the parties under such
9 contract cannot be grounds for challenging prudence or cost
10 recovery by the utility through the purchased gas adjustment
11 clause, and in such cases, the Commission is directed not to
12 consider, and has no authority to consider, any attempted
13 challenges.

14 The contracts entered into by Illinois gas utilities
15 pursuant to subsection (h) of this Section shall provide that
16 the utility retains the right to terminate the contract without
17 further obligation or liability to any party if the contract
18 has been impaired as a result of any legislative,
19 administrative, judicial, or other governmental action that is
20 taken that eliminates all or part of the prudence protection of
21 this subsection (h-10) or denies the recoverability of all or
22 part of the contract costs through the purchased gas adjustment
23 clause. Should any Illinois gas utility exercise its right
24 under this subsection (h-10) to terminate the contract, all
25 contract costs incurred prior to termination are and will be
26 deemed reasonable, prudent, and recoverable as and when

1 incurred and not subject to review or disallowance by the
2 Commission. Any order, issued by the State requiring or
3 authorizing the discontinuation of the merchant function,
4 defined as the purchase and sale of natural gas by an Illinois
5 gas utility for the ultimate consumer in its service territory
6 shall include provisions necessary to prevent the impairment of
7 the value of any contract hereunder over its full term.

8 (h-11) All costs incurred by an Illinois gas utility in
9 procuring SNG, including procuring SNG from a clean coal SNG
10 brownfield facility or a third-party marketer pursuant to
11 subsection (h-1), are reasonable and prudent and recoverable
12 through the purchased gas adjustment clause and are not subject
13 to review or disallowance by the Commission. Sourcing agreement
14 costs are costs incurred by the utility under the terms of a
15 sourcing agreement that incorporates the terms stated in
16 subsection (h-1) of this Section as approved by the Commission
17 as set forth in subsection (h-4) of this Section, which
18 approval shall be deemed conclusive, or as a consequence of or
19 condition to its performance under the contract, including (i)
20 amounts paid for SNG under the SNG contract and (ii) costs of
21 transportation and storage services of SNG purchased from
22 interstate pipelines under federally approved tariffs. Any
23 sourcing agreement, the terms of which have been approved by
24 the Commission as set forth in subsection (h-4) of this
25 Section, and the performance of the parties under the sourcing
26 agreement cannot be grounds for challenging prudence or cost

1 recovery by the utility through the purchased gas adjustment
2 clause, and in these cases, the Commission is directed not to
3 consider, and has no authority to consider, any attempted
4 challenges.

5 (h-15) With respect to each contract entered into by the
6 company with an Illinois utility in accordance with the terms
7 stated in subsection (h) of this Section, within 60 days
8 following the completion of purchases of SNG, the Illinois
9 Power Agency shall conduct an analysis to determine (i) the
10 average contract SNG cost, which shall be calculated as the
11 total amount paid to a company for SNG over the contract term,
12 plus the cost to the utility of the required transportation and
13 storage services of SNG, divided by the total number of MMBtus
14 of SNG actually purchased under the utility contract; (ii) the
15 average natural gas purchase cost, which shall be calculated as
16 the total annual supply costs paid for natural gas (excluding
17 SNG) purchased by such utility over the contract term, plus the
18 costs of transportation and storage services of such natural
19 gas (excluding such costs for SNG), divided by the total number
20 of MMBtus of natural gas (excluding SNG) actually purchased by
21 the utility during the contract term; (iii) the cost
22 differential, which shall be the difference between the average
23 contract SNG cost and the average natural gas purchase cost;
24 and (iv) the revenue share target, which shall be the cost
25 differential multiplied by the total amount of SNG purchased
26 under such utility contract. If the average contract SNG cost

1 is equal to or less than the average natural gas purchase cost,
2 then the company shall have no further obligation to the
3 utility. If the average contract SNG cost for such SNG contract
4 is greater than the average natural gas purchase cost for such
5 utility, then the company shall market the daily production of
6 SNG and distribute on a monthly basis 5% of amounts collected
7 with respect to such future sales to the utilities in
8 proportion to each utility's SNG purchases from the company
9 during the term of the SNG contract to be used to reduce the
10 utility's natural gas costs through the purchased gas
11 adjustment clause; such payments to the utility shall continue
12 until such time as the sum of such payments equals the revenue
13 share target of that utility. The company or utilities shall
14 have no obligation to repay the revenue share target except as
15 provided for in this subsection (h-15).

