



Sen. William R. Haine

**Filed: 3/26/2012**

09700SB2867sam004

LRB097 15146 JDS 67802 a

1 AMENDMENT TO SENATE BILL 2867

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2867 by replacing  
3 Section 10 with the following:

4 "Section 10. The Public Utilities Act is amended by  
5 changing Section 9-220 as follows:

6 (220 ILCS 5/9-220) (from Ch. 111 2/3, par. 9-220)

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

8 (a) Notwithstanding the provisions of Section 9-201, the  
9 Commission may authorize the increase or decrease of rates and  
10 charges based upon changes in the cost of fuel used in the  
11 generation or production of electric power, changes in the cost  
12 of purchased power, or changes in the cost of purchased gas  
13 through the application of fuel adjustment clauses or purchased  
14 gas adjustment clauses. The Commission may also authorize the  
15 increase or decrease of rates and charges based upon  
16 expenditures or revenues resulting from the purchase or sale of

1 emission allowances created under the federal Clean Air Act  
2 Amendments of 1990, through such fuel adjustment clauses, as a  
3 cost of fuel. For the purposes of this paragraph, cost of fuel  
4 used in the generation or production of electric power shall  
5 include the amount of any fees paid by the utility for the  
6 implementation and operation of a process for the  
7 desulfurization of the flue gas when burning high sulfur coal  
8 at any location within the State of Illinois irrespective of  
9 the attainment status designation of such location; but shall  
10 not include transportation costs of coal (i) except to the  
11 extent that for contracts entered into on and after the  
12 effective date of this amendatory Act of 1997, the cost of the  
13 coal, including transportation costs, constitutes the lowest  
14 cost for adequate and reliable fuel supply reasonably available  
15 to the public utility in comparison to the cost, including  
16 transportation costs, of other adequate and reliable sources of  
17 fuel supply reasonably available to the public utility, or (ii)  
18 except as otherwise provided in the next 3 sentences of this  
19 paragraph. Such costs of fuel shall, when requested by a  
20 utility or at the conclusion of the utility's next general  
21 electric rate proceeding, whichever shall first occur, include  
22 transportation costs of coal purchased under existing coal  
23 purchase contracts. For purposes of this paragraph "existing  
24 coal purchase contracts" means contracts for the purchase of  
25 coal in effect on the effective date of this amendatory Act of  
26 1991, as such contracts may thereafter be amended, but only to

1 the extent that any such amendment does not increase the  
2 aggregate quantity of coal to be purchased under such contract.  
3 Nothing herein shall authorize an electric utility to recover  
4 through its fuel adjustment clause any amounts of  
5 transportation costs of coal that were included in the revenue  
6 requirement used to set base rates in its most recent general  
7 rate proceeding. Cost shall be based upon uniformly applied  
8 accounting principles. Annually, the Commission shall initiate  
9 public hearings to determine whether the clauses reflect actual  
10 costs of fuel, gas, power, or coal transportation purchased to  
11 determine whether such purchases were prudent, and to reconcile  
12 any amounts collected with the actual costs of fuel, power,  
13 gas, or coal transportation prudently purchased. In each such  
14 proceeding, the burden of proof shall be upon the utility to  
15 establish the prudence of its cost of fuel, power, gas, or coal  
16 transportation purchases and costs. The Commission shall issue  
17 its final order in each such annual proceeding for an electric  
18 utility by December 31 of the year immediately following the  
19 year to which the proceeding pertains, provided, that the  
20 Commission shall issue its final order with respect to such  
21 annual proceeding for the years 1996 and earlier by December  
22 31, 1998.

23 (b) A public utility providing electric service, other than  
24 a public utility described in subsections (e) or (f) of this  
25 Section, may at any time during the mandatory transition period  
26 file with the Commission proposed tariff sheets that eliminate

1 the public utility's fuel adjustment clause and adjust the  
2 public utility's base rate tariffs by the amount necessary for  
3 the base fuel component of the base rates to recover the public  
4 utility's average fuel and power supply costs per kilowatt-hour  
5 for the 2 most recent years for which the Commission has issued  
6 final orders in annual proceedings pursuant to subsection (a),  
7 where the average fuel and power supply costs per kilowatt-hour  
8 shall be calculated as the sum of the public utility's prudent  
9 and allowable fuel and power supply costs as found by the  
10 Commission in the 2 proceedings divided by the public utility's  
11 actual jurisdictional kilowatt-hour sales for those 2 years.  
12 Notwithstanding any contrary or inconsistent provisions in  
13 Section 9-201 of this Act, in subsection (a) of this Section or  
14 in any rules or regulations promulgated by the Commission  
15 pursuant to subsection (g) of this Section, the Commission  
16 shall review and shall by order approve, or approve as  
17 modified, the proposed tariff sheets within 60 days after the  
18 date of the public utility's filing. The Commission may modify  
19 the public utility's proposed tariff sheets only to the extent  
20 the Commission finds necessary to achieve conformance to the  
21 requirements of this subsection (b). During the 5 years  
22 following the date of the Commission's order, but in any event  
23 no earlier than January 1, 2007, a public utility whose fuel  
24 adjustment clause has been eliminated pursuant to this  
25 subsection shall not file proposed tariff sheets seeking, or  
26 otherwise petition the Commission for, reinstatement of a fuel

1 adjustment clause.

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

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

1 date of the public utility's filing, or (ii) a 12 month future  
2 period ending no later than 15 months following the date of the  
3 public utility's filing. The public utility shall include with  
4 its tariff filing information showing both (1) its actual  
5 jurisdictional power supply costs or gas supply costs for a 12  
6 month historical period conforming to (i) above and (2) its  
7 projected jurisdictional power supply costs or gas supply costs  
8 for a future 12 month period conforming to (ii) above. If the  
9 Commission's order requires modifications in the tariff sheets  
10 filed by the public utility, the public utility shall have 7  
11 days following the date of the order to notify the Commission  
12 whether the public utility will implement the modified tariffs  
13 or elect to continue its fuel or purchased gas adjustment  
14 clause in force as though no order had been entered. The  
15 Commission's order shall provide for any reconciliation of  
16 power supply costs or gas supply costs, as the case may be, and  
17 associated revenues through the date that the public utility's  
18 fuel or purchased gas adjustment clause is eliminated. During  
19 the 5 years following the date of the Commission's order, a  
20 public utility whose fuel or purchased gas adjustment clause  
21 has been eliminated pursuant to this subsection shall not file  
22 proposed tariff sheets seeking, or otherwise petition the  
23 Commission for, reinstatement or adoption of a fuel or  
24 purchased gas adjustment clause. Nothing in this subsection (d)  
25 shall be construed as limiting the Commission's authority to  
26 eliminate a public utility's fuel adjustment clause or

1 purchased gas adjustment clause in accordance with any other  
2 applicable provisions of this Act.

3 (e) Notwithstanding any contrary or inconsistent  
4 provisions in Section 9-201 of this Act, in subsection (a) of  
5 this Section, or in any rules promulgated by the Commission  
6 pursuant to subsection (g) of this Section, a public utility  
7 providing electric service to more than 1,000,000 customers in  
8 this State may, within the first 6 months after the effective  
9 date of this amendatory Act of 1997, file with the Commission  
10 proposed tariff sheets that eliminate, effective January 1,  
11 1997, the public utility's fuel adjustment clause without  
12 adjusting its base rates, and such tariff sheets shall be  
13 effective upon filing. To the extent the application of the  
14 fuel adjustment clause had resulted in net charges to customers  
15 after January 1, 1997, the utility shall also file a tariff  
16 sheet that provides for a refund stated on a per kilowatt-hour  
17 basis of such charges over a period not to exceed 6 months;  
18 provided however, that such refund shall not include the  
19 proportional amounts of taxes paid under the Use Tax Act,  
20 Service Use Tax Act, Service Occupation Tax Act, and Retailers'  
21 Occupation Tax Act on fuel used in generation. The Commission  
22 shall issue an order within 45 days after the date of the  
23 public utility's filing approving or approving as modified such  
24 tariff sheet. If the fuel adjustment clause is eliminated  
25 pursuant to this subsection, the Commission shall not conduct  
26 the annual hearings specified in the last 3 sentences of



1 subsection (a) of this Section for the utility for any period  
2 after December 31, 1996 and prior to any reinstatement of such  
3 clause. A public utility whose fuel adjustment clause has been  
4 eliminated pursuant to this subsection shall not file a  
5 proposed tariff sheet seeking, or otherwise petition the  
6 Commission for, reinstatement of the fuel adjustment clause  
7 prior to January 1, 2007.

8 (f) 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 or regulations promulgated by the  
11 Commission pursuant to subsection (g) of this Section, a public  
12 utility providing electric service to more than 500,000  
13 customers but fewer than 1,000,000 customers in this State may,  
14 within the first 6 months after the effective date of this  
15 amendatory Act of 1997, file with the Commission proposed  
16 tariff sheets that eliminate, effective January 1, 1997, the  
17 public utility's fuel adjustment clause and adjust its base  
18 rates by the amount necessary for the base fuel component of  
19 the base rates to recover 91% of the public utility's average  
20 fuel and power supply costs for the 2 most recent years for  
21 which the Commission, as of January 1, 1997, has issued final  
22 orders in annual proceedings pursuant to subsection (a), where  
23 the average fuel and power supply costs per kilowatt-hour shall  
24 be calculated as the sum of the public utility's prudent and  
25 allowable fuel and power supply costs as found by the  
26 Commission in the 2 proceedings divided by the public utility's

1 actual jurisdictional kilowatt-hour sales for those 2 years,  
2 provided, that such tariff sheets shall be effective upon  
3 filing. To the extent the application of the fuel adjustment  
4 clause had resulted in net charges to customers after January  
5 1, 1997, the utility shall also file a tariff sheet that  
6 provides for a refund stated on a per kilowatt-hour basis of  
7 such charges over a period not to exceed 6 months. Provided  
8 however, that such refund shall not include the proportional  
9 amounts of taxes paid under the Use Tax Act, Service Use Tax  
10 Act, Service Occupation Tax Act, and Retailers' Occupation Tax  
11 Act on fuel used in generation. The Commission shall issue an  
12 order within 45 days after the date of the public utility's  
13 filing approving or approving as modified such tariff sheet. If  
14 the fuel adjustment clause is eliminated pursuant to this  
15 subsection, the Commission shall not conduct the annual  
16 hearings specified in the last 3 sentences of subsection (a) of  
17 this Section for the utility for any period after December 31,  
18 1996 and prior to any reinstatement of such clause. A public  
19 utility whose fuel adjustment clause has been eliminated  
20 pursuant to this subsection shall not file a proposed tariff  
21 sheet seeking, or otherwise petition the Commission for,  
22 reinstatement of the fuel adjustment clause prior to January 1,  
23 2007.

