

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) Notwithstanding the provisions of Section 9-201, the
9 Commission may authorize the increase or decrease of rates and
10 charges based upon changes in the cost of fuel used in the
11 generation or production of electric power, changes in the cost
12 of purchased power, or changes in the cost of purchased gas
13 through the application of fuel adjustment clauses or purchased
14 gas adjustment clauses. The Commission may also authorize the
15 increase or decrease of rates and charges based upon
16 expenditures or revenues resulting from the purchase or sale of
17 emission allowances created under the federal Clean Air Act
18 Amendments of 1990, through such fuel adjustment clauses, as a
19 cost of fuel. For the purposes of this paragraph, cost of fuel
20 used in the generation or production of electric power shall
21 include the amount of any fees paid by the utility for the
22 implementation and operation of a process for the
23 desulfurization of the flue gas when burning high sulfur coal

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

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

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

1 shall be calculated as the sum of the public utility's prudent
2 and allowable fuel and power supply costs as found by the
3 Commission in the 2 proceedings divided by the public utility's
4 actual jurisdictional kilowatt-hour sales for those 2 years.
5 Notwithstanding any contrary or inconsistent provisions in
6 Section 9-201 of this Act, in subsection (a) of this Section or
7 in any rules or regulations promulgated by the Commission
8 pursuant to subsection (g) of this Section, the Commission
9 shall review and shall by order approve, or approve as
10 modified, the proposed tariff sheets within 60 days after the
11 date of the public utility's filing. The Commission may modify
12 the public utility's proposed tariff sheets only to the extent
13 the Commission finds necessary to achieve conformance to the
14 requirements of this subsection (b). During the 5 years
15 following the date of the Commission's order, but in any event
16 no earlier than January 1, 2007, a public utility whose fuel
17 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 of a fuel
20 adjustment clause.

21 (c) Notwithstanding any contrary or inconsistent
22 provisions in Section 9-201 of this Act, in subsection (a) of
23 this Section or in any rules or regulations promulgated by the
24 Commission pursuant to subsection (g) of this Section, a public
25 utility providing electric service, other than a public utility
26 described in subsection (e) or (f) of this Section, may at any

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

20 (d) A public utility providing electric service, or a
21 public utility providing gas service may file with the
22 Commission proposed tariff sheets that eliminate the public
23 utility's fuel or purchased gas adjustment clause and adjust
24 the public utility's base rate tariffs to provide for recovery
25 of power supply costs or gas supply costs that would have been
26 recovered through such clause; provided, that the provisions of

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

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

22 (e) Notwithstanding any contrary or inconsistent
23 provisions in Section 9-201 of this Act, in subsection (a) of
24 this Section, or in any rules promulgated by the Commission
25 pursuant to subsection (g) of this Section, a public utility
26 providing electric service to more than 1,000,000 customers in

1 this State may, within the first 6 months after the effective
2 date of this amendatory Act of 1997, file with the Commission
3 proposed tariff sheets that eliminate, effective January 1,
4 1997, the public utility's fuel adjustment clause without
5 adjusting its base rates, and such tariff sheets shall be
6 effective upon filing. To the extent the application of the
7 fuel adjustment clause had resulted in net charges to customers
8 after January 1, 1997, the utility shall also file a tariff
9 sheet that provides for a refund stated on a per kilowatt-hour
10 basis of such charges over a period not to exceed 6 months;
11 provided however, that such refund shall not include the
12 proportional amounts of taxes paid under the Use Tax Act,
13 Service Use Tax Act, Service Occupation Tax Act, and Retailers'
14 Occupation Tax Act on fuel used in generation. The Commission
15 shall issue an order within 45 days after the date of the
16 public utility's filing approving or approving as modified such
17 tariff sheet. If the fuel adjustment clause is eliminated
18 pursuant to this subsection, the Commission shall not conduct
19 the annual hearings specified in the last 3 sentences of
20 subsection (a) of this Section for the utility for any period
21 after December 31, 1996 and prior to any reinstatement of such
22 clause. A public utility whose fuel adjustment clause has been
23 eliminated pursuant to this subsection shall not file a
24 proposed tariff sheet seeking, or otherwise petition the
25 Commission for, reinstatement of the fuel adjustment clause
26 prior to January 1, 2007.

