



104TH GENERAL ASSEMBLY

State of Illinois

2025 and 2026

HB2862

Introduced 2/6/2025, by Rep. Amy Elik

SYNOPSIS AS INTRODUCED:

220 ILCS 5/9-220

from Ch. 111 2/3, par. 9-220

Amends the Public Utilities Act. Provides that the Illinois Commerce Commission shall not authorize any charges based upon changes in the cost of fuel. Removes provisions concerning the Commission's ability to authorize the increase or decrease of a public utility's rates and charges based upon changes in the cost of fuel used in the generation or production of electric power, changes in the cost of purchased power, or changes in the cost of purchased gas through the application of fuel adjustment clauses or purchased gas adjustment clauses and based upon expenditures or revenues resulting from the purchase or sale of emission allowances through such fuel adjustment clauses as a cost of fuel. Removes provisions concerning a public utility's ability to, at any time during the mandatory transition period, file with the Commission proposed tariff sheets that establish the rate of the provided utility to be applied pursuant to the public utility's fuel adjustment clause at the average value for such rate during the preceding 24 months, provided that such average rate results in a credit to customers' bills, without making any revisions to the public utility's base rate tariffs.

LRB104 10764 AAS 20844 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Public Utilities Act is amended by changing
5 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) The Commission shall not authorize any charges based
9 upon changes in the cost of fuel. ~~Notwithstanding the~~
10 ~~provisions of Section 9-201, the Commission may authorize the~~
11 ~~increase or decrease of rates and charges based upon changes~~
12 ~~in the cost of fuel used in the generation or production of~~
13 ~~electric power, changes in the cost of purchased power, or~~
14 ~~changes in the cost of purchased gas through the application~~
15 ~~of fuel adjustment clauses or purchased gas adjustment~~
16 ~~clauses. The Commission may also authorize the increase or~~
17 ~~decrease of rates and charges based upon expenditures or~~
18 ~~revenues resulting from the purchase or sale of emission~~
19 ~~allowances created under the federal Clean Air Act Amendments~~
20 ~~of 1990, through such fuel adjustment clauses, as a cost of~~
21 ~~fuel. For the purposes of this paragraph, cost of fuel used in~~
22 ~~the generation or production of electric power shall include~~
23 ~~the amount of any fees paid by the utility for the~~

1 ~~implementation and operation of a process for the~~
2 ~~desulfurization of the flue gas when burning high sulfur coal~~
3 ~~at any location within the State of Illinois irrespective of~~
4 ~~the attainment status designation of such location; but shall~~
5 ~~not include transportation costs of coal (i) except to the~~
6 ~~extent that for contracts entered into on and after the~~
7 ~~effective date of this amendatory Act of 1997, the cost of the~~
8 ~~coal, including transportation costs, constitutes the lowest~~
9 ~~cost for adequate and reliable fuel supply reasonably~~
10 ~~available to the public utility in comparison to the cost,~~
11 ~~including transportation costs, of other adequate and reliable~~
12 ~~sources of fuel supply reasonably available to the public~~
13 ~~utility, or (ii) except as otherwise provided in the next 3~~
14 ~~sentences of this paragraph. Such costs of fuel shall, when~~
15 ~~requested by a utility or at the conclusion of the utility's~~
16 ~~next general electric rate proceeding, whichever shall first~~
17 ~~occur, include transportation costs of coal purchased under~~
18 ~~existing coal purchase contracts. For purposes of this~~
19 ~~paragraph "existing coal purchase contracts" means contracts~~
20 ~~for the purchase of coal in effect on the effective date of~~
21 ~~this amendatory Act of 1991, as such contracts may thereafter~~
22 ~~be amended, but only to the extent that any such amendment does~~
23 ~~not increase the aggregate quantity of coal to be purchased~~
24 ~~under such contract. Nothing herein shall authorize an~~
25 ~~electric utility to recover through its fuel adjustment clause~~
26 ~~any amounts of transportation costs of coal that were included~~

1 ~~in the revenue requirement used to set base rates in its most~~
2 ~~recent general rate proceeding. Cost shall be based upon~~
3 ~~uniformly applied accounting principles. Annually, the~~
4 ~~Commission shall initiate public hearings to determine whether~~
5 ~~the clauses reflect actual costs of fuel, gas, power, or coal~~
6 ~~transportation purchased to determine whether such purchases~~
7 ~~were prudent, and to reconcile any amounts collected with the~~
8 ~~actual costs of fuel, power, gas, or coal transportation~~
9 ~~prudently purchased. In each such proceeding, the burden of~~
10 ~~proof shall be upon the utility to establish the prudence of~~
11 ~~its cost of fuel, power, gas, or coal transportation purchases~~
12 ~~and costs. The Commission shall issue its final order in each~~
13 ~~such annual proceeding for an electric utility by December 31~~
14 ~~of the year immediately following the year to which the~~
15 ~~proceeding pertains, provided, that the Commission shall issue~~
16 ~~its final order with respect to such annual proceeding for the~~
17 ~~years 1996 and earlier by December 31, 1998.~~

18 (b) (Blank). ~~A public utility providing electric service,~~
19 ~~other than a public utility described in subsections (e) or~~
20 ~~(f) of this Section, may at any time during the mandatory~~
21 ~~transition period file with the Commission proposed tariff~~
22 ~~sheets that eliminate the public utility's fuel adjustment~~
23 ~~clause and adjust the public utility's base rate tariffs by~~
24 ~~the amount necessary for the base fuel component of the base~~
25 ~~rates to recover the public utility's average fuel and power~~
26 ~~supply costs per kilowatt hour for the 2 most recent years for~~

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

24 (c) (Blank). ~~Notwithstanding any contrary or inconsistent~~
25 ~~provisions in Section 9-201 of this Act, in subsection (a) of~~
26 ~~this Section or in any rules or regulations promulgated by the~~

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

23 (d) (Blank). ~~A public utility providing electric service,~~
24 ~~or a public utility providing gas service may file with the~~
25 ~~Commission proposed tariff sheets that eliminate the public~~
26 ~~utility's fuel or purchased gas adjustment clause and adjust~~