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

26 (h) Any Illinois gas utility may enter into a contract on

1 or before September 30, 2011 for up to 10 years of supply with  
2 any company for the purchase of substitute natural gas (SNG)  
3 produced from coal through the gasification process if the  
4 company has commenced construction of a clean coal SNG facility  
5 by July 1, 2012 and commencement of construction shall mean  
6 that material physical site work has occurred, such as site  
7 clearing and excavation, water runoff prevention, water  
8 retention reservoir preparation, or foundation development.  
9 The contract shall contain the following provisions: (i) at  
10 least 90% of feedstock to be used in the gasification process  
11 shall be coal with a high volatile bituminous rank and greater  
12 than 1.7 pounds of sulfur per million Btu content; (ii) at the  
13 time the contract term commences, the price per million Btu may  
14 not exceed \$7.95 in 2008 dollars, adjusted annually based on  
15 the change in the Annual Consumer Price Index for All Urban  
16 Consumers for the Midwest Region as published in April by the  
17 United States Department of Labor, Bureau of Labor Statistics  
18 (or a suitable Consumer Price Index calculation if this  
19 Consumer Price Index is not available) for the previous  
20 calendar year; provided that the price per million Btu shall  
21 not exceed \$9.95 at any time during the contract; (iii) the  
22 utility's supply contract for the purchase of SNG does not  
23 exceed 15% of the annual system supply requirements of the  
24 utility as of 2008; and (iv) the contract costs pursuant to  
25 subsection (h-10) of this Section shall not include any  
26 lobbying expenses, charitable contributions, advertising,

1 organizational memberships, carbon dioxide pipeline or  
2 sequestration expenses, or marketing expenses.

3 Any gas utility that is providing service to more than  
4 150,000 customers on August 2, 2011 (the effective date of  
5 Public Act 97-239) shall either elect to enter into a contract  
6 on or before September 30, 2011 for 10 years of SNG supply with  
7 the owner of a clean coal SNG facility or to file biennial rate  
8 proceedings before the Commission in the years 2012, 2014, and  
9 2016, with such filings made after August 2, 2011 and no later  
10 than September 30 of the years 2012, 2014, and 2016 consistent  
11 with all requirements of 83 Ill. Adm. Code 255 and 285 as  
12 though the gas utility were filing for an increase in its  
13 rates, without regard to whether such filing would produce an  
14 increase, a decrease, or no change in the gas utility's rates,  
15 and the Commission shall review the gas utility's filing and  
16 shall issue its order in accordance with the provisions of  
17 Section 9-201 of this Act.

18 Within 7 days after August 2, 2011, the owner of the clean  
19 coal SNG facility shall submit to the Illinois Power Agency and  
20 each gas utility that is providing service to more than 150,000  
21 customers on August 2, 2011 a copy of a draft contract. Within  
22 30 days after the receipt of the draft contract, each such gas  
23 utility shall provide the Illinois Power Agency and the owner  
24 of the clean coal SNG facility with its comments and  
25 recommended revisions to the draft contract. Within 7 days  
26 after the receipt of the gas utility's comments and recommended

1 revisions, the owner of the facility shall submit its  
2 responsive comments and a further revised draft of the contract  
3 to the Illinois Power Agency. The Illinois Power Agency shall  
4 review the draft contract and comments.

5 During its review of the draft contract, the Illinois Power  
6 Agency shall:

7 (1) review and confirm in writing that the terms stated  
8 in this subsection (h) are incorporated in the SNG  
9 contract;

10 (2) review the SNG pricing formula included in the  
11 contract and approve that formula if the Illinois Power  
12 Agency determines that the formula, at the time the  
13 contract term commences: (A) starts with a price of \$6.50  
14 per MMBtu adjusted by the adjusted final capitalized plant  
15 cost; (B) takes into account budgeted miscellaneous net  
16 revenue after cost allowance, including sale of SNG  
17 produced by the clean coal SNG facility above the nameplate  
18 capacity of the facility and other by-products produced by  
19 the facility, as approved by the Illinois Power Agency; (C)  
20 does not include carbon dioxide transportation or  
21 sequestration expenses; and (D) includes all provisions  
22 required under this subsection (h); if the Illinois Power  
23 Agency does not approve of the SNG pricing formula, then  
24 the Illinois Power Agency shall modify the formula to  
25 ensure that it meets the requirements of this subsection  
26 (h);

1           (3) review and approve the amount of budgeted  
2 miscellaneous net revenue after cost allowance, including  
3 sale of SNG produced by the clean coal SNG facility above  
4 the nameplate capacity of the facility and other  
5 by-products produced by the facility, to be included in the  
6 pricing formula; the Illinois Power Agency shall approve  
7 the amount of budgeted miscellaneous net revenue to be  
8 included in the pricing formula if it determines the  
9 budgeted amount to be reasonable and accurate;

10           (4) review and confirm in writing that using the EIA  
11 Annual Energy Outlook-2011 Henry Hub Spot Price, the  
12 contract terms set out in subsection (h), the  
13 reconciliation account terms as set out in subsection  
14 (h-15), and an estimated inflation rate of 2.5% for each  
15 corresponding year, that there will be no cumulative  
16 estimated increase for residential customers; and

17           (5) allocate the nameplate capacity of the clean coal  
18 SNG by total therms sold to ultimate customers by each gas  
19 utility in 2008; provided, however, no utility shall be  
20 required to purchase more than 42% of the projected annual  
21 output of the facility; additionally, the Illinois Power  
22 Agency shall further adjust the allocation only as required  
23 to take into account (A) adverse consolidation,  
24 derivative, or lease impacts to the balance sheet or income  
25 statement of any gas utility or (B) the physical capacity  
26 of the gas utility to accept SNG.

1           If the parties to the contract do not agree on the terms  
2           therein, then the Illinois Power Agency shall retain an  
3           independent mediator to mediate the dispute between the  
4           parties. If the parties are in agreement on the terms of the  
5           contract, then the Illinois Power Agency shall approve the  
6           contract. If after mediation the parties have failed to come to  
7           agreement, then the Illinois Power Agency shall revise the  
8           draft contract as necessary to confirm that the contract  
9           contains only terms that are reasonable and equitable. The  
10          Illinois Power Agency may, in its discretion, retain an  
11          independent, qualified, and experienced expert to assist in its  
12          obligations under this subsection (h). The Illinois Power  
13          Agency shall adopt and make public policies detailing the  
14          processes for retaining a mediator and an expert under this  
15          subsection (h). Any mediator or expert retained under this  
16          subsection (h) shall be retained no later than 60 days after  
17          August 2, 2011.

18          The Illinois Power Agency shall complete all of its  
19          responsibilities under this subsection (h) within 60 days after  
20          August 2, 2011. The clean coal SNG facility shall pay a  
21          reasonable fee as required by the Illinois Power Agency for its  
22          services under this subsection (h) and shall pay the mediator's  
23          and expert's reasonable fees, if any. A gas utility and its  
24          customers shall have no obligation to reimburse the clean coal  
25          SNG facility or the Illinois Power Agency of any such costs.

26          Within 30 days after commercial production of SNG has

1 begun, the Commission shall initiate a review to determine  
2 whether the final capitalized plant cost of the clean coal SNG  
3 facility reflects actual incurred costs and whether the  
4 incurred costs were reasonable. In determining the actual  
5 incurred costs included in the final capitalized plant cost and  
6 the reasonableness of those costs, the Commission may in its  
7 discretion retain independent, qualified, and experienced  
8 experts to assist in its determination. The expert shall not  
9 own or control any direct or indirect interest in the clean  
10 coal SNG facility and shall have no contractual relationship  
11 with the clean coal SNG facility. If an expert is retained by  
12 the Commission, then the clean coal SNG facility shall pay the  
13 expert's reasonable fees. The fees shall not be passed on to a  
14 utility or its customers. The Commission shall adopt and make  
15 public a policy detailing the process for retaining experts  
16 under this subsection (h).

17 Within 30 days after completion of its review, the  
18 Commission shall initiate a formal proceeding on the final  
19 capitalized plant cost of the clean coal SNG facility at which  
20 comments and testimony may be submitted by any interested  
21 parties and the public. If the Commission finds that the final  
22 capitalized plant cost includes costs that were not actually  
23 incurred or costs that were unreasonably incurred, then the  
24 Commission shall disallow the amount of non-incurred or  
25 unreasonable costs from the SNG price under contracts entered  
26 into under this subsection (h). If the Commission disallows any



1 costs, then the Commission shall adjust the SNG price using the  
2 price formula in the contract approved by the Illinois Power  
3 Agency under this subsection (h) to reflect the disallowed  
4 costs and shall enter an order specifying the revised price. In  
5 addition, the Commission's order shall direct the clean coal  
6 SNG facility to issue refunds of such sums as shall represent  
7 the difference between actual gross revenues and the gross  
8 revenue that would have been obtained based upon the same  
9 volume, from the price revised by the Commission. Any refund  
10 shall include interest calculated at a rate determined by the  
11 Commission and shall be returned according to procedures  
12 prescribed by the Commission.