1 (f) Notwithstanding any contrary or inconsistent
2 provisions in Section 9-201 of this Act, in subsection (a) of
3 this Section, or in any rules or regulations promulgated by the
4 Commission pursuant to subsection (g) of this Section, a public
5 utility providing electric service to more than 500,000
6 customers but fewer than 1,000,000 customers in this State may,
7 within the first 6 months after the effective date of this
8 amendatory Act of 1997, file with the Commission proposed
9 tariff sheets that eliminate, effective January 1, 1997, the
10 public utility's fuel adjustment clause and adjust its base
11 rates by the amount necessary for the base fuel component of
12 the base rates to recover 91% of the public utility's average
13 fuel and power supply costs for the 2 most recent years for
14 which the Commission, as of January 1, 1997, has issued final
15 orders in annual proceedings pursuant to subsection (a), where
16 the average fuel and power supply costs per kilowatt-hour shall
17 be calculated as the sum of the public utility's prudent and
18 allowable fuel and power supply costs as found by the
19 Commission in the 2 proceedings divided by the public utility's
20 actual jurisdictional kilowatt-hour sales for those 2 years,
21 provided, that such tariff sheets shall be effective upon
22 filing. To the extent the application of the fuel adjustment
23 clause had resulted in net charges to customers after January
24 1, 1997, the utility shall also file a tariff sheet that
25 provides for a refund stated on a per kilowatt-hour basis of
26 such charges over a period not to exceed 6 months. Provided

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

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

19 (h) Any Illinois gas utility may enter into a contract on
20 or before September 30, 2011 for up to 10 years of supply with
21 any company for the purchase of substitute natural gas (SNG)
22 produced from coal through the gasification process if the
23 company has commenced construction of a clean coal SNG facility
24 by July 1, 2012 and commencement of construction shall mean
25 that material physical site work has occurred, such as site
26 clearing and excavation, water runoff prevention, water

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

22 Any gas utility that is providing service to more than
23 150,000 customers on August 2, 2011 (the effective date of
24 Public Act 97-239) ~~this amendatory Act of the 97th General~~
25 ~~Assembly~~ shall either elect to enter into a contract on or
26 before September 30, 2011 for 10 years of SNG supply with the

1 owner of a clean coal SNG facility or to file biennial rate
2 proceedings before the Commission in the years 2012, 2014, and
3 2016, with such filings made after August 2, 2011 ~~the effective~~
4 ~~date of this amendatory Act of the 97th General Assembly~~ and no
5 later than September 30 of the years 2012, 2014, and 2016
6 consistent with all requirements of 83 Ill. Adm. Code 255 and
7 285 as though the gas utility were filing for an increase in
8 its rates, without regard to whether such filing would produce
9 an increase, a decrease, or no change in the gas utility's
10 rates, and the Commission shall review the gas utility's filing
11 and shall issue its order in accordance with the provisions of
12 Section 9-201 of this Act.

13 Within 7 days after August 2, 2011 ~~the effective date of~~
14 ~~this amendatory Act of the 97th General Assembly~~, the owner of
15 the clean coal SNG facility shall submit to the Illinois Power
16 Agency and each gas utility that is providing service to more
17 than 150,000 customers on August 2, 2011 ~~the effective date of~~
18 ~~this amendatory Act of the 97th General Assembly~~ a copy of a
19 draft contract. Within 30 days after the receipt of the draft
20 contract, each such gas utility shall provide the Illinois
21 Power Agency and the owner of the clean coal SNG facility with
22 its comments and recommended revisions to the draft contract.
23 Within 7 days after the receipt of the gas utility's comments
24 and recommended revisions, the owner of the facility shall
25 submit its responsive comments and a further revised draft of
26 the contract to the Illinois Power Agency. The Illinois Power

1 Agency shall review the draft contract and comments.

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

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

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

24 (3) review and approve the amount of budgeted
25 miscellaneous net revenue after cost allowance, including
26 sale of SNG produced by the clean coal SNG facility above

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

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

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

24 If the parties to the contract do not agree on the terms
25 therein, then the Illinois Power Agency shall retain an
26 independent mediator to mediate the dispute between the

1 parties. If the parties are in agreement on the terms of the
2 contract, then the Illinois Power Agency shall approve the
3 contract. If after mediation the parties have failed to come to
4 agreement, then the Illinois Power Agency shall revise the
5 draft contract as necessary to confirm that the contract
6 contains only terms that are reasonable and equitable. The
7 Illinois Power Agency may, in its discretion, retain an
8 independent, qualified, and experienced expert to assist in its
9 obligations under this subsection (h). The Illinois Power
10 Agency shall adopt and make public policies detailing the
11 processes for retaining a mediator and an expert under this
12 subsection (h). Any mediator or expert retained under this
13 subsection (h) shall be retained no later than 60 days after
14 August 2, 2011 ~~the effective date of this amendatory Act of the~~
15 ~~97th General Assembly.~~