1 ~~the public utility's base rate tariffs to provide for recovery~~
2 ~~of power supply costs or gas supply costs that would have been~~
3 ~~recovered through such clause; provided, that the provisions~~
4 ~~of this subsection (d) shall not be available to a public~~
5 ~~utility described in subsections (e) or (f) of this Section to~~
6 ~~eliminate its fuel adjustment clause. Notwithstanding any~~
7 ~~contrary or inconsistent provisions in Section 9-201 of this~~
8 ~~Act, in subsection (a) of this Section, or in any rules or~~
9 ~~regulations promulgated by the Commission pursuant to~~
10 ~~subsection (g) of this Section, the Commission shall review~~
11 ~~and shall by order approve, or approve as modified in the~~
12 ~~Commission's order, the proposed tariff sheets within 240 days~~
13 ~~after the date of the public utility's filing. The~~
14 ~~Commission's order shall approve rates and charges that the~~
15 ~~Commission, based on information in the public utility's~~
16 ~~filing or on the record if a hearing is held by the Commission,~~
17 ~~finds will recover the reasonable, prudent and necessary~~
18 ~~jurisdictional power supply costs or gas supply costs incurred~~
19 ~~or to be incurred by the public utility during a 12 month~~
20 ~~period found by the Commission to be appropriate for these~~
21 ~~purposes, provided, that such period shall be either (i) a 12~~
22 ~~month historical period occurring during the 15 months ending~~
23 ~~on the date of the public utility's filing, or (ii) a 12 month~~
24 ~~future period ending no later than 15 months following the~~
25 ~~date of the public utility's filing. The public utility shall~~
26 ~~include with its tariff filing information showing both (1)~~

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

25 (e) (Blank). ~~Notwithstanding any contrary or inconsistent~~
26 ~~provisions in Section 9 201 of this Act, in subsection (a) of~~

1 ~~this Section, or in any rules promulgated by the Commission~~
2 ~~pursuant to subsection (g) of this Section, a public utility~~
3 ~~providing electric service to more than 1,000,000 customers in~~
4 ~~this State may, within the first 6 months after the effective~~
5 ~~date of this amendatory Act of 1997, file with the Commission~~
6 ~~proposed tariff sheets that eliminate, effective January 1,~~
7 ~~1997, the public utility's fuel adjustment clause without~~
8 ~~adjusting its base rates, and such tariff sheets shall be~~
9 ~~effective upon filing. To the extent the application of the~~
10 ~~fuel adjustment clause had resulted in net charges to~~
11 ~~customers after January 1, 1997, the utility shall also file a~~
12 ~~tariff sheet that provides for a refund stated on a per~~
13 ~~kilowatt-hour basis of such charges over a period not to~~
14 ~~exceed 6 months; provided however, that such refund shall not~~
15 ~~include the proportional amounts of taxes paid under the Use~~
16 ~~Tax Act, Service Use Tax Act, Service Occupation Tax Act, and~~
17 ~~Retailers' Occupation Tax Act on fuel used in generation. The~~
18 ~~Commission shall issue an order within 45 days after the date~~
19 ~~of the public utility's filing approving or approving as~~
20 ~~modified such tariff sheet. If the fuel adjustment clause is~~
21 ~~eliminated pursuant to this subsection, the Commission shall~~
22 ~~not conduct the annual hearings specified in the last 3~~
23 ~~sentences of subsection (a) of this Section for the utility~~
24 ~~for any period after December 31, 1996 and prior to any~~
25 ~~reinstatement of such clause. A public utility whose fuel~~
26 ~~adjustment clause has been eliminated pursuant to this~~

1 ~~subsection shall not file a proposed tariff sheet seeking, or~~
2 ~~otherwise petition the Commission for, reinstatement of the~~
3 ~~fuel adjustment clause prior to January 1, 2007.~~

4 (f) (Blank). ~~Notwithstanding any contrary or inconsistent~~
5 ~~provisions in Section 9-201 of this Act, in subsection (a) of~~
6 ~~this Section, or in any rules or regulations promulgated by~~
7 ~~the Commission pursuant to subsection (g) of this Section, a~~
8 ~~public utility providing electric service to more than 500,000~~
9 ~~customers but fewer than 1,000,000 customers in this State~~
10 ~~may, within the first 6 months after the effective date of this~~
11 ~~amendatory Act of 1997, file with the Commission proposed~~
12 ~~tariff sheets that eliminate, effective January 1, 1997, the~~
13 ~~public utility's fuel adjustment clause and adjust its base~~
14 ~~rates by the amount necessary for the base fuel component of~~
15 ~~the base rates to recover 91% of the public utility's average~~
16 ~~fuel and power supply costs for the 2 most recent years for~~
17 ~~which the Commission, as of January 1, 1997, has issued final~~
18 ~~orders in annual proceedings pursuant to subsection (a), where~~
19 ~~the average fuel and power supply costs per kilowatt hour~~
20 ~~shall be calculated as the sum of the public utility's prudent~~
21 ~~and allowable fuel and power supply costs as found by the~~
22 ~~Commission in the 2 proceedings divided by the public~~
23 ~~utility's actual jurisdictional kilowatt hour sales for those~~
24 ~~2 years, provided, that such tariff sheets shall be effective~~
25 ~~upon filing. To the extent the application of the fuel~~
26 ~~adjustment clause had resulted in net charges to customers~~

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

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

23 (h) Any Illinois gas utility may enter into a contract on
24 or before September 30, 2011 for up to 10 years of supply with
25 any company for the purchase of substitute natural gas (SNG)
26 produced from coal through the gasification process if the

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

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

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

1 contract to the Illinois Power Agency. The Illinois Power
2 Agency shall review the draft contract and comments.