13 Nothing in this subsection (h) shall preclude any party  
14 affected by a decision of the Commission under this subsection  
15 (h) from seeking judicial review of the Commission's decision.

16 (h-1) Any Illinois gas utility may enter into a sourcing  
17 agreement for up to 30 years of supply with the clean coal SNG  
18 brownfield facility if the clean coal SNG brownfield facility  
19 has commenced construction. Any gas utility that is providing  
20 service to more than 150,000 customers on July 13, 2011 (the  
21 effective date of Public Act 97-096) shall either elect to file  
22 biennial rate proceedings before the Commission in the years  
23 2012, 2014, and 2016 or enter into a sourcing agreement or  
24 sourcing agreements with a clean coal SNG brownfield facility  
25 with an initial term of 30 years for either (i) a percentage of  
26 43,500,000,000 cubic feet per year, such that the utilities

1 entering into sourcing agreements with the clean coal SNG  
2 brownfield facility purchase 100%, allocated by total therms  
3 sold to ultimate customers by each gas utility in 2008 or (ii)  
4 such lesser amount as may be available from the clean coal SNG  
5 brownfield facility; provided that no utility shall be required  
6 to purchase more than 42% of the projected annual output of the  
7 clean coal SNG brownfield facility, with the remainder of such  
8 utility's obligation to be divided proportionately between the  
9 other utilities, and provided that the Illinois Power Agency  
10 shall further adjust the allocation only as required to take  
11 into account adverse consolidation, derivative, or lease  
12 impacts to the balance sheet or income statement of any gas  
13 utility.

14 A gas utility electing to file biennial rate proceedings  
15 before the Commission must file a notice of its election with  
16 the Commission within 60 days after July 13, 2011 or its right  
17 to make the election is irrevocably waived. A gas utility  
18 electing to file biennial rate proceedings shall make such  
19 filings no later than August 1 of the years 2012, 2014, and  
20 2016, consistent with all requirements of 83 Ill. Adm. Code 255  
21 and 285 as though the gas utility were filing for an increase  
22 in its rates, without regard to whether such filing would  
23 produce an increase, a decrease, or no change in the gas  
24 utility's rates, and notwithstanding any other provisions of  
25 this Act, the Commission shall fully review the gas utility's  
26 filing and shall issue its order in accordance with the

1 provisions of Section 9-201 of this Act, regardless of whether  
2 the Commission has approved a formula rate for the gas utility.

3 Within 15 days after July 13, 2011, the owner of the clean  
4 coal SNG brownfield facility shall submit to the Illinois Power  
5 Agency and each gas utility that is providing service to more  
6 than 150,000 customers on July 13, 2011 a copy of a draft  
7 sourcing agreement. Within 45 days after receipt of the draft  
8 sourcing agreement, each such gas utility shall provide the  
9 Illinois Power Agency and the owner of a clean coal SNG  
10 brownfield facility with its comments and recommended  
11 revisions to the draft sourcing agreement. Within 15 days after  
12 the receipt of the gas utility's comments and recommended  
13 revisions, the owner of the clean coal SNG brownfield facility  
14 shall submit its responsive comments and a further revised  
15 draft of the sourcing agreement to the Illinois Power Agency.  
16 The Illinois Power Agency shall review the draft sourcing  
17 agreement and comments.

18 If the parties to the sourcing agreement do not agree on  
19 the terms therein, then the Illinois Power Agency shall retain  
20 an independent mediator to mediate the dispute between the  
21 parties. If the parties are in agreement on the terms of the  
22 sourcing agreement, the Illinois Power Agency shall approve the  
23 final draft sourcing agreement. If after mediation the parties  
24 have failed to come to agreement, then the Illinois Power  
25 Agency shall revise the draft sourcing agreement as necessary  
26 to confirm that the final draft sourcing agreement contains

1 only terms that are reasonable and equitable. The Illinois  
2 Power Agency shall adopt and make public a policy detailing the  
3 process for retaining a mediator under this subsection (h-1).  
4 Any mediator retained to assist with mediating disputes between  
5 the parties regarding the sourcing agreement shall be retained  
6 no later than 60 days after July 13, 2011.

7 Upon approval of a final draft agreement, the Illinois  
8 Power Agency shall submit the final draft agreement to the  
9 Capital Development Board and the Commission no later than 90  
10 days after July 13, 2011. The gas utility and the clean coal  
11 SNG brownfield facility shall pay a reasonable fee as required  
12 by the Illinois Power Agency for its services under this  
13 subsection (h-1) and shall pay the mediator's reasonable fees,  
14 if any. The Illinois Power Agency shall adopt and make public a  
15 policy detailing the process for retaining a mediator under  
16 this Section.

17 The sourcing agreement between a gas utility and the clean  
18 coal SNG brownfield facility shall contain the following  
19 provisions:

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

23 (2) Coal and petroleum coke are feedstocks for the  
24 gasification process, with coal comprising at least 50% of  
25 the total feedstock over the term of the sourcing agreement  
26 unless the facility reasonably determines that it is

1 necessary to use additional petroleum coke to deliver net  
2 consumer savings, in which case the facility shall use coal  
3 for at least 35% of the total feedstock over the term of  
4 any sourcing agreement and with the feedstocks to be  
5 procured in accordance with requirements of Section 1-78 of  
6 the Illinois Power Agency Act.

7 (3) The sourcing agreement has an initial term that  
8 once entered into terminates no more than 30 years after  
9 the commencement of the commercial production of SNG at the  
10 clean coal SNG brownfield facility.

11 (4) The clean coal SNG brownfield facility guarantees a  
12 minimum of \$100,000,000 in consumer savings to customers of  
13 the utilities that have entered into sourcing agreements  
14 with the clean coal SNG brownfield facility, calculated in  
15 real 2010 dollars at the conclusion of the term of the  
16 sourcing agreement by comparing the delivered SNG price to  
17 the Chicago City-gate price on a weighted daily basis for  
18 each day over the entire term of the sourcing agreement, to  
19 be provided in accordance with subsection (h-2) of this  
20 Section.

21 (5) Prior to the clean coal SNG brownfield facility  
22 issuing a notice to proceed to construction, the clean coal  
23 SNG brownfield facility shall establish a consumer  
24 protection reserve account for the benefit of the customers  
25 of the utilities that have entered into sourcing agreements  
26 with the clean coal SNG brownfield facility pursuant to

1       this subsection (h-1), with cash principal in the amount of  
2       \$150,000,000. This cash principal shall only be  
3       recoverable through the consumer protection reserve  
4       account and not as a cost to be recovered in the delivered  
5       SNG price pursuant to subsection (h-3) of this Section. The  
6       consumer protection reserve account shall be maintained  
7       and administered by an independent trustee that is mutually  
8       agreed upon by the clean coal SNG brownfield facility, the  
9       utilities, and the Commission in an interest-bearing  
10      account in accordance with subsection (h-2) of this  
11      Section.

12       "Consumer protection reserve account principal maximum  
13      amount" shall mean the maximum amount of principal to be  
14      maintained in the consumer protection reserve account.  
15      During the first 2 years of operation of the facility,  
16      there shall be no consumer protection reserve account  
17      maximum amount. After the first 2 years of operation of the  
18      facility, the consumer protection reserve account maximum  
19      amount shall be \$150,000,000. After 5 years of operation,  
20      and every 5 years thereafter, the trustee shall calculate  
21      the 5-year average balance of the consumer protection  
22      reserve account. If the trustee determines that during the  
23      prior 5 years the consumer protection reserve account has  
24      had an average account balance of less than \$75,000,000,  
25      then the consumer protection reserve account principal  
26      maximum amount shall be increased by \$5,000,000. If the

1 trustee determines that during the prior 5 years the  
2 consumer protection reserve account has had an average  
3 account balance of more than \$75,000,000, then the consumer  
4 protection reserve account principal maximum amount shall  
5 be decreased by \$5,000,000.

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

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

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

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

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

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

23 (11) A utility may exit the sourcing agreement without  
24 penalty if the clean coal SNG brownfield facility does not  
25 commence construction by July 1, 2015.

26 (12) A utility is responsible to pay only the



1 Commission determined unit price cost of SNG that is  
2 purchased by the utility. Nothing in the sourcing agreement  
3 will obligate a utility to invest capital in a clean coal  
4 SNG brownfield facility.

5 (13) The quality of SNG must, at a minimum, be  
6 equivalent to the quality required for interstate pipeline  
7 gas before a utility is required to accept and pay for SNG  
8 gas.

9 (14) Nothing in the sourcing agreement will require a  
10 utility to construct any facilities to accept delivery of  
11 SNG. Provided, however, if a utility is required by law or  
12 otherwise elects to connect the clean coal SNG brownfield  
13 facility to an interstate pipeline, then the utility shall  
14 be entitled to recover pursuant to its tariffs all just and  
15 reasonable costs that are prudently incurred. Any costs  
16 incurred by the utility to receive, deliver, manage, or  
17 otherwise accommodate purchases under the SNG sourcing  
18 agreement will be fully recoverable through a utility's  
19 purchased gas adjustment clause rider mechanism in  
20 conjunction with a SNG brownfield facility rider  
21 mechanism. The SNG brownfield facility rider mechanism (A)  
22 shall be applicable to all customers who receive  
23 transportation service from the utility, (B) shall be  
24 designed to have an equal percent impact on the  
25 transportation services rates of each class of the  
26 utility's customers, and (C) shall accurately reflect the

1 net consumer savings, if any, and above-market costs, if  
2 any, associated with the utility receiving, delivering,  
3 managing, or otherwise accommodating purchases under the  
4 SNG sourcing agreement.