16 The Illinois Power Agency shall complete all of its
17 responsibilities under this subsection (h) within 60 days after
18 August 2, 2011 ~~the effective date of this amendatory Act of the~~
19 ~~97th General Assembly.~~ The clean coal SNG facility shall pay a
20 reasonable fee as required by the Illinois Power Agency for its
21 services under this subsection (h) and shall pay the mediator's
22 and expert's reasonable fees, if any. A gas utility and its
23 customers shall have no obligation to reimburse the clean coal
24 SNG facility or the Illinois Power Agency of any 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 and
5 the reasonableness of those costs, the Commission may in its
6 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 any
26 costs, then the Commission shall adjust the SNG price using the

1 price formula in the contract approved by the Illinois Power
2 Agency under this subsection (h) to reflect the disallowed
3 costs and shall enter an order specifying the revised price. In
4 addition, the Commission's order shall direct the clean coal
5 SNG facility to issue refunds of such sums as shall represent
6 the difference between actual gross revenues and the gross
7 revenue that would have been obtained based upon the same
8 volume, from the price revised by the Commission. Any refund
9 shall include interest calculated at a rate determined by the
10 Commission and shall be returned according to procedures
11 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) ~~this amendatory Act of the~~
21 ~~97th General Assembly~~ shall either elect to file biennial rate
22 proceedings before the Commission in the years 2012, 2014, and
23 2016 or enter into a sourcing agreement or sourcing agreements
24 with a clean coal SNG brownfield facility with an initial term
25 of 30 years for either (i) a percentage of 43,500,000,000 cubic
26 feet per year, such that the utilities entering into sourcing

1 agreements with the clean coal SNG brownfield facility purchase
2 100%, allocated by total therms sold to ultimate customers by
3 each gas utility in 2008 or (ii) such lesser amount as may be
4 available from the clean coal SNG brownfield facility; provided
5 that no utility shall be required to purchase more than 42% of
6 the projected annual output of the clean coal SNG brownfield
7 facility, with the remainder of such utility's obligation to be
8 divided proportionately between the other utilities, and
9 provided that the Illinois Power Agency shall further adjust
10 the allocation only as required to take into account adverse
11 consolidation, derivative, or lease impacts to the balance
12 sheet or income 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 ~~the effective~~
16 ~~date of this amendatory Act of the 97th General Assembly~~ or its
17 right to make the election is irrevocably waived. A gas utility
18 electing to file biennial rate proceedings shall make such
19 filings no later than August 1 of the years 2012, 2014, and
20 2016, consistent with all requirements of 83 Ill. Adm. Code 255
21 and 285 as though the gas utility were filing for an increase
22 in its rates, without regard to whether such filing would
23 produce an increase, a decrease, or no change in the gas
24 utility's rates, and notwithstanding any other provisions of
25 this Act, the Commission shall fully review the gas utility's
26 filing and shall issue its order in accordance with the

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

3 Within 15 days after July 13, 2011 ~~the effective date of~~
4 ~~this amendatory Act of the 97th General Assembly,~~ the owner of
5 the clean coal SNG brownfield facility shall submit to the
6 Illinois Power Agency and each gas utility that is providing
7 service to more than 150,000 customers on July 13, 2011 ~~the~~
8 ~~effective date of this amendatory Act of the 97th General~~
9 ~~Assembly~~ a copy of a draft sourcing agreement. Within 45 days
10 after receipt of the draft sourcing agreement, each such gas
11 utility shall provide the Illinois Power Agency and the owner
12 of a clean coal SNG brownfield facility with its comments and
13 recommended revisions to the draft sourcing agreement. Within
14 15 days after the receipt of the gas utility's comments and
15 recommended revisions, the owner of the clean coal SNG
16 brownfield facility shall submit its responsive comments and a
17 further revised draft of the sourcing agreement to the Illinois
18 Power Agency. The Illinois Power Agency shall review the draft
19 sourcing agreement and comments.