3 During its review of the draft contract, the Illinois
4 Power Agency shall:

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

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

25 (3) review and approve the amount of budgeted
26 miscellaneous net revenue after cost allowance, including

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

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

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

25 If the parties to the contract do not agree on the terms
26 therein, then the Illinois Power Agency shall retain an

1 independent mediator to mediate the dispute between the
2 parties. If the parties are in agreement on the terms of the
3 contract, then the Illinois Power Agency shall approve the
4 contract. If after mediation the parties have failed to come
5 to agreement, then the Illinois Power Agency shall revise the
6 draft contract as necessary to confirm that the contract
7 contains only terms that are reasonable and equitable. The
8 Illinois Power Agency may, in its discretion, retain an
9 independent, qualified, and experienced expert to assist in
10 its obligations under this subsection (h). The Illinois Power
11 Agency shall adopt and make public policies detailing the
12 processes for retaining a mediator and an expert under this
13 subsection (h). Any mediator or expert retained under this
14 subsection (h) shall be retained no later than 60 days after
15 August 2, 2011.

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

25 Within 30 days after commercial production of SNG has
26 begun, the Commission shall initiate a review to determine

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

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

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

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

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

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

13 A gas utility electing to file biennial rate proceedings
14 before the Commission must file a notice of its election with
15 the Commission within 60 days after July 13, 2011 or its right
16 to make the election is irrevocably waived. A gas utility
17 electing to file biennial rate proceedings shall make such
18 filings no later than August 1 of the years 2012, 2014, and
19 2016, consistent with all requirements of 83 Ill. Adm. Code
20 255 and 285 as though the gas utility were filing for an
21 increase in its rates, without regard to whether such filing
22 would produce an increase, a decrease, or no change in the gas
23 utility's rates, and notwithstanding any other provisions of
24 this Act, the Commission shall fully review the gas utility's
25 filing and shall issue its order in accordance with the
26 provisions of Section 9-201 of this Act, regardless of whether

1 the Commission has approved a formula rate for the gas
2 utility.

3 Within 15 days after July 13, 2011, the owner of the clean
4 coal SNG brownfield facility shall submit to the Illinois
5 Power Agency and each gas utility that is providing service to
6 more 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
12 after the receipt of the gas utility's comments and
13 recommended revisions, the owner of the clean coal SNG
14 brownfield facility shall submit its responsive comments and a
15 further revised draft of the sourcing agreement to the
16 Illinois Power Agency. The Illinois Power Agency shall review
17 the draft sourcing 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
23 the final draft sourcing agreement. If after mediation the
24 parties have failed to come to agreement, then the Illinois
25 Power Agency shall revise the draft sourcing agreement as
26 necessary to confirm that the final draft sourcing agreement

1 contains only terms that are reasonable and equitable. The
2 Illinois Power Agency shall adopt and make public a policy
3 detailing the process for retaining a mediator under this
4 subsection (h-1). Any mediator retained to assist with
5 mediating disputes between the parties regarding the sourcing
6 agreement shall be retained no later than 60 days after July
7 13, 2011.

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

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

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

24 (2) Coal and petroleum coke are feedstocks for the
25 gasification process, with coal comprising at least 50% of
26 the total feedstock over the term of the sourcing

1 agreement unless the facility reasonably determines that
2 it is necessary to use additional petroleum coke to
3 deliver net consumer savings, in which case the facility
4 shall use coal for at least 35% of the total feedstock over
5 the term of any sourcing agreement and with the feedstocks
6 to be procured in accordance with requirements of Section
7 1-78 of the Illinois Power Agency Act.

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

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

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

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

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

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

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

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

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

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

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

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

25 (11) A utility may exit the sourcing agreement without
26 penalty if the clean coal SNG brownfield facility does not

1 commence construction by July 1, 2015.

2 (12) A utility is responsible to pay only the
3 Commission determined unit price cost of SNG that is
4 purchased by the utility. Nothing in the sourcing
5 agreement will obligate a utility to invest capital in a
6 clean coal SNG brownfield facility.

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

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

1 transportation services rates of each class of the
2 utility's customers, and (C) shall accurately reflect the
3 net consumer savings, if any, and above-market costs, if
4 any, associated with the utility receiving, delivering,
5 managing, or otherwise accommodating purchases under the
6 SNG sourcing agreement.

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

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

23 (17) Prior to the clean coal SNG brownfield facility
24 issuing a notice to proceed to construction, the clean
25 coal SNG brownfield facility shall file with the
26 Commission a certificate from an independent engineer that

1 the clean coal SNG brownfield facility has (A) obtained
2 all applicable State and federal environmental permits
3 required for construction; (B) obtained approval from the
4 Commission of a carbon capture and sequestration plan; and
5 (C) obtained all necessary permits required for
6 construction for the transportation and sequestration of
7 carbon dioxide as set forth in the Commission-approved
8 carbon capture and sequestration plan.

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

1 delivered SNG price pursuant to subsection (h-3) of this
2 Section. The consumer protection reserve account shall be
3 maintained and administered by an independent trustee that is
4 mutually agreed upon by the clean coal SNG brownfield
5 facility, the utilities, and the Commission in an
6 interest-bearing account in accordance with the following:

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

20 (2) During the first 2 years of operation of the
21 facility:

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

26 (B) to the extent the monthly delivered SNG price

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

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

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

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

1 the entire term of the sourcing agreement to date,
2 then 50% of any amounts in the consumer protection
3 reserve account in excess of the consumer protection
4 reserve account principal maximum shall be distributed
5 to the clean coal SNG brownfield facility, with the
6 remaining 50% of any such additional amounts being
7 credited to retail customers, and (ii) if retail
8 customers have realized net consumer savings, then
9 100% of any amounts in the consumer protection reserve
10 account in excess of the consumer protection reserve
11 account principal maximum shall be distributed to the
12 clean coal SNG brownfield facility; provided, however,
13 that under no circumstances shall the total cumulative
14 amount distributed to the clean coal SNG brownfield
15 facility under this subparagraph (B) exceed
16 \$150,000,000;

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

23 (D) if retail customers have realized net consumer
24 savings, calculated by comparing the delivered SNG
25 price to the weighted average of the daily Chicago
26 City-gate price on a daily basis over the entire term

1 of the sourcing agreement to date, then after
2 distributing the amounts pursuant to subparagraphs (B)
3 and (C) of this paragraph (3), 50% of any additional
4 amounts in the consumer protection reserve account in
5 excess of the consumer protection reserve account
6 principal maximum shall be distributed to the clean
7 coal SNG brownfield facility, with the remaining 50%
8 of any such additional amounts being credited to
9 retail customers; provided, however, that if retail
10 customers have not realized such net consumer savings,
11 no such distribution shall be made to the clean coal
12 SNG brownfield facility, and 100% of such additional
13 amounts shall be credited to the retail customers to
14 the extent the consumer protection reserve account
15 exceeds the consumer protection reserve account
16 principal maximum amount.