16 (h-20) The General Assembly authorizes the Illinois
17 Finance Authority to issue bonds to the maximum extent
18 permitted to finance coal gasification facilities described in
19 this Section, which constitute both "industrial projects"
20 under Article 801 of the Illinois Finance Authority Act and
21 "clean coal and energy projects" under Sections 825-65 through
22 825-75 of the Illinois Finance Authority Act. The General
23 Assembly further authorizes the Illinois Power Agency to become
24 party to agreements and take such actions as necessary to
25 enable the Illinois Power Agency or its designate to (i) review
26 and confirm in writing that the terms stated in subsection (h)

1 of this Section are incorporated in the SNG contract, and (ii)
2 conduct an analysis pursuant to subsection (h-15) of this
3 Section. Administrative costs incurred by the Illinois Finance
4 Authority and Illinois Power Agency in performance of this
5 subsection (h-20) shall be subject to reimbursement by the
6 company on terms as the Illinois Finance Authority, the
7 Illinois Power Agency, and the company may agree. The utility
8 and its customers shall have no obligation to reimburse the
9 company, the Illinois Finance Authority, or the Illinois Power
10 Agency for any such costs.

11 (i) If a gas utility or an affiliate of a gas utility has
12 an ownership interest in any entity that produces or sells
13 synthetic natural gas, Article VII of this Act shall apply.

14 (Source: P.A. 95-1027, eff. 6-1-09; 96-1364, eff. 7-28-10.)

15 Section 15. The Illinois Gas Pipeline Safety Act is amended
16 by changing Sections 2.02, 2.03, 2.04, and 3 as follows:

17 (220 ILCS 20/2.02) (from Ch. 111 2/3, par. 552.2)

18 Sec. 2.02. "Gas" means natural gas, flammable gas or gas
19 which is toxic or corrosive. "Gas" also means carbon dioxide in
20 any physical form, whenever transported by pipeline for the
21 purpose of sequestration.

22 (Source: P.A. 76-1588.)

23 (220 ILCS 20/2.03) (from Ch. 111 2/3, par. 552.3)

1 Sec. 2.03. "Transportation of gas" means the gathering,
2 transmission, or distribution of gas by pipeline or its
3 storage, within this State and not subject to the jurisdiction
4 of the Federal Energy Regulatory Commission under the Natural
5 Gas Act, except that it includes the transmission of gas
6 through pipeline facilities within this State that transport
7 gas from an interstate gas pipeline to a direct sales customer
8 within this State purchasing gas for its own consumption.
9 "Transportation of gas" also includes the conveyance of gas
10 from a gas main through the primary fuel line to the outside
11 wall of residential premises. If the gas meter is placed within
12 3 feet of the structure, the utility's responsibility shall end
13 at the outlet side of the meter. "Transportation of gas" also
14 includes the conveyance of carbon dioxide in any physical form
15 for the purpose of sequestration.

16 (Source: P.A. 87-1092; 88-314.)

17 (220 ILCS 20/2.04) (from Ch. 111 2/3, par. 552.4)

18 Sec. 2.04. "Pipeline facilities" includes new and existing
19 pipe rights-of-way and any equipment, facility, or building
20 used in the transportation of gas or the treatment of gas
21 during the course of transportation and includes facilities
22 within this State that transport gas from an interstate gas
23 pipeline to a direct sales customer within this State
24 purchasing gas for its own consumption, but "rights-of-way" as
25 used in this Act does not authorize the Commission to

1 prescribe, under this Act, the location or routing of any
2 pipeline facility. "Pipeline facilities" also includes new and
3 existing pipes and lines and any other equipment, facility, or
4 structure, except customer-owned branch lines connected to the
5 primary fuel lines, used to convey gas from a gas main to the
6 outside wall of residential premises, and any person who
7 provides gas service directly to its residential customer
8 through these facilities shall be deemed to operate such
9 pipeline facilities for purposes of this Act irrespective of
10 the ownership of the facilities or the location of the
11 facilities with respect to the meter, except that a person who
12 provides gas service to a "master meter system", as that term
13 is defined at 49 C.F.R. Section 191.3, shall not be deemed to
14 operate any facilities downstream of the master meter.
15 "Pipeline facilities" also includes new and existing pipe
16 rights-of-way and any equipment, facility, or building used in
17 the transportation of carbon dioxide in any physical form for
18 the purpose of sequestration.

19 (Source: P.A. 87-1092; 88-314.)