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

1 Agency shall revise the draft sourcing agreement as necessary
2 to confirm that the final draft sourcing agreement contains
3 only terms that are reasonable and equitable. The Illinois
4 Power Agency shall adopt and make public a policy detailing the
5 process for retaining a mediator under this subsection (h-1).
6 Any mediator retained to assist with mediating disputes between
7 the parties regarding the sourcing agreement shall be retained
8 no later than 60 days after July 13, 2011 ~~the effective date of~~
9 ~~this amendatory Act of the 97th General Assembly.~~

10 Upon approval of a final draft agreement, the Illinois
11 Power Agency shall submit the final draft agreement to the
12 Capital Development Board and the Commission no later than 90
13 days after July 13, 2011 ~~the effective date of this amendatory~~
14 ~~Act of the 97th General Assembly.~~ The gas utility and the clean
15 coal SNG brownfield facility shall pay a reasonable fee as
16 required by the Illinois Power Agency for its services under
17 this subsection (h-1) and shall pay the mediator's reasonable
18 fees, if any. The Illinois Power Agency shall adopt and make
19 public a policy detailing the process for retaining a mediator
20 under this Section.

21 The sourcing agreement between a gas utility and the clean
22 coal SNG brownfield facility shall contain the following
23 provisions:

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

1 (2) Coal and petroleum coke are feedstocks for the
2 gasification process, with coal comprising at least 50% of
3 the total feedstock over the term of the sourcing agreement
4 unless the facility reasonably determines that it is
5 necessary to use additional petroleum coke to deliver net
6 consumer savings, in which case the facility shall use coal
7 for at least 35% of the total feedstock over the term of
8 any sourcing agreement and with the feedstocks to be
9 procured in accordance with requirements of Section 1-78 of
10 the Illinois Power Agency Act.

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

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

25 (5) Prior to the clean coal SNG brownfield facility
26 issuing a notice to proceed to construction, the clean coal

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

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

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

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

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

24 (8) The delivered SNG price per million btu to be paid
25 monthly by the utility to the clean coal SNG brownfield
26 facility, which shall be based only upon the following: (A)

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

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

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

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

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

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

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

1 transportation service from the utility, (B) shall be
2 designed to have an equal percent impact on the
3 transportation services rates of each class of the
4 utility's customers, and (C) shall accurately reflect the
5 net consumer savings, if any, and above-market costs, if
6 any, associated with the utility receiving, delivering,
7 managing, or otherwise accommodating purchases under the
8 SNG sourcing agreement.

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

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

25 (17) Prior to the clean coal SNG brownfield facility
26 issuing a notice to proceed to construction, the clean coal

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

11 (h-2) Consumer protection reserve account. The clean coal
12 SNG brownfield facility shall guarantee a minimum of
13 \$100,000,000 in consumer savings to customers of the utilities
14 that have entered into sourcing agreements with the clean coal
15 SNG brownfield facility, calculated in real 2010 dollars at the
16 conclusion of the term of the sourcing agreement by comparing
17 the delivered SNG price to the Chicago City-gate price on a
18 weighted daily basis for each day over the entire term of the
19 sourcing agreement. Prior to the clean coal SNG brownfield
20 facility issuing a notice to proceed to construction, the clean
21 coal SNG brownfield facility shall establish a consumer
22 protection reserve account for the benefit of the retail
23 customers of the utilities that have entered into sourcing
24 agreements with the clean coal SNG brownfield facility pursuant
25 to subsection (h-1), with cash principal in the amount of
26 \$150,000,000. Such cash principal shall only be recovered

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

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

22 (2) During the first 2 years of operation of the
23 facility:

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

1 equal to the overage amount; and

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

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

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

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

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

17 (C) to the extent there is an overage amount, after
18 distributing the amounts pursuant to subparagraph (B)
19 of this paragraph (3), if any, the consumer protection
20 reserve account shall be used to provide a credit to
21 reduce the SNG price by an amount equal to the overage
22 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% of
8 any such additional amounts being credited to retail
9 customers; provided, however, that if retail customers
10 have not realized such net consumer savings, no such
11 distribution shall be made to the clean coal SNG
12 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 consumer
25 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 be
8 distributed to the company, and the remaining 50% shall be
9 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 shall
15 be liable for any remaining amount owed to the retail
16 customers to the extent that the customers are provided
17 with the \$100,000,000 in savings as guaranteed in this
18 subsection (h-2). The retail customers shall have first
19 priority in recovering that debt above any creditors,
20 except the original senior secured lender to the extent
21 that the original senior secured lender has any senior
22 secured debt outstanding, including any clean coal SNG
23 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 of

1 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 to
25 the Commission to be erroneous or defective, the Commission
26 may notify the clean coal SNG brownfield facility to amend

1 the report within 30 days, and, before or after the
2 termination of the 30-day period, the Commission may
3 examine the trustee of the consumer protection reserve
4 account or the officers, agents, employees, books,
5 records, or accounts of the clean coal SNG brownfield
6 facility and correct such items in the report as upon such
7 examination the Commission may find defective or
8 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 Commission.
14 The Commission shall publish an annual summary of the
15 reports prior to February 1 of the following year. The
16 annual summary shall be made available to the public on the
17 Commission's website and shall be submitted to the General
18 Assembly.