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

26 (5) At the conclusion of the term of the sourcing

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

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

24 (7) The clean coal SNG brownfield facility, the
25 utilities, and the trustee shall work together to take
26 commercially reasonable steps to minimize the tax impact

1 of these transactions, while preserving the consumer
2 benefits.

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

9 (A) the extent the monthly delivered SNG price is
10 greater than, less than, or equal to the Chicago
11 City-gate price;

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

14 (C) the amounts credited to consumers and
15 distributed to the clean coal SNG brownfield facility
16 during the month;

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

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

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

22 (G) any other additional information the
23 Commission shall require.

24 When any report is erroneous or defective or appears
25 to the Commission to be erroneous or defective, the
26 Commission may notify the clean coal SNG brownfield

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

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

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

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

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

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

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

1 brownfield facility to recover under the sourcing
2 agreement. In making this determination, the Capital
3 Development Board shall review the facility cost
4 report, if any, of the clean coal SNG brownfield
5 facility, adjusting the results based on the change in
6 the Annual Consumer Price Index for All Urban
7 Consumers for the Midwest Region as published in April
8 by the United States Department of Labor, Bureau of
9 Labor Statistics, the final draft of the sourcing
10 agreement, and the rate of return approved by the
11 Commission. In addition, the Capital Development Board
12 may consult as much as it deems necessary with the
13 clean coal SNG brownfield facility and conduct
14 whatever research and investigation it deems
15 necessary.

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

1 clean coal SNG brownfield facility. In order to
2 qualify as an independent expert, a person or company
3 must have:

4 (i) direct previous experience conducting
5 front-end engineering and design studies for
6 large-scale energy facilities and administering
7 large-scale energy operations and maintenance
8 contracts, which may be particularized to the
9 specific type of financing associated with the
10 clean coal SNG brownfield facility;

11 (ii) an advanced degree in economics,
12 mathematics, engineering, or a related area of
13 study;

14 (iii) ten years of experience in the energy
15 sector, including construction and risk management
16 experience;

17 (iv) expertise in assisting companies with
18 obtaining financing for large-scale energy
19 projects, which may be particularized to the
20 specific type of financing associated with the
21 clean coal SNG brownfield facility;

22 (v) expertise in operations and maintenance
23 which may be particularized to the specific type
24 of operations and maintenance associated with the
25 clean coal SNG brownfield facility;

26 (vi) expertise in credit and contract

1 protocols;

2 (vii) adequate resources to perform and
3 fulfill the required functions and
4 responsibilities; and

5 (viii) the absence of a conflict of interest
6 and inappropriate bias for or against an affected
7 gas utility or the clean coal SNG brownfield
8 facility.

9 The clean coal SNG brownfield facility and the
10 Illinois Power Agency shall cooperate with the Capital
11 Development Board in any investigation it deems
12 necessary. The Capital Development Board shall make
13 its final determination of the range of capital costs
14 confidentially and shall submit that range to the
15 Commission in a confidential filing within 120 days
16 after July 13, 2011 (the effective date of Public Act
17 97-096). The clean coal SNG brownfield facility shall
18 submit to the Commission its estimate of the capital
19 costs to be recovered under the sourcing agreement.
20 Only after the clean coal SNG brownfield facility has
21 submitted this estimate shall the Commission publicly
22 announce the range of capital costs submitted by the
23 Capital Development Board.

24 In the event that the estimate submitted by the
25 clean coal SNG brownfield facility is within or below
26 the range submitted by the Capital Development Board,

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

16 The Capital Development Board shall monitor the
17 construction of the clean coal SNG brownfield facility
18 for the full duration of construction to assess
19 potential cost overruns. The Capital Development
20 Board, in its discretion, may retain an expert to
21 facilitate such monitoring. The clean coal SNG
22 brownfield facility shall pay a reasonable fee as
23 required by the Capital Development Board for the
24 Capital Development Board's services under this
25 subsection (h-3) to be deposited into the Capital
26 Development Board Revolving Fund, and such fee shall

1 not be passed through to a utility or its customers. If
2 an expert is retained by the Capital Development Board
3 for monitoring of construction, then the clean coal
4 SNG brownfield facility must pay for the expert's
5 reasonable fees and such costs shall not be passed
6 through to a utility or its customers.

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

21 In determining the return on equity, the
22 Commission shall select a commercially reasonable
23 return on equity taking into account the return on
24 equity being received by developers of similar
25 facilities in or outside of Illinois, the need to
26 balance an incentive for clean-coal technology with

1 the need to protect ratepayers from high gas prices,
2 the risks being borne by the clean coal SNG brownfield
3 facility in the final draft sourcing agreement, and
4 any other information that the Commission may deem
5 relevant. The Commission may establish a return on
6 equity that varies with the amount of savings, if any,
7 to customers during the term of the sourcing
8 agreement, comparing the delivered SNG price to a
9 daily weighted average price of natural gas, based
10 upon an index. The Illinois Power Agency shall
11 recommend a return on equity to the Commission using
12 the same criteria. Within 60 days after receiving the
13 final draft sourcing agreement from the Illinois Power
14 Agency, the Commission shall approve the rate of
15 return for the clean coal brownfield facility. Within
16 30 days after obtaining debt financing for the clean
17 coal SNG brownfield facility, the clean coal SNG
18 brownfield facility shall file a notice with the
19 Commission identifying the actual cost of debt.

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

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

1 Illinois Power Agency shall cooperate with the Capital
2 Development Board in any investigation it deems necessary.
3 The Capital Development Board shall make its final
4 determination of the range of operations and maintenance
5 costs confidentially and shall submit that range to the
6 Commission in a confidential filing within 120 days after
7 July 13, 2011.

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

1 costs to be recovered under the sourcing agreement. Within
2 15 days after the Capital Development Board has submitted
3 its range and the clean coal SNG brownfield facility has
4 submitted its estimate, the Commission shall approve the
5 operations and maintenance costs for the clean coal SNG
6 brownfield facility.