5 (15) Remedies for the clean coal SNG brownfield  
6 facility's failure to deliver a designated amount for a  
7 designated period.

8 (16) The clean coal SNG brownfield facility shall make  
9 a good faith effort to ensure that an amount equal to not  
10 less than 15% of the value of its prime construction  
11 contract for the facility shall be established as a goal to  
12 be awarded to minority owned businesses, female owned  
13 businesses, and businesses owned by a person with a  
14 disability; provided that at least 75% of the amount of  
15 such total goal shall be for minority owned businesses.  
16 "Minority owned business", "female owned business", and  
17 "business owned by a person with a disability" shall have  
18 the meanings ascribed to them in Section 2 of the Business  
19 Enterprise for Minorities, Females and Persons with  
20 Disabilities Act.

21 (17) Prior to the clean coal SNG brownfield facility  
22 issuing a notice to proceed to construction, the clean coal  
23 SNG brownfield facility shall file with the Commission a  
24 certificate from an independent engineer that the clean  
25 coal SNG brownfield facility has (A) obtained all  
26 applicable State and federal environmental permits

1 required for construction; (B) obtained approval from the  
2 Commission of a carbon capture and sequestration plan; and  
3 (C) obtained all necessary permits required for  
4 construction for the transportation and sequestration of  
5 carbon dioxide as set forth in the Commission-approved  
6 carbon capture and sequestration plan.

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

1 independent trustee that is mutually agreed upon by the clean  
2 coal SNG brownfield facility, the utilities, and the Commission  
3 in an interest-bearing account in accordance with the  
4 following:

5 (1) The clean coal SNG brownfield facility monthly  
6 shall calculate (A) the difference between the monthly  
7 delivered SNG price and the Chicago City-gate price, by  
8 comparing the delivered SNG price, which shall include the  
9 cost of transportation to the delivery point, if any, to  
10 the Chicago City-gate price on a weighted daily basis for  
11 each day of the prior month based upon a mutually agreed  
12 upon published index and (B) the overage amount, if any, by  
13 calculating the annualized incremental additional cost, if  
14 any, of the delivered SNG in excess of 2.015% of the  
15 average annual inflation-adjusted amounts paid by all gas  
16 distribution customers in connection with natural gas  
17 service during the 5 years ending May 31, 2010.

18 (2) During the first 2 years of operation of the  
19 facility:

20 (A) to the extent there is an overage amount, the  
21 consumer protection reserve account shall be used to  
22 provide a credit to reduce the SNG price by an amount  
23 equal to the overage amount; and

24 (B) to the extent the monthly delivered SNG price  
25 is less than or equal to the Chicago City-gate price,  
26 the utility shall credit the difference between the

1 monthly delivered SNG price and the monthly Chicago  
2 City-gate price, if any, to the consumer protection  
3 reserve account. Such credit issued pursuant to this  
4 paragraph (B) shall be deemed prudent and reasonable  
5 and not subject to a Commission prudence review;

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

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

17 (B) any amounts in the consumer protection reserve  
18 account in excess of the consumer protection reserve  
19 account principal maximum amount shall be distributed  
20 as follows: (i) if retail customers have not realized  
21 net consumer savings, calculated by comparing the  
22 delivered SNG price to the weighted average of the  
23 daily Chicago City-gate price on a daily basis over the  
24 entire term of the sourcing agreement to date, then 50%  
25 of any amounts in the consumer protection reserve  
26 account in excess of the consumer protection reserve

1 account principal maximum shall be distributed to the  
2 clean coal SNG brownfield facility, with the remaining  
3 50% of any such additional amounts being credited to  
4 retail customers, and (ii) if retail customers have  
5 realized net consumer savings, then 100% of any amounts  
6 in the consumer protection reserve account in excess of  
7 the consumer protection reserve account principal  
8 maximum shall be distributed to the clean coal SNG  
9 brownfield facility; provided, however, that under no  
10 circumstances shall the total cumulative amount  
11 distributed to the clean coal SNG brownfield facility  
12 under this subparagraph (B) exceed \$150,000,000;

13 (C) to the extent there is an overage amount, after  
14 distributing the amounts pursuant to subparagraph (B)  
15 of this paragraph (3), if any, the consumer protection  
16 reserve account shall be used to provide a credit to  
17 reduce the SNG price by an amount equal to the overage  
18 amount;

19 (D) if retail customers have realized net consumer  
20 savings, calculated by comparing the delivered SNG  
21 price to the weighted average of the daily Chicago  
22 City-gate price on a daily basis over the entire term  
23 of the sourcing agreement to date, then after  
24 distributing the amounts pursuant to subparagraphs (B)  
25 and (C) of this paragraph (3), 50% of any additional  
26 amounts in the consumer protection reserve account in

1 excess of the consumer protection reserve account  
2 principal maximum shall be distributed to the clean  
3 coal SNG brownfield facility, with the remaining 50% of  
4 any such additional amounts being credited to retail  
5 customers; provided, however, that if retail customers  
6 have not realized such net consumer savings, no such  
7 distribution shall be made to the clean coal SNG  
8 brownfield facility, and 100% of such additional  
9 amounts shall be credited to the retail customers to  
10 the extent the consumer protection reserve account  
11 exceeds the consumer protection reserve account  
12 principal maximum amount.

13 (4) Fifty percent of all additional net revenue,  
14 defined as miscellaneous net revenue after cost allowance  
15 for costs associated with additional net revenue that are  
16 not otherwise recoverable pursuant to subsection (h-3) of  
17 this Section, including net revenue from sales of  
18 substitute natural gas derived from the facility above the  
19 nameplate capacity of the facility and other by-products  
20 produced by the facility, shall be credited to the consumer  
21 protection reserve account.

22 (5) At the conclusion of the term of the sourcing  
23 agreement, to the extent retail customers have not saved  
24 the minimum of \$100,000,000 in consumer savings as  
25 guaranteed in this subsection (h-2), amounts in the  
26 consumer protection reserve account shall be credited to

1 retail customers to the extent the retail customers have  
2 saved the minimum of \$100,000,000; 50% of any additional  
3 amounts in the consumer protection reserve account shall be  
4 distributed to the company, and the remaining 50% shall be  
5 distributed to retail customers.

6 (6) If, at the conclusion of the term of the sourcing  
7 agreement, the customers have not saved the minimum  
8 \$100,000,000 in savings as guaranteed in this subsection  
9 (h-2) and the consumer protection reserve account has been  
10 depleted, then the clean coal SNG brownfield facility shall  
11 be liable for any remaining amount owed to the retail  
12 customers to the extent that the customers are provided  
13 with the \$100,000,000 in savings as guaranteed in this  
14 subsection (h-2). The retail customers shall have first  
15 priority in recovering that debt above any creditors,  
16 except the original senior secured lender to the extent  
17 that the original senior secured lender has any senior  
18 secured debt outstanding, including any clean coal SNG  
19 brownfield facility parent companies or affiliates.

20 (7) The clean coal SNG brownfield facility, the  
21 utilities, and the trustee shall work together to take  
22 commercially reasonable steps to minimize the tax impact of  
23 these transactions, while preserving the consumer  
24 benefits.

25 (8) The clean coal SNG brownfield facility shall each  
26 month, starting in the facility's first year of commercial



1 operation, file with the Commission, in such form as the  
2 Commission shall require, a report as to the consumer  
3 protection reserve account. The monthly report must  
4 contain the following information:

5 (A) the extent the monthly delivered SNG price is  
6 greater than, less than, or equal to the Chicago  
7 City-gate price;

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

10 (C) the amounts credited to consumers and  
11 distributed to the clean coal SNG brownfield facility  
12 during the month;

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

15 (E) the total amount of consumer savings to date;

16 (F) a confidential summary of the inputs used to  
17 calculate the additional net revenue; and

18 (G) any other additional information the  
19 Commission shall require.

20 When any report is erroneous or defective or appears to  
21 the Commission to be erroneous or defective, the Commission  
22 may notify the clean coal SNG brownfield facility to amend  
23 the report within 30 days, and, before or after the  
24 termination of the 30-day period, the Commission may  
25 examine the trustee of the consumer protection reserve  
26 account or the officers, agents, employees, books,

1 records, or accounts of the clean coal SNG brownfield  
2 facility and correct such items in the report as upon such  
3 examination the Commission may find defective or  
4 erroneous. All reports shall be under oath.

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

15 Any facility that fails to file a report required under  
16 this paragraph (8) to the Commission within the time  
17 specified or to make specific answer to any question  
18 propounded by the Commission within 30 days from the time  
19 it is lawfully required to do so, or within such further  
20 time not to exceed 90 days as may in its discretion be  
21 allowed by the Commission, shall pay a penalty of \$500 to  
22 the Commission for each day it is in default.

23 Any person who willfully makes any false report to the  
24 Commission or to any member, officer, or employee thereof,  
25 any person who willfully in a report withholds or fails to  
26 provide material information to which the Commission is

1 entitled under this paragraph (8) and which information is  
2 either required to be filed by statute, rule, regulation,  
3 order, or decision of the Commission or has been requested  
4 by the Commission, and any person who willfully aids or  
5 abets such person shall be guilty of a Class A misdemeanor.