19 Any facility that fails to file a report required under
20 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 misdemeanor.

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

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

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

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

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

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

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

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

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

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

23 (vi) expertise in credit and contract
24 protocols;

25 (vii) adequate resources to perform and
26 fulfill the required functions and

1 responsibilities; and
2 (viii) the absence of a conflict of interest
3 and inappropriate bias for or against an affected
4 gas utility or the clean coal SNG brownfield
5 facility.

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

22 In the event that the estimate submitted by the
23 clean coal SNG brownfield facility is within or below
24 the range submitted by the Capital Development Board,
25 the clean coal SNG brownfield facility's estimate
26 shall be approved by the Commission as the amount of

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

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

1 for monitoring of construction, then the clean coal SNG
2 brownfield facility must pay for the expert's
3 reasonable fees and such costs shall not be passed
4 through to a utility or its customers.

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

19 In determining the return on equity, the
20 Commission shall select a commercially reasonable
21 return on equity taking into account the return on
22 equity being received by developers of similar
23 facilities in or outside of Illinois, the need to
24 balance an incentive for clean-coal technology with
25 the need to protect ratepayers from high gas prices,
26 the risks being borne by the clean coal SNG brownfield

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

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

25 The Capital Development Board shall calculate a range
26 of operations and maintenance costs that it believes would

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

1 Board shall make its final determination of the range of
2 operations and maintenance costs confidentially and shall
3 submit that range to the Commission in a confidential
4 filing within 120 days after July 13, 2011 ~~the effective~~
5 ~~date of this amendatory Act of the 97th General Assembly.~~

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

1 its range and the clean coal SNG brownfield facility has
2 submitted its estimate, the Commission shall approve the
3 operations and maintenance costs for the clean coal SNG
4 brownfield facility.

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

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

20 (A) capture carbon dioxide;

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

23 (C) build, operate, and maintain a carbon dioxide
24 pipeline; and

25 (D) transport the carbon dioxide to the
26 sequestration site or a pipeline.

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

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

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

24 (5) Taxes and fees imposed by the federal government,
25 the State, or any unit of local government applicable to
26 the clean coal SNG brownfield facility, excluding income

1 tax, shall be recoverable by the clean coal SNG brownfield
2 facility under the sourcing agreement to the extent such
3 taxes and fees were not applicable to the facility on July
4 13, 2011 ~~the date of this amendatory Act of the 97th~~
5 ~~General Assembly.~~

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

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

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

12 (8) The Capital Development Board shall adopt and make
13 public a policy detailing the process for retaining experts
14 under this Section. Any experts retained to assist with
15 calculating the range of capital costs or operations and
16 maintenance costs shall be retained no later than 45 days
17 after July 13, 2011 ~~the effective date of this amendatory~~
18 ~~Act of the 97th General Assembly.~~

19 (h-4) No later than 90 days after the Illinois Power Agency
20 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, and
23 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 meet
6 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 ~~Act~~ and all sourcing agreements under
14 subsection (h-1) of this Section Act, regardless of
15 duration, shall require the owner of any facility supplying
16 SNG under the contract or sourcing agreement to provide
17 certified documentation to the Commission each year,
18 starting in the facility's first year of commercial
19 operation, accurately reporting the quantity of carbon
20 dioxide emissions from the facility that have been captured
21 and sequestered and reporting any quantities of carbon
22 dioxide released from the site or sites at which carbon
23 dioxide emissions were sequestered in prior years, based on
24 continuous monitoring 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 or
3 that sequestration of emissions from prior years has
4 failed, resulting in the release of carbon dioxide into the
5 atmosphere, then the owner of the clean coal SNG facility
6 must pay a penalty of \$20 per ton of excess carbon dioxide
7 emissions not to exceed \$40,000,000, in any given year
8 which shall be deposited into the Energy Efficiency Trust
9 Fund and distributed pursuant to subsection (b) of Section
10 6-6 of the Renewable Energy, Energy Efficiency, and Coal
11 Resources Development Law of 1997. On or before the 5-year
12 anniversary of the execution of the contract and every 5
13 years thereafter, an expert hired by the owner of the
14 facility with the approval of the Attorney General shall
15 conduct an analysis to determine the cost of sequestration
16 of at least 90% of the total carbon dioxide emissions the
17 plant would otherwise emit. If the analysis shows that the
18 actual annual cost is greater than the penalty, then the
19 penalty shall be increased to equal the actual cost.
20 Provided, however, to the extent that the owner of the
21 facility described in subsection (h) of this Section ~~Act~~
22 can demonstrate that the failure was as a result of acts of
23 God (including fire, flood, earthquake, tornado,
24 lightning, hurricane, or other natural disaster); any
25 amendment, modification, or abrogation of any applicable
26 law or regulation that would prevent performance; war;