7 The clean coal SNG brownfield facility shall pay for
8 the independent engineering expert's reasonable fees and
9 such costs shall not be passed through to a utility or its
10 customers. The clean coal SNG brownfield facility shall
11 pay a reasonable fee as required by the Capital
12 Development Board for the Capital Development Board's
13 services under this subsection (h-3) to be deposited into
14 the Capital Development Board Revolving Fund, and such fee
15 shall not be passed through to a utility or its customers.

16 (3) Sequestration costs approved by the Commission
17 shall be recoverable by the clean coal SNG brownfield
18 facility. "Sequestration costs" means costs to be incurred
19 by the clean coal SNG brownfield facility in accordance
20 with its Commission-approved carbon capture and
21 sequestration plan to:

22 (A) capture carbon dioxide;

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

25 (C) build, operate, and maintain a carbon dioxide
26 pipeline; and

1 (D) transport the carbon dioxide to the
2 sequestration site or a pipeline.

3 The Commission shall assess the prudence of the
4 sequestration costs for the clean coal SNG brownfield
5 facility before construction commences at the
6 sequestration site or pipeline. Any revenues the clean
7 coal SNG brownfield facility receives as a result of the
8 capture, transportation, or sequestration of carbon
9 dioxide shall be first credited against all sequestration
10 costs, with the positive balance, if any, treated as
11 additional net revenue.

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

1 Commission shall provide for notice and a public hearing
2 for approval of the increased sequestration costs.

3 (4) Actual delivered and processed fuel costs shall be
4 set by the Illinois Power Agency through a SNG feedstock
5 procurement, pursuant to Sections 1-20, 1-77, and 1-78 of
6 the Illinois Power Agency Act, to be performed at least
7 every 5 years and purchased by the clean coal SNG
8 brownfield facility pursuant to feedstock procurement
9 contracts developed by the Illinois Power Agency, with
10 coal comprising at least 50% of the total feedstock over
11 the term of the sourcing agreement and petroleum coke
12 comprising the remainder of the SNG feedstock. If the
13 Commission fails to approve a feedstock procurement plan
14 or fails to approve the results of a feedstock procurement
15 event, then the fuel shall be purchased by the company
16 month-by-month on the spot market and those actual
17 delivered and processed fuel costs shall be recoverable
18 under the sourcing agreement. If a supplier defaults under
19 the terms of a procurement contract, then the Illinois
20 Power Agency shall immediately initiate a feedstock
21 procurement process to obtain a replacement supply, and,
22 prior to the conclusion of that process, fuel shall be
23 purchased by the company month-by-month on the spot market
24 and those actual delivered and processed fuel costs shall
25 be recoverable under the sourcing agreement.

26 (5) Taxes and fees imposed by the federal government,

1 the State, or any unit of local government applicable to
2 the clean coal SNG brownfield facility, excluding income
3 tax, shall be recoverable by the clean coal SNG brownfield
4 facility under the sourcing agreement to the extent such
5 taxes and fees were not applicable to the facility on July
6 13, 2011.

7 (6) The actual transportation costs, in accordance
8 with the applicable utility's tariffs, and third-party
9 marketer costs incurred by the company, if any, associated
10 with transporting the SNG from the clean coal SNG
11 brownfield facility to the Chicago City-gate to sell such
12 SNG into the natural gas markets shall be recoverable
13 under the sourcing agreement.

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

1 decision of the Commission upon rehearing shall be final.

2 Any person affected by a decision of the Commission
3 under this subsection (h-3) may have the decision reviewed
4 only under and in accordance with the Administrative
5 Review Law. Unless otherwise provided, the provisions of
6 the Administrative Review Law, all amendments and
7 modifications to that Law, and the rules adopted pursuant
8 to that Law shall apply to and govern all proceedings for
9 the judicial review of final administrative decisions of
10 the Commission under this subsection (h-3). The term
11 "administrative decision" is defined as in Section 3-101
12 of the Code of Civil Procedure.

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

19 (h-4) No later than 90 days after the Illinois Power
20 Agency submits the final draft sourcing agreement pursuant to
21 subsection (h-1), the Commission shall approve a sourcing
22 agreement containing (i) the capital costs, rate of return,
23 and operations and maintenance costs established pursuant to
24 subsection (h-3) and (ii) all other terms and conditions,
25 rights, provisions, exceptions, and limitations contained in
26 the final draft sourcing agreement; provided, however, the

1 Commission shall correct typographical and scrivener's errors
2 and modify the contract only as necessary to provide that the
3 gas utility does not have the right to terminate the sourcing
4 agreement due to any future events that may occur other than
5 the clean coal SNG brownfield facility's failure to timely
6 meet milestones, uncured default, extended force majeure, or
7 abandonment. Once the sourcing agreement is approved, then the
8 gas utility subject to that sourcing agreement shall have 45
9 days after the date of the Commission's approval to enter into
10 the sourcing agreement.

11 (h-5) Sequestration enforcement.

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

25 (B) If, in any year, the owner of the clean coal SNG
26 facility fails to demonstrate that the SNG facility

1 captured and sequestered at least 90% of the total carbon
2 dioxide emissions that the facility would otherwise emit
3 or that sequestration of emissions from prior years has
4 failed, resulting in the release of carbon dioxide into
5 the atmosphere, then the owner of the clean coal SNG
6 facility must pay a penalty of \$20 per ton of excess carbon
7 dioxide emissions not to exceed \$40,000,000, in any given
8 year which shall be deposited into the Energy Efficiency
9 Trust Fund and distributed pursuant to subsection (b) of
10 Section 6-6 of the Renewable Energy, Energy Efficiency,
11 and Coal Resources Development Law of 1997. On or before
12 the 5-year anniversary of the execution of the contract
13 and every 5 years thereafter, an expert hired by the owner
14 of the facility with the approval of the Attorney General
15 shall conduct an analysis to determine the cost of
16 sequestration of at least 90% of the total carbon dioxide
17 emissions the plant would otherwise emit. If the analysis
18 shows that the actual annual cost is greater than the
19 penalty, then the penalty shall be increased to equal the
20 actual cost. Provided, however, to the extent that the
21 owner of the facility described in subsection (h) of this
22 Section can demonstrate that the failure was as a result
23 of acts of God (including fire, flood, earthquake,
24 tornado, lightning, hurricane, or other natural disaster);
25 any amendment, modification, or abrogation of any
26 applicable law or regulation that would prevent