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

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

18 (A) Capital costs. The Capital Development Board  
19 shall calculate a range of capital costs that it  
20 believes would be reasonable for the clean coal SNG  
21 brownfield facility to recover under the sourcing  
22 agreement. In making this determination, the Capital  
23 Development Board shall review the facility cost  
24 report, if any, of the clean coal SNG brownfield  
25 facility, adjusting the results based on the change in  
26 the Annual Consumer Price Index for All Urban Consumers

1 for the Midwest Region as published in April by the  
2 United States Department of Labor, Bureau of Labor  
3 Statistics, the final draft of the sourcing agreement,  
4 and the rate of return approved by the Commission. In  
5 addition, the Capital Development Board may consult as  
6 much as it deems necessary with the clean coal SNG  
7 brownfield facility and conduct whatever research and  
8 investigation it deems necessary.

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

23 (i) direct previous experience conducting  
24 front-end engineering and design studies for  
25 large-scale energy facilities and administering  
26 large-scale energy operations and maintenance

1 contracts, which may be particularized to the  
2 specific type of financing associated with the  
3 clean coal SNG brownfield facility;

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

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

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

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

19 (vi) expertise in credit and contract  
20 protocols;

21 (vii) adequate resources to perform and  
22 fulfill the required functions and  
23 responsibilities; and

24 (viii) the absence of a conflict of interest  
25 and inappropriate bias for or against an affected  
26 gas utility or the clean coal SNG brownfield

1 facility.

2 The clean coal SNG brownfield facility and the  
3 Illinois Power Agency shall cooperate with the Capital  
4 Development Board in any investigation it deems  
5 necessary. The Capital Development Board shall make  
6 its final determination of the range of capital costs  
7 confidentially and shall submit that range to the  
8 Commission in a confidential filing within 120 days  
9 after July 13, 2011 (the effective date of Public Act  
10 97-096). The clean coal SNG brownfield facility shall  
11 submit to the Commission its estimate of the capital  
12 costs to be recovered under the sourcing agreement.  
13 Only after the clean coal SNG brownfield facility has  
14 submitted this estimate shall the Commission publicly  
15 announce the range of capital costs submitted by the  
16 Capital Development Board.

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

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

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

26 (B) Rate of Return. No later than 30 days after the

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

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



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

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

20 The Capital Development Board shall calculate a range  
21 of operations and maintenance costs that it believes would  
22 be reasonable for the clean coal SNG brownfield facility to  
23 recover under the sourcing agreement, incorporating an  
24 inflation index or combination of inflation indices to most  
25 accurately reflect the actual costs of operating the clean  
26 coal SNG brownfield facility. In making this

1 determination, the Capital Development Board shall review  
2 the facility cost report, if any, of the clean coal SNG  
3 brownfield facility, adjusting the results for inflation  
4 based on the change in the Annual Consumer Price Index for  
5 All Urban Consumers for the Midwest Region as published in  
6 April by the United States Department of Labor, Bureau of  
7 Labor Statistics, the final draft of the sourcing  
8 agreement, and the rate of return approved by the  
9 Commission. In addition, the Capital Development Board may  
10 consult as much as it deems necessary with the clean coal  
11 SNG brownfield facility and conduct whatever research and  
12 investigation it deems necessary. As set forth in  
13 subparagraph (A) of paragraph (1) of this subsection (h-3),  
14 the Capital Development Board shall retain an independent  
15 engineering expert to assist in determining both the range  
16 of operations and maintenance costs that it believes would  
17 be reasonable for the clean coal SNG brownfield facility to  
18 recover under the sourcing agreement. The clean coal SNG  
19 brownfield facility and the Illinois Power Agency shall  
20 cooperate with the Capital Development Board in any  
21 investigation it deems necessary. The Capital Development  
22 Board shall make its final determination of the range of  
23 operations and maintenance costs confidentially and shall  
24 submit that range to the Commission in a confidential  
25 filing within 120 days after July 13, 2011.

26 The clean coal SNG brownfield facility shall submit to

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

25 The clean coal SNG brownfield facility shall pay for  
26 the independent engineering expert's reasonable fees and

1 such costs shall not be passed through to a utility or its  
2 customers. The clean coal SNG brownfield facility shall pay  
3 a reasonable fee as required by the Capital Development  
4 Board for the Capital Development Board's services under  
5 this subsection (h-3) to be deposited into the Capital  
6 Development Board Revolving Fund, and such fee shall not be  
7 passed through to a utility or its customers.

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

14 (A) capture carbon dioxide;

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

17 (C) build, operate, and maintain a carbon dioxide  
18 pipeline; and

19 (D) transport the carbon dioxide to the  
20 sequestration site or a pipeline.

21 The Commission shall assess the prudence of the  
22 sequestration costs for the clean coal SNG brownfield  
23 facility before construction commences at the  
24 sequestration site or pipeline. Any revenues the clean coal  
25 SNG brownfield facility receives as a result of the  
26 capture, transportation, or sequestration of carbon

1       dioxide shall be first credited against all sequestration  
2       costs, with the positive balance, if any, treated as  
3       additional net revenue.

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

21      (4) Actual delivered and processed fuel costs shall be  
22      set by the Illinois Power Agency through a SNG feedstock  
23      procurement, pursuant to Sections 1-20, 1-77, and 1-78 of  
24      the Illinois Power Agency Act, to be performed at least  
25      every 5 years and purchased by the clean coal SNG  
26      brownfield facility pursuant to feedstock procurement

1 contracts developed by the Illinois Power Agency, with coal  
2 comprising at least 50% of the total feedstock over the  
3 term of the sourcing agreement and petroleum coke  
4 comprising the remainder of the SNG feedstock. If the  
5 Commission fails to approve a feedstock procurement plan or  
6 fails to approve the results of a feedstock procurement  
7 event, then the fuel shall be purchased by the company  
8 month-by-month on the spot market and those actual  
9 delivered and processed fuel costs shall be recoverable  
10 under the sourcing agreement. If a supplier defaults under  
11 the terms of a procurement contract, then the Illinois  
12 Power Agency shall immediately initiate a feedstock  
13 procurement process to obtain a replacement supply, and,  
14 prior to the conclusion of that process, fuel shall be  
15 purchased by the company month-by-month on the spot market  
16 and those actual delivered and processed fuel costs shall  
17 be recoverable under the sourcing agreement.

18 (5) Taxes and fees imposed by the federal government,  
19 the State, or any unit of local government applicable to  
20 the clean coal SNG brownfield facility, excluding income  
21 tax, shall be recoverable by the clean coal SNG brownfield  
22 facility under the sourcing agreement to the extent such  
23 taxes and fees were not applicable to the facility on July  
24 13, 2011.

25 (6) The actual transportation costs, in accordance  
26 with the applicable utility's tariffs, and third-party

1 marketer costs incurred by the company, if any, associated  
2 with transporting the SNG from the clean coal SNG  
3 brownfield facility to the Chicago City-gate to sell such  
4 SNG into the natural gas markets shall be recoverable under  
5 the sourcing agreement.

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

20 Any person affected by a decision of the Commission  
21 under this subsection (h-3) may have the decision reviewed  
22 only under and in accordance with the Administrative Review  
23 Law. Unless otherwise provided, the provisions of the  
24 Administrative Review Law, all amendments and  
25 modifications to that Law, and the rules adopted pursuant  
26 to that Law shall apply to and govern all proceedings for

1 the judicial review of final administrative decisions of  
2 the Commission under this subsection (h-3). The term  
3 "administrative decision" is defined as in Section 3-101 of  
4 the Code of Civil Procedure.

5 (8) The Capital Development Board shall adopt and make  
6 public a policy detailing the process for retaining experts  
7 under this Section. Any experts retained to assist with  
8 calculating the range of capital costs or operations and  
9 maintenance costs shall be retained no later than 45 days  
10 after July 13, 2011.

11 (h-4) No later than 90 days after the Illinois Power Agency  
12 submits the final draft sourcing agreement pursuant to  
13 subsection (h-1), the Commission shall approve a sourcing  
14 agreement containing (i) the capital costs, rate of return, and  
15 operations and maintenance costs established pursuant to  
16 subsection (h-3) and (ii) all other terms and conditions,  
17 rights, provisions, exceptions, and limitations contained in  
18 the final draft sourcing agreement; provided, however, the  
19 Commission shall correct typographical and scrivener's errors  
20 and modify the contract only as necessary to provide that the  
21 gas utility does not have the right to terminate the sourcing  
22 agreement due to any future events that may occur other than  
23 the clean coal SNG brownfield facility's failure to timely meet  
24 milestones, uncured default, extended force majeure, or  
25 abandonment. Once the sourcing agreement is approved, then the  
26 gas utility subject to that sourcing agreement shall have 45



1 days after the date of the Commission's approval to enter into  
2 the sourcing agreement.

3 (h-5) Sequestration enforcement.

4 (A) All contracts entered into under subsection (h) of  
5 this Section and all sourcing agreements under subsection  
6 (h-1) of this Section, regardless of duration, shall  
7 require the owner of any facility supplying SNG under the  
8 contract or sourcing agreement to provide certified  
9 documentation to the Commission each year, starting in the  
10 facility's first year of commercial operation, accurately  
11 reporting the quantity of carbon dioxide emissions from the  
12 facility that have been captured and sequestered and  
13 reporting any quantities of carbon dioxide released from  
14 the site or sites at which carbon dioxide emissions were  
15 sequestered in prior years, based on continuous monitoring  
16 of those sites.