1 invasion; act of foreign enemies; hostilities (regardless
2 of whether war is declared); civil war; rebellion;
3 revolution; insurrection; military or usurped power or
4 confiscation; terrorist activities; civil disturbance;
5 riots; nationalization; sabotage; blockage; or embargo,
6 the owner of the facility described in subsection (h) of
7 this Section ~~Act~~ shall not be subject to a penalty if and
8 only if (i) it promptly provides notice of its failure to
9 the Commission; (ii) as soon as practicable and consistent
10 with any order or direction from the Commission, it submits
11 to the Commission proposed modifications to its carbon
12 capture and sequestration plan; and (iii) it carries out
13 its proposed modifications in the manner and time directed
14 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% of
19 the total carbon dioxide emissions that the facility would
20 otherwise emit, then the owner of the facility may credit
21 such additional amounts to reduce the amount of any future
22 penalty to be paid. The penalty resulting from the failure
23 to capture and sequester at least the minimum amount of
24 carbon dioxide shall not be passed on to a utility or its
25 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 (h-5),
5 including any penalty payments owed, but not including the
6 physical obligation to capture and sequester at least 90%
7 of the total carbon dioxide emissions that the facility
8 would otherwise emit. Such action may be filed in any
9 circuit court in Illinois. By entering into a contract
10 pursuant to subsection (h) of this Section, the clean coal
11 SNG facility agrees to waive any objections to venue or to
12 the jurisdiction of the court with regard to the Attorney
13 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 the
11 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 the
18 facility has contracted with another party to capture,
19 transport, or sequester carbon dioxide. ~~described in~~
20 ~~subsection (h) of this Act described in subsection (h) of~~
21 ~~this Act~~

22 (C) If, in any year, the owner of a clean coal SNG
23 brownfield facility fails to demonstrate that the clean
24 coal SNG brownfield facility captured and sequestered at
25 least 85% of the total carbon dioxide emissions that the
26 facility would otherwise emit, then the owner of the clean

1 coal SNG brownfield facility must pay a penalty of \$20 per
2 ton of excess carbon emissions up to \$20,000,000, which
3 shall be deposited into the Energy Efficiency Trust Fund
4 and distributed pursuant to subsection (b) of Section 6-6
5 of the Renewable Energy, Energy Efficiency, and Coal
6 Resources Development Law of 1997. Provided, however, to
7 the extent that the owner of the clean coal SNG brownfield
8 facility can demonstrate that the failure was as a result
9 of acts of God (including fire, flood, earthquake, tornado,
10 lightning, hurricane, or other natural disaster); any
11 amendment, modification, or abrogation of any applicable
12 law or regulation that would prevent performance; war;
13 invasion; act of foreign enemies; hostilities (regardless
14 of whether war is declared); civil war; rebellion;
15 revolution; insurrection; military or usurped power or
16 confiscation; terrorist activities; civil disturbances;
17 riots; nationalization; sabotage; blockage; or embargo,
18 the owner of the clean coal SNG brownfield facility shall
19 not be subject to a penalty if and only if (i) it promptly
20 provides notice of its failure to the Commission; (ii) as
21 soon as practicable and consistent with any order or
22 direction from the Commission, it submits to the Commission
23 proposed modifications to its carbon capture and
24 sequestration plan; and (iii) it carries out its proposed
25 modifications in the manner and time directed by the
26 Commission. If the Commission finds that the facility has

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

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

26 Compliance with the sequestration requirements and

1 penalty requirements specified in this subsection (h-5)
2 for the clean coal SNG brownfield facility shall be
3 assessed annually by the Commission, which may in its
4 discretion retain an expert to facilitate its assessment.
5 If an expert is retained by the Commission, then the clean
6 coal SNG brownfield facility shall pay for the expert's
7 reasonable fees, and such costs shall not be passed through
8 to a utility or its customers. ~~or a clean coal SNG~~
9 ~~brownfield facility or requisite penalties are paid~~

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

16 (h-7) Sequestration permitting, oversight, and
17 investigations.