1 performance; war; invasion; act of foreign enemies;
2 hostilities (regardless of whether war is declared); civil
3 war; rebellion; revolution; insurrection; military or
4 usurped power or confiscation; terrorist activities; civil
5 disturbance; riots; nationalization; sabotage; blockage;
6 or embargo, the owner of the facility described in
7 subsection (h) of this Section shall not be subject to a
8 penalty if and only if (i) it promptly provides notice of
9 its failure to the Commission; (ii) as soon as practicable
10 and consistent with any order or direction from the
11 Commission, it submits to the Commission proposed
12 modifications to its carbon capture and sequestration
13 plan; and (iii) it carries out its proposed modifications
14 in the manner and time directed by the Commission.

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

26 If the clean coal SNG facility fails to meet the

1 requirements specified in this subsection (h-5), then the
2 Attorney General, on behalf of the People of the State of
3 Illinois, shall bring an action to enforce the obligations
4 related to the facility set forth in this subsection
5 (h-5), including any penalty payments owed, but not
6 including the physical obligation to capture and sequester
7 at least 90% of the total carbon dioxide emissions that
8 the facility would otherwise emit. Such action may be
9 filed in any circuit court in Illinois. By entering into a
10 contract pursuant to subsection (h) of this Section, the
11 clean coal SNG facility agrees to waive any objections to
12 venue or to the jurisdiction of the court with regard to
13 the Attorney General's action under this subsection (h-5).

14 Compliance with the sequestration requirements and any
15 penalty requirements specified in this subsection (h-5)
16 for the clean coal SNG facility shall be assessed annually
17 by the Commission, which may in its discretion retain an
18 expert to facilitate its assessment. If any expert is
19 retained by the Commission, then the clean coal SNG
20 facility shall pay for the expert's reasonable fees, and
21 such costs shall not be passed through to the utility or
22 its customers.

23 In addition, carbon dioxide emission credits received
24 by the clean coal SNG facility in connection with
25 sequestration of carbon dioxide from the facility must be
26 sold in a timely fashion with any revenue, less applicable

1 fees and expenses and any expenses required to be paid by
2 facility for carbon dioxide transportation or
3 sequestration, deposited into the reconciliation account
4 within 30 days after receipt of such funds by the owner of
5 the clean coal SNG facility.

6 The clean coal SNG facility is prohibited from
7 transporting or sequestering carbon dioxide unless the
8 owner of the carbon dioxide pipeline that transfers the
9 carbon dioxide from the facility and the owner of the
10 sequestration site where the carbon dioxide captured by
11 the facility is stored has acquired all applicable permits
12 under applicable State and federal laws, statutes, rules,
13 or regulations prior to the transfer or sequestration of
14 carbon dioxide. The responsibility for compliance with the
15 sequestration requirements specified in this subsection
16 (h-5) for the clean coal SNG facility shall reside solely
17 with the clean coal SNG facility, regardless of whether
18 the facility has contracted with another party to capture,
19 transport, or sequester carbon dioxide.

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

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

1 penalty. If the owner of a clean coal SNG brownfield
2 facility demonstrates that the clean coal SNG brownfield
3 facility captured and sequestered more than 85% of the
4 total carbon emissions that the facility would otherwise
5 emit, the owner of the clean coal SNG brownfield facility
6 may credit such additional amounts to reduce the amount of
7 any future penalty to be paid. The penalty resulting from
8 the failure to capture and sequester at least the minimum
9 amount of carbon dioxide shall not be passed on to a
10 utility or its customers.

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

23 Compliance with the sequestration requirements and
24 penalty requirements specified in this subsection (h-5)
25 for the clean coal SNG brownfield facility shall be
26 assessed annually by the Commission, which may in its

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

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

18 (h-7) Sequestration permitting, oversight, and
19 investigations.

20 (1) No clean coal facility or clean coal SNG
21 brownfield facility may transport or sequester carbon
22 dioxide unless the Commission approves the method of
23 carbon dioxide transportation or sequestration. Such
24 approval shall be required regardless of whether the
25 facility has contracted with another to transport or
26 sequester the carbon dioxide. Nothing in this subsection

1 (h-7) shall release the owner or operator of a carbon
2 dioxide sequestration site or carbon dioxide pipeline from
3 any other permitting requirements under applicable State
4 and federal laws, statutes, rules, or regulations.

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

26 No later than 6 months prior to the date upon which the

1 owner intends to commence construction of a clean coal
2 facility or the clean coal SNG brownfield facility, the
3 owner of the facility shall file with the Commission a
4 carbon dioxide transportation or sequestration plan. The
5 Commission shall hold a public hearing within 30 days
6 after receipt of the facility's carbon dioxide
7 transportation or sequestration plan. The Commission shall
8 post notice of the review on its website upon submission
9 of a carbon dioxide transportation or sequestration method
10 and shall accept written public comments. The Commission
11 shall take the comments into account when making its
12 decision.

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

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

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

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

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

6 (4) (Blank).

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

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

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

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

22 These pledges are for the benefit of the parties to those
23 sourcing agreements and the issuers and holders of bonds or
24 other obligations issued or incurred to finance or refinance
25 the clean coal SNG brownfield facility. The clean coal SNG
26 brownfield facility is authorized to include and refer to

1 these pledges in any financing agreement into which it may
2 enter in regard to those sourcing agreements.