17 (B) If, in any year, the owner of the clean coal SNG  
18 facility fails to demonstrate that the SNG facility  
19 captured and sequestered at least 90% of the total carbon  
20 dioxide emissions that the facility would otherwise emit or  
21 that sequestration of emissions from prior years has  
22 failed, resulting in the release of carbon dioxide into the  
23 atmosphere, then the owner of the clean coal SNG facility  
24 must pay a penalty of \$20 per ton of excess carbon dioxide  
25 emissions not to exceed \$40,000,000, in any given year  
26 which shall be deposited into the Energy Efficiency Trust

1 Fund and distributed pursuant to subsection (b) of Section  
2 6-6 of the Renewable Energy, Energy Efficiency, and Coal  
3 Resources Development Law of 1997. On or before the 5-year  
4 anniversary of the execution of the contract and every 5  
5 years thereafter, an expert hired by the owner of the  
6 facility with the approval of the Attorney General shall  
7 conduct an analysis to determine the cost of sequestration  
8 of at least 90% of the total carbon dioxide emissions the  
9 plant would otherwise emit. If the analysis shows that the  
10 actual annual cost is greater than the penalty, then the  
11 penalty shall be increased to equal the actual cost.  
12 Provided, however, to the extent that the owner of the  
13 facility described in subsection (h) of this Section can  
14 demonstrate that the failure was as a result of acts of God  
15 (including fire, flood, earthquake, tornado, lightning,  
16 hurricane, or other natural disaster); any amendment,  
17 modification, or abrogation of any applicable law or  
18 regulation that would prevent performance; war; invasion;  
19 act of foreign enemies; hostilities (regardless of whether  
20 war is declared); civil war; rebellion; revolution;  
21 insurrection; military or usurped power or confiscation;  
22 terrorist activities; civil disturbance; riots;  
23 nationalization; sabotage; blockage; or embargo, the owner  
24 of the facility described in subsection (h) of this Section  
25 shall not be subject to a penalty if and only if (i) it  
26 promptly provides notice of its failure to the Commission;

1 (ii) as soon as practicable and consistent with any order  
2 or direction from the Commission, it submits to the  
3 Commission proposed modifications to its carbon capture  
4 and sequestration plan; and (iii) it carries out its  
5 proposed modifications in the manner and time directed by  
6 the Commission.

7 If the Commission finds that the facility has not  
8 satisfied each of these requirements, then the facility  
9 shall be subject to the penalty. If the owner of the clean  
10 coal SNG facility captured and sequestered more than 90% of  
11 the total carbon dioxide emissions that the facility would  
12 otherwise emit, then the owner of the facility may credit  
13 such additional amounts to reduce the amount of any future  
14 penalty to be paid. The penalty resulting from the failure  
15 to capture and sequester at least the minimum amount of  
16 carbon dioxide shall not be passed on to a utility or its  
17 customers.

18 If the clean coal SNG facility fails to meet the  
19 requirements specified in this subsection (h-5), then the  
20 Attorney General, on behalf of the People of the State of  
21 Illinois, shall bring an action to enforce the obligations  
22 related to the facility set forth in this subsection (h-5),  
23 including any penalty payments owed, but not including the  
24 physical obligation to capture and sequester at least 90%  
25 of the total carbon dioxide emissions that the facility  
26 would otherwise emit. Such action may be filed in any

1 circuit court in Illinois. By entering into a contract  
2 pursuant to subsection (h) of this Section, the clean coal  
3 SNG facility agrees to waive any objections to venue or to  
4 the jurisdiction of the court with regard to the Attorney  
5 General's action under this subsection (h-5).

6 Compliance with the sequestration requirements and any  
7 penalty requirements specified in this subsection (h-5)  
8 for the clean coal SNG facility shall be assessed annually  
9 by the Commission, which may in its discretion retain an  
10 expert to facilitate its assessment. If any expert is  
11 retained by the Commission, then the clean coal SNG  
12 facility shall pay for the expert's reasonable fees, and  
13 such costs shall not be passed through to the utility or  
14 its customers.

15 In addition, carbon dioxide emission credits received  
16 by the clean coal SNG facility in connection with  
17 sequestration of carbon dioxide from the facility must be  
18 sold in a timely fashion with any revenue, less applicable  
19 fees and expenses and any expenses required to be paid by  
20 facility for carbon dioxide transportation or  
21 sequestration, deposited into the reconciliation account  
22 within 30 days after receipt of such funds by the owner of  
23 the clean coal SNG facility.

24 The clean coal SNG facility is prohibited from  
25 transporting or sequestering carbon dioxide unless the  
26 owner of the carbon dioxide pipeline that transfers the

1 carbon dioxide from the facility and the owner of the  
2 sequestration site where the carbon dioxide captured by the  
3 facility is stored has acquired all applicable permits  
4 under applicable State and federal laws, statutes, rules,  
5 or regulations prior to the transfer or sequestration of  
6 carbon dioxide. The responsibility for compliance with the  
7 sequestration requirements specified in this subsection  
8 (h-5) for the clean coal SNG facility shall reside solely  
9 with the clean coal SNG facility, regardless of whether the  
10 facility has contracted with another party to capture,  
11 transport, or sequester carbon dioxide.

12 (C) If, in any year, the owner of a clean coal SNG  
13 brownfield facility fails to demonstrate that the clean  
14 coal SNG brownfield facility captured and sequestered at  
15 least 85% of the total carbon dioxide emissions that the  
16 facility would otherwise emit, then the owner of the clean  
17 coal SNG brownfield facility must pay a penalty of \$20 per  
18 ton of excess carbon emissions up to \$20,000,000, which  
19 shall be deposited into the Energy Efficiency Trust Fund  
20 and distributed pursuant to subsection (b) of Section 6-6  
21 of the Renewable Energy, Energy Efficiency, and Coal  
22 Resources Development Law of 1997. Provided, however, to  
23 the extent that the owner of the clean coal SNG brownfield  
24 facility can demonstrate that the failure was as a result  
25 of acts of God (including fire, flood, earthquake, tornado,  
26 lightning, hurricane, or other natural disaster); any

1 amendment, modification, or abrogation of any applicable  
2 law or regulation that would prevent performance; war;  
3 invasion; act of foreign enemies; hostilities (regardless  
4 of whether war is declared); civil war; rebellion;  
5 revolution; insurrection; military or usurped power or  
6 confiscation; terrorist activities; civil disturbances;  
7 riots; nationalization; sabotage; blockage; or embargo,  
8 the owner of the clean coal SNG brownfield facility shall  
9 not be subject to a penalty if and only if (i) it promptly  
10 provides notice of its failure to the Commission; (ii) as  
11 soon as practicable and consistent with any order or  
12 direction from the Commission, it submits to the Commission  
13 proposed modifications to its carbon capture and  
14 sequestration plan; and (iii) it carries out its proposed  
15 modifications in the manner and time directed by the  
16 Commission. If the Commission finds that the facility has  
17 not satisfied each of these requirements, then the facility  
18 shall be subject to the penalty. If the owner of a clean  
19 coal SNG brownfield facility demonstrates that the clean  
20 coal SNG brownfield facility captured and sequestered more  
21 than 85% of the total carbon emissions that the facility  
22 would otherwise emit, the owner of the clean coal SNG  
23 brownfield facility may credit such additional amounts to  
24 reduce the amount of any future penalty to be paid. The  
25 penalty resulting from the failure to capture and sequester  
26 at least the minimum amount of carbon dioxide shall not be

1 passed on to a utility or its customers.

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

14 Compliance with the sequestration requirements and  
15 penalty requirements specified in this subsection (h-5)  
16 for the clean coal SNG brownfield facility shall be  
17 assessed annually by the Commission, which may in its  
18 discretion retain an expert to facilitate its assessment.  
19 If an expert is retained by the Commission, then the clean  
20 coal SNG brownfield facility shall pay for the expert's  
21 reasonable fees, and such costs shall not be passed through  
22 to a utility or its customers. A SNG facility operating  
23 pursuant to this subsection (h-5) shall not forfeit its  
24 designation as a clean coal SNG facility or a clean coal  
25 SNG brownfield facility if the facility fails to fully  
26 comply with the applicable carbon sequestration requirements

1       in any given year, provided the requisite offsets are  
2       purchased or requisite penalties are paid.

3           Responsibility for compliance with the sequestration  
4       requirements specified in this subsection (h-5) for the  
5       clean coal SNG brownfield facility shall reside solely with  
6       the clean coal SNG brownfield facility regardless of  
7       whether the facility has contracted with another party to  
8       capture, transport, or sequester carbon dioxide.

9       (h-7)    Sequestration    permitting,    oversight,    and  
10      investigations.

11           (1) No clean coal facility or clean coal SNG brownfield  
12      facility may transport or sequester carbon dioxide unless  
13      the Commission approves the method of carbon dioxide  
14      transportation or sequestration. Such approval shall be  
15      required regardless of whether the facility has contracted  
16      with another to transport or sequester the carbon dioxide.  
17      Nothing in this subsection (h-7) shall release the owner or  
18      operator of a carbon dioxide sequestration site or carbon  
19      dioxide pipeline from any other permitting requirements  
20      under applicable State and federal laws, statutes, rules,  
21      or regulations.

22           (2) The Commission shall review carbon dioxide  
23      transportation and sequestration methods proposed by a  
24      clean coal facility or a clean coal SNG brownfield facility  
25      and shall approve those methods it deems reasonable and  
26      cost-effective. For purposes of this review,



1 "cost-effective" means a commercially reasonable price for  
2 similar carbon dioxide transportation or sequestration  
3 techniques. In determining whether sequestration is  
4 reasonable and cost-effective, the Commission may consult  
5 with the Illinois State Geological Survey and retain third  
6 parties to assist in its determination, provided that such  
7 third parties shall not own or control any direct or  
8 indirect interest in the facility that is proposing the  
9 carbon dioxide transportation or the carbon dioxide  
10 sequestration method and shall have no contractual  
11 relationship with that facility. If a third party is  
12 retained by the Commission, then the facility proposing the  
13 carbon dioxide transportation or sequestration method  
14 shall pay for the expert's reasonable fees, and these costs  
15 shall not be passed through to a utility or its customers.