18 (1) No clean coal facility or clean coal SNG brownfield
19 facility may transport or sequester carbon dioxide unless
20 the Commission approves the method of carbon dioxide
21 transportation or sequestration. Such approval shall be
22 required regardless of whether the facility has contracted
23 with another to transport or sequester the carbon dioxide.
24 Nothing in this subsection (h-7) shall release the owner or
25 operator of a carbon dioxide sequestration site or carbon
26 dioxide pipeline from any other permitting requirements

1 under applicable State and federal laws, statutes, rules,
2 or regulations.

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

23 No later than 6 months prior to the date upon which the
24 owner intends to commence construction of a clean coal
25 facility or the clean coal SNG brownfield facility, the
26 owner of the facility shall file with the Commission a

1 carbon dioxide transportation or sequestration plan. The
2 Commission shall hold a public hearing within 30 days after
3 receipt of the facility's carbon dioxide transportation or
4 sequestration plan. The Commission shall post notice of the
5 review on its website upon submission of a carbon dioxide
6 transportation or sequestration method and shall accept
7 written public comments. The Commission shall take the
8 comments into account when making its decision.

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

23 (3) At least annually, the Illinois Environmental
24 Protection Agency shall inspect all carbon dioxide
25 sequestration sites in Illinois. The Illinois
26 Environmental Protection Agency may, as often as deemed

1 necessary, monitor and conduct investigations of those
2 sites. The owner or operator of the sequestration site must
3 cooperate with the Illinois Environmental Protection
4 Agency investigations of carbon dioxide sequestration
5 sites.

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

25 (4) At least annually, the Commission shall inspect all
26 carbon dioxide pipelines in Illinois that transport carbon

1 dioxide to ensure the safety and feasibility of those
2 pipelines. The Commission may, as often as deemed
3 necessary, monitor and conduct investigations of those
4 pipelines. The owner or operator of the pipeline must
5 cooperate with the Commission investigations of the carbon
6 dioxide pipelines.

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

24 (h-9) The clean coal SNG brownfield facility shall have the
25 right to recover prudently incurred increased costs or reduced
26 revenue resulting from any new or amendatory legislation or

1 other action. The State of Illinois pledges that the State will
2 not enact any law or take any action to:

3 (1) break, or repeal the authority for, sourcing
4 agreements approved by the Commission and entered into
5 between public utilities and the clean coal SNG brownfield
6 facility;

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

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

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

20 The State of Illinois retains and reserves all other rights
21 to enact new or amendatory legislation or take any other
22 action, without impairment of the right of the clean coal SNG
23 brownfield facility to recover prudently incurred increased
24 costs or reduced revenue resulting from the new or amendatory
25 legislation or other action, including, but not limited to,
26 such legislation or other action that would (i) directly or

1 indirectly raise the costs the clean coal SNG brownfield
2 facility must incur; (ii) directly or indirectly place
3 additional restrictions, regulations, or requirements on the
4 clean coal SNG brownfield facility; (iii) prohibit
5 sequestration in general or prohibit a specific sequestration
6 method or project; or (iv) increase minimum sequestration
7 requirements for the clean coal SNG brownfield facility to the
8 extent technically feasible. The clean coal SNG brownfield
9 facility shall have the right to recover prudently incurred
10 increased costs or reduced revenue resulting from the new or
11 amendatory legislation or other action as described in this
12 subsection (h-9).

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

1 rider mechanism that (A) shall be applicable to all customers
2 who receive transportation service from the utility, (B) shall
3 be designed to have an equal percentage impact on the
4 transportation services rates of each class of the utility's
5 total customers, and (C) shall accurately reflect the net
6 customer savings, if any, and above market costs, if any, under
7 the SNG contract. Any contract, the terms of which have been
8 confirmed in writing by the Illinois Power Agency as set forth
9 in subsection (h) of this Section and the performance of the
10 parties under such contract cannot be grounds for challenging
11 prudence or cost recovery by the utility through the purchased
12 gas adjustment clause, and in such cases, the Commission is
13 directed not to consider, and has no authority to consider, any
14 attempted challenges.