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

22 (h-10) Contract costs for SNG incurred by an Illinois gas
23 utility are reasonable and prudent and recoverable through the
24 purchased gas adjustment clause and are not subject to review
25 or disallowance by the Commission. Contract costs are costs
26 incurred by the utility under the terms of a contract that

1 incorporates the terms stated in subsection (h) of this
2 Section as confirmed in writing by the Illinois Power Agency
3 as set forth in subsection (h) of this Section, which
4 confirmation shall be deemed conclusive, or as a consequence
5 of or condition to its performance under the contract,
6 including (i) amounts paid for SNG under the SNG contract and
7 (ii) costs of transportation and storage services of SNG
8 purchased from interstate pipelines under federally approved
9 tariffs. The Illinois gas utility shall initiate a clean coal
10 SNG facility rider mechanism that (A) shall be applicable to
11 all customers who receive transportation service from the
12 utility, (B) shall be designed to have an equal percentage
13 impact on the transportation services rates of each class of
14 the utility's total customers, and (C) shall accurately
15 reflect the net customer savings, if any, and above market
16 costs, if any, under the SNG contract. Any contract, the terms
17 of which have been confirmed in writing by the Illinois Power
18 Agency as set forth in subsection (h) of this Section and the
19 performance of the parties under such contract cannot be
20 grounds for challenging prudence or cost recovery by the
21 utility through the purchased gas adjustment clause, and in
22 such cases, the Commission is directed not to consider, and
23 has no authority to consider, any attempted challenges.

24 The contracts entered into by Illinois gas utilities
25 pursuant to subsection (h) of this Section shall provide that
26 the utility retains the right to terminate the contract

1 without further obligation or liability to any party if the
2 contract has been impaired as a result of any legislative,
3 administrative, judicial, or other governmental action that is
4 taken that eliminates all or part of the prudence protection
5 of this subsection (h-10) or denies the recoverability of all
6 or part of the contract costs through the purchased gas
7 adjustment clause. Should any Illinois gas utility exercise
8 its right under this subsection (h-10) to terminate the
9 contract, all contract costs incurred prior to termination are
10 and will be deemed reasonable, prudent, and recoverable as and
11 when incurred and not subject to review or disallowance by the
12 Commission. Any order, issued by the State requiring or
13 authorizing the discontinuation of the merchant function,
14 defined as the purchase and sale of natural gas by an Illinois
15 gas utility for the ultimate consumer in its service territory
16 shall include provisions necessary to prevent the impairment
17 of the value of any contract hereunder over its full term.

18 (h-11) All costs incurred by an Illinois gas utility in
19 procuring SNG from a clean coal SNG brownfield facility
20 pursuant to subsection (h-1) or a third-party marketer
21 pursuant to subsection (h-1) are reasonable and prudent and
22 recoverable through the purchased gas adjustment clause in
23 conjunction with a SNG brownfield facility rider mechanism and
24 are not subject to review or disallowance by the Commission;
25 provided that if a utility is required by law or otherwise
26 elects to connect the clean coal SNG brownfield facility to an

1 interstate pipeline, then the utility shall be entitled to
2 recover pursuant to its tariffs all just and reasonable costs
3 that are prudently incurred. Sourcing agreement costs are
4 costs incurred by the utility under the terms of a sourcing
5 agreement that incorporates the terms stated in subsection
6 (h-1) of this Section as approved by the Commission as set
7 forth in subsection (h-4) of this Section, which approval
8 shall be deemed conclusive, or as a consequence of or
9 condition to its performance under the contract, including (i)
10 amounts paid for SNG under the SNG contract and (ii) costs of
11 transportation and storage services of SNG purchased from
12 interstate pipelines under federally approved tariffs. Any
13 sourcing agreement, the terms of which have been approved by
14 the Commission as set forth in subsection (h-4) of this
15 Section, and the performance of the parties under the sourcing
16 agreement cannot be grounds for challenging prudence or cost
17 recovery by the utility, and in these cases, the Commission is
18 directed not to consider, and has no authority to consider,
19 any attempted challenges.

20 (h-15) Reconciliation account. The clean coal SNG facility
21 shall establish a reconciliation account for the benefit of
22 the retail customers of the utilities that have entered into
23 contracts with the clean coal SNG facility pursuant to
24 subsection (h). The reconciliation account shall be maintained
25 and administered by an independent trustee that is mutually
26 agreed upon by the owners of the clean coal SNG facility, the

1 utilities, and the Commission in an interest-bearing account
2 in accordance with the following:

3 (1) The clean coal SNG facility shall conduct an
4 analysis annually within 60 days after receiving the
5 necessary cost information, which shall be provided by the
6 gas utility within 6 months after the end of the preceding
7 calendar year, to determine (i) the average annual
8 contract SNG cost, which shall be calculated as the total
9 amount paid for SNG purchased from the clean coal SNG
10 facility over the preceding 12 months, plus the cost to
11 the utility of the required transportation and storage
12 services of SNG, divided by the total number of MMBtus of
13 SNG actually purchased from the clean coal SNG facility in
14 the preceding 12 months under the utility contract; (ii)
15 the average annual natural gas purchase cost, which shall
16 be calculated as the total annual supply costs paid for
17 baseload natural gas (excluding any SNG) purchased by such
18 utility over the preceding 12 months plus the costs of
19 transportation and storage services of such natural gas
20 (excluding such costs for SNG), divided by the total
21 number of MMbtus of baseload natural gas (excluding SNG)
22 actually purchased by the utility during the year; (iii)
23 the cost differential, which shall be the difference
24 between the average annual contract SNG cost and the
25 average annual natural gas purchase cost; and (iv) the
26 revenue share target which shall be the cost differential

1 multiplied by the total amount of SNG purchased over the
2 preceding 12 months under such utility contract.

3 (A) To the extent the annual average contract SNG
4 cost is less than the annual average natural gas
5 purchase cost, the utility shall credit an amount
6 equal to the revenue share target to the
7 reconciliation account. Such credit payment shall be
8 made monthly starting within 30 days after the
9 completed analysis in this subsection (h-15) and based
10 on collections from all customers via a line item
11 charge in all customer bills designed to have an equal
12 percentage impact on the transportation services of
13 each class of customers. Credit payments made pursuant
14 to this subparagraph (A) shall be deemed prudent and
15 reasonable and not subject to Commission prudence
16 review.

17 (B) To the extent the annual average contract SNG
18 cost is greater than the annual average natural gas
19 purchase cost, the reconciliation account shall be
20 used to provide a credit equal to the revenue share
21 target to the utilities to be used to reduce the
22 utility's natural gas costs through the purchased gas
23 adjustment clause. Such payment shall be made within
24 30 days after the completed analysis pursuant to this
25 subsection (h-15), but only to the extent that the
26 reconciliation account has a positive balance.