16 No later than 6 months prior to the date upon which the  
17 owner intends to commence construction of a clean coal  
18 facility or the clean coal SNG brownfield facility, the  
19 owner of the facility shall file with the Commission a  
20 carbon dioxide transportation or sequestration plan. The  
21 Commission shall hold a public hearing within 30 days after  
22 receipt of the facility's carbon dioxide transportation or  
23 sequestration plan. The Commission shall post notice of the  
24 review on its website upon submission of a carbon dioxide  
25 transportation or sequestration method and shall accept  
26 written public comments. The Commission shall take the

1 comments into account when making its decision.

2 The Commission may not approve a carbon dioxide  
3 sequestration method if the owner or operator of the  
4 sequestration site has not received (i) an Underground  
5 Injection Control permit from the United States  
6 Environmental Protection Agency, or from the Illinois  
7 Environmental Protection Agency pursuant to the  
8 Environmental Protection Act; (ii) an Underground  
9 Injection Control permit from the Illinois Department of  
10 Natural Resources pursuant to the Illinois Oil and Gas Act;  
11 or (iii) an Underground Injection Control permit from the  
12 United States Environmental Protection Agency or a permit  
13 similar to items (i) or (ii) from the state in which the  
14 sequestration site is located if the sequestration will  
15 take place outside of Illinois. The Commission shall  
16 approve or deny the carbon dioxide transportation or  
17 sequestration method within 90 days after the receipt of  
18 all required information.

19 (3) (Blank). ~~At least annually, the Illinois~~  
20 ~~Environmental Protection Agency shall inspect all carbon~~  
21 ~~dioxide sequestration sites in Illinois. The Illinois~~  
22 ~~Environmental Protection Agency may, as often as deemed~~  
23 ~~necessary, monitor and conduct investigations of these~~  
24 ~~sites. The owner or operator of the sequestration site must~~  
25 ~~cooperate with the Illinois Environmental Protection~~  
26 ~~Agency investigations of carbon dioxide sequestration~~

1 ~~sites.~~

2 ~~If the Illinois Environmental Protection Agency~~  
3 ~~determines at any time a site creates conditions that~~  
4 ~~warrant the issuance of a seal order under Section 34 of~~  
5 ~~the Environmental Protection Act, then the Illinois~~  
6 ~~Environmental Protection Agency shall seal the site~~  
7 ~~pursuant to the Environmental Protection Act. If the~~  
8 ~~Illinois Environmental Protection Agency determines at any~~  
9 ~~time a carbon dioxide sequestration site creates~~  
10 ~~conditions that warrant the institution of a civil action~~  
11 ~~for an injunction under Section 43 of the Environmental~~  
12 ~~Protection Act, then the Illinois Environmental Protection~~  
13 ~~Agency shall request the State's Attorney or the Attorney~~  
14 ~~General institute such action. The Illinois Environmental~~  
15 ~~Protection Agency shall provide notice of any such actions~~  
16 ~~as soon as possible on its website. The SNG facility shall~~  
17 ~~incur all reasonable costs associated with any such~~  
18 ~~inspection or monitoring of the sequestration sites, and~~  
19 ~~these costs shall not be recoverable from utilities or~~  
20 ~~their customers.~~

21 (4) At least annually, the Commission shall inspect all  
22 carbon dioxide pipelines in Illinois that transport carbon  
23 dioxide to ensure the safety and feasibility of those  
24 pipelines. The Commission may, as often as deemed  
25 necessary, monitor and conduct investigations of those  
26 pipelines. The owner or operator of the pipeline must

1 cooperate with the Commission investigations of the carbon  
2 dioxide pipelines.

3 In circumstances whereby a carbon dioxide pipeline  
4 creates a substantial danger to the environment or to the  
5 public health of persons or to the welfare of persons where  
6 such danger is to the livelihood of such persons, the  
7 State's Attorney or Attorney General, upon the request of  
8 the Commission or on his or her own motion, may institute a  
9 civil action for an immediate injunction to halt any  
10 discharge or other activity causing or contributing to the  
11 danger or to require such other action as may be necessary.  
12 The court may issue an ex parte order and shall schedule a  
13 hearing on the matter not later than 3 working days after  
14 the date of injunction. The Commission shall provide notice  
15 of any such actions as soon as possible on its website. The  
16 SNG facility shall incur all reasonable costs associated  
17 with any such inspection or monitoring of the sequestration  
18 sites, and these costs shall not be recoverable from a  
19 utility or its customers.

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

25 (1) break, or repeal the authority for, sourcing  
26 agreements approved by the Commission and entered into

1           between public utilities and the clean coal SNG brownfield  
2           facility;

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

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

9           These pledges are for the benefit of the parties to those  
10          sourcing agreements and the issuers and holders of bonds or  
11          other obligations issued or incurred to finance or refinance  
12          the clean coal SNG brownfield facility. The clean coal SNG  
13          brownfield facility is authorized to include and refer to these  
14          pledges in any financing agreement into which it may enter in  
15          regard to those sourcing agreements.

16          The State of Illinois retains and reserves all other rights  
17          to enact new or amendatory legislation or take any other  
18          action, without impairment of the right of the clean coal SNG  
19          brownfield facility to recover prudently incurred increased  
20          costs or reduced revenue resulting from the new or amendatory  
21          legislation or other action, including, but not limited to,  
22          such legislation or other action that would (i) directly or  
23          indirectly raise the costs the clean coal SNG brownfield  
24          facility must incur; (ii) directly or indirectly place  
25          additional restrictions, regulations, or requirements on the  
26          clean coal SNG brownfield facility; (iii) prohibit

1 sequestration in general or prohibit a specific sequestration  
2 method or project; or (iv) increase minimum sequestration  
3 requirements for the clean coal SNG brownfield facility to the  
4 extent technically feasible. The clean coal SNG brownfield  
5 facility shall have the right to recover prudently incurred  
6 increased costs or reduced revenue resulting from the new or  
7 amendatory legislation or other action as described in this  
8 subsection (h-9).

9 (h-10) Contract costs for SNG incurred by an Illinois gas  
10 utility are reasonable and prudent and recoverable through the  
11 purchased gas adjustment clause and are not subject to review  
12 or disallowance by the Commission. Contract costs are costs  
13 incurred by the utility under the terms of a contract that  
14 incorporates the terms stated in subsection (h) of this Section  
15 as confirmed in writing by the Illinois Power Agency as set  
16 forth in subsection (h) of this Section, which confirmation  
17 shall be deemed conclusive, or as a consequence of or condition  
18 to its performance under the contract, including (i) amounts  
19 paid for SNG under the SNG contract and (ii) costs of  
20 transportation and storage services of SNG purchased from  
21 interstate pipelines under federally approved tariffs. The  
22 Illinois gas utility shall initiate a clean coal SNG facility  
23 rider mechanism that (A) shall be applicable to all customers  
24 who receive transportation service from the utility, (B) shall  
25 be designed to have an equal percentage impact on the  
26 transportation services rates of each class of the utility's

1 total customers, and (C) shall accurately reflect the net  
2 customer savings, if any, and above market costs, if any, under  
3 the SNG contract. Any contract, the terms of which have been  
4 confirmed in writing by the Illinois Power Agency as set forth  
5 in subsection (h) of this Section and the performance of the  
6 parties under such contract cannot be grounds for challenging  
7 prudence or cost recovery by the utility through the purchased  
8 gas adjustment clause, and in such cases, the Commission is  
9 directed not to consider, and has no authority to consider, any  
10 attempted challenges.

11 The contracts entered into by Illinois gas utilities  
12 pursuant to subsection (h) of this Section shall provide that  
13 the utility retains the right to terminate the contract without  
14 further obligation or liability to any party if the contract  
15 has been impaired as a result of any legislative,  
16 administrative, judicial, or other governmental action that is  
17 taken that eliminates all or part of the prudence protection of  
18 this subsection (h-10) or denies the recoverability of all or  
19 part of the contract costs through the purchased gas adjustment  
20 clause. Should any Illinois gas utility exercise its right  
21 under this subsection (h-10) to terminate the contract, all  
22 contract costs incurred prior to termination are and will be  
23 deemed reasonable, prudent, and recoverable as and when  
24 incurred and not subject to review or disallowance by the  
25 Commission. Any order, issued by the State requiring or  
26 authorizing the discontinuation of the merchant function,

1 defined as the purchase and sale of natural gas by an Illinois  
2 gas utility for the ultimate consumer in its service territory  
3 shall include provisions necessary to prevent the impairment of  
4 the value of any contract hereunder over its full term.

5 (h-11) All costs incurred by an Illinois gas utility in  
6 procuring SNG from a clean coal SNG brownfield facility  
7 pursuant to subsection (h-1) or a third-party marketer pursuant  
8 to subsection (h-1) are reasonable and prudent and recoverable  
9 through the purchased gas adjustment clause in conjunction with  
10 a SNG brownfield facility rider mechanism and are not subject  
11 to review or disallowance by the Commission; provided that if a  
12 utility is required by law or otherwise elects to connect the  
13 clean coal SNG brownfield facility to an interstate pipeline,  
14 then the utility shall be entitled to recover pursuant to its  
15 tariffs all just and reasonable costs that are prudently  
16 incurred. Sourcing agreement costs are costs incurred by the  
17 utility under the terms of a sourcing agreement that  
18 incorporates the terms stated in subsection (h-1) of this  
19 Section as approved by the Commission as set forth in  
20 subsection (h-4) of this Section, which approval shall be  
21 deemed conclusive, or as a consequence of or condition to its  
22 performance under the contract, including (i) amounts paid for  
23 SNG under the SNG contract and (ii) costs of transportation and  
24 storage services of SNG purchased from interstate pipelines  
25 under federally approved tariffs. Any sourcing agreement, the  
26 terms of which have been approved by the Commission as set



1     forth in subsection (h-4) of this Section, and the performance  
2     of the parties under the sourcing agreement cannot be grounds  
3     for challenging prudence or cost recovery by the utility, and  
4     in these cases, the Commission is directed not to consider, and  
5     has no authority to consider, any attempted challenges.