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

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

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

1 SNG under the SNG contract and (ii) costs of transportation and
2 storage services of SNG purchased from interstate pipelines
3 under federally approved tariffs. Any sourcing agreement, the
4 terms of which have been approved by the Commission as set
5 forth in subsection (h-4) of this Section, and the performance
6 of the parties under the sourcing agreement cannot be grounds
7 for challenging prudence or cost recovery by the utility, and
8 in these cases, the Commission is directed not to consider, and
9 has no authority to consider, any attempted challenges.

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

19 (1) The clean coal SNG facility shall conduct an
20 analysis annually within 60 days after receiving the
21 necessary cost information, which shall be provided by the
22 gas utility within 6 months after the end of the preceding
23 calendar year, to determine (i) the average annual contract
24 SNG cost, which shall be calculated as the total amount
25 paid for SNG purchased from the clean coal SNG facility
26 over the preceding 12 months, plus the cost to the utility

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

19 (A) To the extent the annual average contract SNG
20 cost is less than the annual average natural gas
21 purchase cost, the utility shall credit an amount equal
22 to the revenue share target to the reconciliation
23 account. Such credit payment shall be made monthly
24 starting within 30 days after the completed analysis in
25 this subsection (h-15) and based on collections from
26 all customers via a line item charge in all customer

1 bills designed to have an equal percentage impact on
2 the transportation services of each class of
3 customers. Credit payments made pursuant to this
4 subparagraph (A) shall be deemed prudent and
5 reasonable and not subject to Commission prudence
6 review.

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

17 (2) At the conclusion of the term of the SNG contracts
18 pursuant to subsection (h) and the completion of the final
19 annual analysis pursuant to this subsection (h-15), to the
20 extent the facility owes any amount to retail customers,
21 amounts in the account shall be credited to retail
22 customers to the extent the owed amount is repaid; 50% of
23 any additional amount in the reconciliation account shall
24 be distributed to the utilities to be used to reduce the
25 utilities' natural gas costs through the purchase gas
26 adjustment clause with the remaining amount distributed to

1 the clean coal SNG facility. Such payment shall be made
2 within 30 days after the last completed analysis pursuant
3 to this subsection (h-15). If the facility has repaid all
4 owed amounts, if any, to retail customers and has
5 distributed 50% of any additional amount in the account to
6 the utilities, then the owners of the clean coal SNG
7 facility shall have no further obligation to the utility or
8 the retail customers.

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

1 contract, then the owner of the clean coal SNG facility
2 must sell the facility, and all proceeds from that sale
3 must be used to repay any amount owed to the retail
4 customers under this subsection (h-15).

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

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

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

26 (A) the revenue share target amount;

1 (B) the amount credited or debited to the
2 reconciliation account during the year;

3 (C) the amount credited to the utilities to be used
4 to reduce the utilities natural gas costs though the
5 purchase gas adjustment clause;

6 (D) the total amount of reconciliation account at
7 the beginning and end of the year;

8 (E) the total amount of consumer savings to date;
9 and

10 (F) any additional information the Commission may
11 require.

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

21 All reports made to the Commission by the clean coal SNG
22 facility and the contents of the reports shall be open to
23 public inspection and shall be deemed a public record under the
24 Freedom of Information Act. Such reports shall be preserved in
25 the office of the Commission. The Commission shall publish an
26 annual summary of the reports prior to February 1 of the

1 following year. The annual summary shall be made available to
2 the public on the Commission's website and shall be submitted
3 to the General Assembly.

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

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

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

1 825-75 of the Illinois Finance Authority Act.

2 Administrative costs incurred by the Illinois Finance
3 Authority in performance of this subsection (h-20) shall be
4 subject to reimbursement by the clean coal SNG facility on
5 terms as the Illinois Finance Authority and the clean coal SNG
6 facility may agree. The utility and its customers shall have no
7 obligation to reimburse the clean coal SNG facility or the
8 Illinois Finance Authority for any such costs.

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

23 (h-30) The State of Illinois retains and reserves all other
24 rights to enact new or amendatory legislation or take any other
25 action, including, but not limited to, such legislation or
26 other action that would (1) directly or indirectly raise the

1 costs that the clean coal SNG facility must incur; (2) directly
2 or indirectly place additional restrictions, regulations, or
3 requirements on the clean coal SNG facility; (3) prohibit
4 sequestration in general or prohibit a specific sequestration
5 method or project; or (4) increase minimum sequestration
6 requirements.

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

10 (Source: P.A. 96-1364, eff. 7-28-10; 97-96, eff. 7-13-11;
11 97-239, eff. 8-2-11; revised 9-12-11.)

12 Section 99. Effective date. This Act takes effect upon
13 becoming law.