1 (2) At the conclusion of the term of the SNG contracts
2 pursuant to subsection (h) and the completion of the final
3 annual analysis pursuant to this subsection (h-15), to the
4 extent the facility owes any amount to retail customers,
5 amounts in the account shall be credited to retail
6 customers to the extent the owed amount is repaid; 50% of
7 any additional amount in the reconciliation account shall
8 be distributed to the utilities to be used to reduce the
9 utilities' natural gas costs through the purchase gas
10 adjustment clause with the remaining amount distributed to
11 the clean coal SNG facility. Such payment shall be made
12 within 30 days after the last completed analysis pursuant
13 to this subsection (h-15). If the facility has repaid all
14 owed amounts, if any, to retail customers and has
15 distributed 50% of any additional amount in the account to
16 the utilities, then the owners of the clean coal SNG
17 facility shall have no further obligation to the utility
18 or the retail customers.

19 If, at the conclusion of the term of the contracts
20 pursuant to subsection (h) and the completion of the final
21 annual analysis pursuant to this subsection (h-15), the
22 facility owes any amount to retail customers and the
23 account has been depleted, then the clean coal SNG
24 facility shall be liable for any remaining amount owed to
25 the retail customers. The clean coal SNG facility shall
26 market the daily production of SNG and distribute on a

1 monthly basis 5% of the amounts collected with respect to
2 such future sales to the utilities in proportion to each
3 utility's SNG contract to be used to reduce the utility's
4 natural gas costs through the purchase gas adjustment
5 clause; such payments to the utility shall continue until
6 either 15 years after the conclusion of the contract or
7 such time as the sum of such payments equals the remaining
8 amount owed to the retail customers at the end of the
9 contract, whichever is earlier. If the debt to the retail
10 customers is not repaid within 15 years after the
11 conclusion of the contract, then the owner of the clean
12 coal SNG facility must sell the facility, and all proceeds
13 from that sale must be used to repay any amount owed to the
14 retail customers under this subsection (h-15).

15 The retail customers shall have first priority in
16 recovering that debt above any creditors, except the
17 secured lenders to the extent that the secured lenders
18 have any secured debt outstanding, including any parent
19 companies or affiliates of the clean coal SNG facility.

20 (3) 50% of all additional net revenue, defined as
21 miscellaneous net revenue after cost allowance and above
22 the budgeted estimate established for revenue pursuant to
23 subsection (h), including sale of substitute natural gas
24 derived from the clean coal SNG facility above the
25 nameplate capacity of the facility and other by-products
26 produced by the facility, shall be credited to the

1 reconciliation account on an annual basis with such
2 payment made within 30 days after the end of each calendar
3 year during the term of the contract.

4 (4) The clean coal SNG facility shall each year,
5 starting in the facility's first year of commercial
6 operation, file with the Commission, in such form as the
7 Commission shall require, a report as to the
8 reconciliation account. The annual report must contain the
9 following information:

10 (A) the revenue share target amount;

11 (B) the amount credited or debited to the
12 reconciliation account during the year;

13 (C) the amount credited to the utilities to be
14 used to reduce the utilities natural gas costs though
15 the purchase gas adjustment clause;

16 (D) the total amount of reconciliation account at
17 the beginning and end of the year;

18 (E) the total amount of consumer savings to date;
19 and

20 (F) any additional information the Commission may
21 require.

22 When any report is erroneous or defective or appears to
23 the Commission to be erroneous or defective, the Commission
24 may notify the clean coal SNG facility to amend the report
25 within 30 days; before or after the termination of the 30-day
26 period, the Commission may examine the trustee of the

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

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

15 Any facility that fails to file the report required under
16 this paragraph (4) to the Commission within the time specified
17 or to make specific answer to any question propounded by the
18 Commission within 30 days after the time it is lawfully
19 required to do so, or within such further time not to exceed 90
20 days as may be allowed by the Commission in its discretion,
21 shall pay a penalty of \$500 to the Commission for each day it
22 is in default.

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

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

6 (h-20) The General Assembly authorizes the Illinois
7 Finance Authority to issue bonds to the maximum extent
8 permitted to finance coal gasification facilities described in
9 this Section, which constitute both "industrial projects"
10 under Article 801 of the Illinois Finance Authority Act and
11 "clean coal and energy projects" under Sections 825-65 through
12 825-75 of the Illinois Finance Authority Act.

13 Administrative costs incurred by the Illinois Finance
14 Authority in performance of this subsection (h-20) shall be
15 subject to reimbursement by the clean coal SNG facility on
16 terms as the Illinois Finance Authority and the clean coal SNG
17 facility may agree. The utility and its customers shall have
18 no obligation to reimburse the clean coal SNG facility or the
19 Illinois Finance Authority for any such costs.

20 (h-25) The State of Illinois pledges that the State may
21 not enact any law or take any action to (1) break or repeal the
22 authority for SNG purchase contracts entered into between
23 public gas utilities and the clean coal SNG facility pursuant
24 to subsection (h) of this Section or (2) deny public gas
25 utilities their full cost recovery for contract costs, as
26 defined in subsection (h-10), that are incurred under such SNG

1 purchase contracts. These pledges are for the benefit of the
2 parties to such SNG purchase contracts and the issuers and
3 holders of bonds or other obligations issued or incurred to
4 finance or refinance the clean coal SNG facility. The
5 beneficiaries are authorized to include and refer to these
6 pledges in any finance agreement into which they may enter in
7 regard to such contracts.

8 (h-30) The State of Illinois retains and reserves all
9 other rights to enact new or amendatory legislation or take
10 any other action, including, but not limited to, such
11 legislation or other action that would (1) directly or
12 indirectly raise the costs that the clean coal SNG facility
13 must incur; (2) directly or indirectly place additional
14 restrictions, regulations, or requirements on the clean coal
15 SNG facility; (3) prohibit sequestration in general or
16 prohibit a specific sequestration method or project; or (4)
17 increase minimum sequestration requirements.

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

21 (Source: P.A. 100-391, eff. 8-25-17.)