6     (h-15) Reconciliation account. The clean coal SNG facility  
7     shall establish a reconciliation account for the benefit of the  
8     retail customers of the utilities that have entered into  
9     contracts with the clean coal SNG facility pursuant to  
10    subsection (h). The reconciliation account shall be maintained  
11    and administered by an independent trustee that is mutually  
12    agreed upon by the owners of the clean coal SNG facility, the  
13    utilities, and the Commission in an interest-bearing account in  
14    accordance with the following:

15       (1) The clean coal SNG facility shall conduct an  
16       analysis annually within 60 days after receiving the  
17       necessary cost information, which shall be provided by the  
18       gas utility within 6 months after the end of the preceding  
19       calendar year, to determine (i) the average annual contract  
20       SNG cost, which shall be calculated as the total amount  
21       paid for SNG purchased from the clean coal SNG facility  
22       over the preceding 12 months, plus the cost to the utility  
23       of the required transportation and storage services of SNG,  
24       divided by the total number of MMBtus of SNG actually  
25       purchased from the clean coal SNG facility in the preceding  
26       12 months under the utility contract; (ii) the average

1 annual natural gas purchase cost, which shall be calculated  
2 as the total annual supply costs paid for baseload natural  
3 gas (excluding any SNG) purchased by such utility over the  
4 preceding 12 months plus the costs of transportation and  
5 storage services of such natural gas (excluding such costs  
6 for SNG), divided by the total number of MMBtus of baseload  
7 natural gas (excluding SNG) actually purchased by the  
8 utility during the year; (iii) the cost differential, which  
9 shall be the difference between the average annual contract  
10 SNG cost and the average annual natural gas purchase cost;  
11 and (iv) the revenue share target which shall be the cost  
12 differential multiplied by the total amount of SNG  
13 purchased over the preceding 12 months under such utility  
14 contract.

15 (A) To the extent the annual average contract SNG  
16 cost is less than the annual average natural gas  
17 purchase cost, the utility shall credit an amount equal  
18 to the revenue share target to the reconciliation  
19 account. Such credit payment shall be made monthly  
20 starting within 30 days after the completed analysis in  
21 this subsection (h-15) and based on collections from  
22 all customers via a line item charge in all customer  
23 bills designed to have an equal percentage impact on  
24 the transportation services of each class of  
25 customers. Credit payments made pursuant to this  
26 subparagraph (A) shall be deemed prudent and

1 reasonable and not subject to Commission prudence  
2 review.

3 (B) To the extent the annual average contract SNG  
4 cost is greater than the annual average natural gas  
5 purchase cost, the reconciliation account shall be  
6 used to provide a credit equal to the revenue share  
7 target to the utilities to be used to reduce the  
8 utility's natural gas costs through the purchased gas  
9 adjustment clause. Such payment shall be made within 30  
10 days after the completed analysis pursuant to this  
11 subsection (h-15), but only to the extent that the  
12 reconciliation account has a positive balance.

13 (2) At the conclusion of the term of the SNG contracts  
14 pursuant to subsection (h) and the completion of the final  
15 annual analysis pursuant to this subsection (h-15), to the  
16 extent the facility owes any amount to retail customers,  
17 amounts in the account shall be credited to retail  
18 customers to the extent the owed amount is repaid; 50% of  
19 any additional amount in the reconciliation account shall  
20 be distributed to the utilities to be used to reduce the  
21 utilities' natural gas costs through the purchase gas  
22 adjustment clause with the remaining amount distributed to  
23 the clean coal SNG facility. Such payment shall be made  
24 within 30 days after the last completed analysis pursuant  
25 to this subsection (h-15). If the facility has repaid all  
26 owed amounts, if any, to retail customers and has

1 distributed 50% of any additional amount in the account to  
2 the utilities, then the owners of the clean coal SNG  
3 facility shall have no further obligation to the utility or  
4 the retail customers.

5 If, at the conclusion of the term of the contracts  
6 pursuant to subsection (h) and the completion of the final  
7 annual analysis pursuant to this subsection (h-15), the  
8 facility owes any amount to retail customers and the  
9 account has been depleted, then the clean coal SNG facility  
10 shall be liable for any remaining amount owed to the retail  
11 customers. The clean coal SNG facility shall market the  
12 daily production of SNG and distribute on a monthly basis  
13 5% of the amounts collected with respect to such future  
14 sales to the utilities in proportion to each utility's SNG  
15 contract to be used to reduce the utility's natural gas  
16 costs through the purchase gas adjustment clause; such  
17 payments to the utility shall continue until either 15  
18 years after the conclusion of the contract or such time as  
19 the sum of such payments equals the remaining amount owed  
20 to the retail customers at the end of the contract,  
21 whichever is earlier. If the debt to the retail customers  
22 is not repaid within 15 years after the conclusion of the  
23 contract, then the owner of the clean coal SNG facility  
24 must sell the facility, and all proceeds from that sale  
25 must be used to repay any amount owed to the retail  
26 customers under this subsection (h-15).

1           The retail customers shall have first priority in  
2 recovering that debt above any creditors, except the  
3 secured lenders to the extent that the secured lenders have  
4 any secured debt outstanding, including any parent  
5 companies or affiliates of the clean coal SNG facility.

6           (3) 50% of all additional net revenue, defined as  
7 miscellaneous net revenue after cost allowance and above  
8 the budgeted estimate established for revenue pursuant to  
9 subsection (h), including sale of substitute natural gas  
10 derived from the clean coal SNG facility above the  
11 nameplate capacity of the facility and other by-products  
12 produced by the facility, shall be credited to the  
13 reconciliation account on an annual basis with such payment  
14 made within 30 days after the end of each calendar year  
15 during the term of the contract.

16           (4) The clean coal SNG facility shall each year,  
17 starting in the facility's first year of commercial  
18 operation, file with the Commission, in such form as the  
19 Commission shall require, a report as to the reconciliation  
20 account. The annual report must contain the following  
21 information:

22                   (A) the revenue share target amount;

23                   (B) the amount credited or debited to the  
24 reconciliation account during the year;

25                   (C) the amount credited to the utilities to be used  
26 to reduce the utilities natural gas costs though the

1 purchase gas adjustment clause;

2 (D) the total amount of reconciliation account at  
3 the beginning and end of the year;

4 (E) the total amount of consumer savings to date;  
5 and

6 (F) any additional information the Commission may  
7 require.

8 When any report is erroneous or defective or appears to the  
9 Commission to be erroneous or defective, the Commission may  
10 notify the clean coal SNG facility to amend the report within  
11 30 days; before or after the termination of the 30-day period,  
12 the Commission may examine the trustee of the reconciliation  
13 account or the officers, agents, employees, books, records, or  
14 accounts of the clean coal SNG facility and correct such items  
15 in the report as upon such examination the Commission may find  
16 defective or erroneous. All reports shall be under oath.

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

26 Any facility that fails to file the report required under

1 this paragraph (4) to the Commission within the time specified  
2 or to make specific answer to any question propounded by the  
3 Commission within 30 days after the time it is lawfully  
4 required to do so, or within such further time not to exceed 90  
5 days as may be allowed by the Commission in its discretion,  
6 shall pay a penalty of \$500 to the Commission for each day it  
7 is in default.

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

17 (h-20) The General Assembly authorizes the Illinois  
18 Finance Authority to issue bonds to the maximum extent  
19 permitted to finance coal gasification facilities described in  
20 this Section, which constitute both "industrial projects"  
21 under Article 801 of the Illinois Finance Authority Act and  
22 "clean coal and energy projects" under Sections 825-65 through  
23 825-75 of the Illinois Finance Authority Act.

24 Administrative costs incurred by the Illinois Finance  
25 Authority in performance of this subsection (h-20) shall be  
26 subject to reimbursement by the clean coal SNG facility on

1 terms as the Illinois Finance Authority and the clean coal SNG  
2 facility may agree. The utility and its customers shall have no  
3 obligation to reimburse the clean coal SNG facility or the  
4 Illinois Finance Authority for any such costs.

5 (h-25) The State of Illinois pledges that the State may not  
6 enact any law or take any action to (1) break or repeal the  
7 authority for SNG purchase contracts entered into between  
8 public gas utilities and the clean coal SNG facility pursuant  
9 to subsection (h) of this Section or (2) deny public gas  
10 utilities their full cost recovery for contract costs, as  
11 defined in subsection (h-10), that are incurred under such SNG  
12 purchase contracts. These pledges are for the benefit of the  
13 parties to such SNG purchase contracts and the issuers and  
14 holders of bonds or other obligations issued or incurred to  
15 finance or refinance the clean coal SNG facility. The  
16 beneficiaries are authorized to include and refer to these  
17 pledges in any finance agreement into which they may enter in  
18 regard to such contracts.

19 (h-30) The State of Illinois retains and reserves all other  
20 rights to enact new or amendatory legislation or take any other  
21 action, including, but not limited to, such legislation or  
22 other action that would (1) directly or indirectly raise the  
23 costs that the clean coal SNG facility must incur; (2) directly  
24 or indirectly place additional restrictions, regulations, or  
25 requirements on the clean coal SNG facility; (3) prohibit  
26 sequestration in general or prohibit a specific sequestration



1 method or project; or (4) increase minimum sequestration  
2 requirements.

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

6 (Source: P.A. 96-1364, eff. 7-28-10; 97-96, eff. 7-13-11;  
7 97-239, eff. 8-2-11; 97-630, eff. 12-8-11.)".