20 (220 ILCS 20/3) (from Ch. 111 2/3, par. 553)

21 Sec. 3. (a) As soon as practicable, but not later than 3
22 months after the effective date of this Act, the Commission
23 shall adopt rules establishing minimum safety standards for the
24 transportation of gas and for pipeline facilities. Such rules
25 shall be at least as inclusive, as stringent, and compatible

1 with, the minimum safety standards adopted by the Secretary of
2 Transportation under the Federal Act. Thereafter, the
3 Commission shall maintain such rules so that the rules are at
4 least as inclusive, as stringent, and compatible with, the
5 minimum standards from time to time in effect under the Federal
6 Act. The Commission shall also adopt rules establishing minimum
7 safety standards for the transportation of carbon dioxide in
8 any physical form for the purpose of sequestration and for
9 pipeline facilities used for that function.

10 (b) Standards established under this Act may apply to the
11 design, installation, inspection, testing, construction,
12 extension, operation, replacement, and maintenance of pipeline
13 facilities. Standards affecting the design, installation,
14 construction, initial inspection and initial testing are not
15 applicable to pipeline facilities in existence on the date such
16 standards are adopted. Whenever the Commission finds a
17 particular facility to be hazardous to life or property, it may
18 require the person operating such facility to take the steps
19 necessary to remove the hazard.

20 (c) Standards established by the Commission under this Act
21 shall, subject to paragraphs (a) and (b) of this Section 3, be
22 practicable and designed to meet the need for pipeline safety.
23 In prescribing such standards, the Commission shall consider:
24 similar standards established in other states; relevant
25 available pipeline safety data; whether such standards are
26 appropriate for the particular type of pipeline

1 transportation; the reasonableness of any proposed standards;
2 and the extent to which such standards will contribute to
3 public safety.

4 Rules adopted under this Act are subject to "The Illinois
5 Administrative Procedure Act", approved September 22, 1975, as
6 amended.

7 (Source: P.A. 83-333.)

8 Section 20. The Illinois Environmental Protection Act is
9 amended by adding Section 13.7 as follows:

10 (415 ILCS 5/13.7 new)

11 Sec. 13.7. Carbon dioxide sequestration sites.

12 (a) For purposes of this Section, the term "carbon dioxide
13 sequestration site" means a site or facility for which the
14 Agency has issued a permit for the underground injection of
15 carbon dioxide.

16 (b) The Agency shall inspect carbon dioxide sequestration
17 sites for compliance with this Act, rules adopted under this
18 Act, and permits issued by the Agency.

19 (c) If the Agency issues a seal order under Section 34 of
20 this Act in relation to a carbon dioxide sequestration site, or
21 if a civil action for an injunction to halt activity at a
22 carbon dioxide sequestration site is initiated under Section 43
23 of this Act at the request of the Agency, then the Agency shall
24 post notice of such action on its website.

1 (d) Persons seeking a permit or permit modification for the
2 underground injection of carbon dioxide shall be liable to the
3 Agency for all reasonable and documented costs incurred by the
4 Agency that are associated with review and issuance of the
5 permit, including, but not limited to, costs associated with
6 public hearings and the review of permit applications. Once a
7 permit is issued, the permittee shall be liable to the Agency
8 for all reasonable and documented costs incurred by the Agency
9 that are associated with inspections and other oversight of the
10 carbon dioxide sequestration site. Persons liable for costs
11 under this subsection (d) must pay the costs upon invoicing, or
12 other request or demand for payment, by the Agency.

13 Moneys collected under this subsection (d) shall be
14 deposited into the Environmental Protection Permit and
15 Inspection Fund established under Section 22.8 of this Act. The
16 Agency may adopt rules relating to the collection of costs due
17 under this subsection (d).

18 (e) The Agency shall not issue a permit or permit
19 modification for the underground injection of carbon dioxide
20 unless all costs for which the permittee is liable under
21 subsection (d) of this Section have been paid.

22 (f) No person shall fail or refuse to pay costs for which
23 the person is liable under subsection (d) of this Section.

24 Section 85. Rulemaking. The Illinois Environmental
25 Protection Agency, the Illinois Commerce Commission, the

1 Capital Development Board, and the Illinois Department of
2 Natural Resources shall have rulemaking authority to implement
3 the provisions of this amendatory Act of the 96th General
4 Assembly.

5 Section 90. Inseverability. The provisions of this Act are
6 mutually dependent and inseverable. If any provision is held
7 invalid, then this entire Act, including all new and amendatory
8 provisions, is invalid.

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.".