



Rep. Dan Reitz

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1 AMENDMENT TO SENATE BILL 2169

2 AMENDMENT NO. _____. Amend Senate Bill 2169 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Power Agency Act is amended by
5 changing Section 1-10 as follows:

6 (20 ILCS 3855/1-10)

7 Sec. 1-10. Definitions.

8 "Agency" means the Illinois Power Agency.

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

1 "Authority" means the Illinois Finance Authority.

2 "Clean coal facility" means an electric generating
3 facility that uses primarily coal as a feedstock and that
4 captures and sequesters carbon dioxide emissions at the
5 following levels: at least 50% of the total carbon dioxide
6 emissions that the facility would otherwise emit if, at the
7 time construction commences, the facility is scheduled to
8 commence operation before 2016, at least 70% of the total
9 carbon dioxide emissions that the facility would otherwise emit
10 if, at the time construction commences, the facility is
11 scheduled to commence operation during 2016 or 2017, and at
12 least 90% of the total carbon dioxide emissions that the
13 facility would otherwise emit if, at the time construction
14 commences, the facility is scheduled to commence operation
15 after 2017. The power block of the clean coal facility shall
16 not exceed allowable emission rates for sulfur dioxide,
17 nitrogen oxides, carbon monoxide, particulates and mercury for
18 a natural gas-fired combined-cycle facility the same size as
19 and in the same location as the clean coal facility at the time
20 the clean coal facility obtains an approved air permit. All
21 coal used by a clean coal facility shall have high volatile
22 bituminous rank and greater than 1.7 pounds of sulfur per
23 million btu content, unless the clean coal facility does not
24 use gasification technology and was operating as a conventional
25 coal-fired electric generating facility on June 1, 2009 (the
26 effective date of Public Act 95-1027).

1 "Clean coal SNG facility" means a facility that uses a
2 gasification process to produce substitute natural gas, that
3 sequesters at least 90% of the total carbon emissions that the
4 facility would otherwise emit, ~~and~~ that uses at least 90%
5 ~~petroleum coke or~~ coal as a feedstock, with all such coal
6 having a high bituminous rank and greater than 1.7 pounds of
7 sulfur per million btu content, and that has a valid and
8 effective permit to construct emission sources and air
9 pollution control equipment and approval with respect to the
10 federal regulations for Prevention of Significant
11 Deterioration of Air Quality (PSD) for the plant pursuant to
12 the federal Clean Air Act.

13 "Commission" means the Illinois Commerce Commission.

14 "Costs incurred in connection with the development and
15 construction of a facility" means:

16 (1) the cost of acquisition of all real property, and
17 fixtures, and improvements in connection therewith and
18 equipment, personal property, and other property, rights,
19 and easements acquired that are deemed necessary for the
20 operation and maintenance of the facility;

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

23 (3) all origination, commitment, utilization,
24 facility, placement, underwriting, syndication, credit
25 enhancement, and rating agency fees;

26 (4) engineering, design, procurement, consulting,

1 legal, accounting, title insurance, survey, appraisal,
2 escrow, trustee, collateral agency, interest rate hedging,
3 interest rate swap, capitalized interest, contingency, as
4 required by lenders, and other financing costs, and other
5 expenses for professional services; and

6 (5) the costs of plans, specifications, site study and
7 investigation, installation, surveys, other Agency costs
8 and estimates of costs, and other expenses necessary or
9 incidental to determining the feasibility of any project,
10 together with such other expenses as may be necessary or
11 incidental to the financing, insuring, acquisition, and
12 construction of a specific project and starting up,
13 commissioning, and placing that project in operation.

14 "Department" means the Department of Commerce and Economic
15 Opportunity.

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

17 "Demand-response" means measures that decrease peak
18 electricity demand or shift demand from peak to off-peak
19 periods.

20 "Energy efficiency" means measures that reduce the amount
21 of electricity or natural gas required to achieve a given end
22 use.

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

25 "Facility" means an electric generating unit or a
26 co-generating unit that produces electricity along with

1 related equipment necessary to connect the facility to an
2 electric transmission or distribution system.

3 "Governmental aggregator" means one or more units of local
4 government that individually or collectively procure
5 electricity to serve residential retail electrical loads
6 located within its or their jurisdiction.

7 "Local government" means a unit of local government as
8 defined in Article VII of Section 1 of the Illinois
9 Constitution.

10 "Municipality" means a city, village, or incorporated
11 town.

12 "Person" means any natural person, firm, partnership,
13 corporation, either domestic or foreign, company, association,
14 limited liability company, joint stock company, or association
15 and includes any trustee, receiver, assignee, or personal
16 representative thereof.

17 "Project" means the planning, bidding, and construction of
18 a facility.

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

21 "Real property" means any interest in land together with
22 all structures, fixtures, and improvements thereon, including
23 lands under water and riparian rights, any easements,
24 covenants, licenses, leases, rights-of-way, uses, and other
25 interests, together with any liens, judgments, mortgages, or
26 other claims or security interests related to real property.

1 "Renewable energy credit" means a tradable credit that
2 represents the environmental attributes of a certain amount of
3 energy produced from a renewable energy resource.

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

19 "Revenue bond" means any bond, note, or other evidence of
20 indebtedness issued by the Authority, the principal and
21 interest of which is payable solely from revenues or income
22 derived from any project or activity of the Agency.

23 "Sequester" means permanent storage of carbon dioxide by
24 injecting it into a saline aquifer, a depleted gas reservoir,
25 or an oil reservoir, directly or through an enhanced oil
26 recovery process that may involve intermediate storage.

1 regardless of whether these activities are conducted by a clean
2 coal facility, a clean coal SNG facility, or a party with which
3 a clean coal facility or clean coal SNG facility has contracted
4 for such purposes in a salt dome.

5 "Servicing agreement" means (i) in the case of an electric
6 utility, an agreement between the owner of a clean coal
7 facility and such electric utility, which agreement shall have
8 terms and conditions meeting the requirements of paragraph (3)
9 of subsection (d) of Section 1-75, and (ii) in the case of an
10 alternative retail electric supplier, an agreement between the
11 owner of a clean coal facility and such alternative retail
12 electric supplier, which agreement shall have terms and
13 conditions meeting the requirements of Section 16-115(d) (5) of
14 the Public Utilities Act.

15 "Substitute natural gas" or "SNG" means a gas manufactured
16 by gasification of hydrocarbon feedstock, which is
17 substantially interchangeable in use and distribution with
18 conventional natural gas.

19 "Total resource cost test" or "TRC test" means a standard
20 that is met if, for an investment in energy efficiency or
21 demand-response measures, the benefit-cost ratio is greater
22 than one. The benefit-cost ratio is the ratio of the net
23 present value of the total benefits of the program to the net
24 present value of the total costs as calculated over the
25 lifetime of the measures. A total resource cost test compares
26 the sum of avoided electric utility costs, representing the

1 benefits that accrue to the system and the participant in the
2 delivery of those efficiency measures, as well as other
3 quantifiable societal benefits, including avoided natural gas
4 utility costs, to the sum of all incremental costs of end-use
5 measures that are implemented due to the program (including
6 both utility and participant contributions), plus costs to
7 administer, deliver, and evaluate each demand-side program, to
8 quantify the net savings obtained by substituting the
9 demand-side program for supply resources. In calculating
10 avoided costs of power and energy that an electric utility
11 would otherwise have had to acquire, reasonable estimates shall
12 be included of financial costs likely to be imposed by future
13 regulations and legislation on emissions of greenhouse gases.

14 (Source: P.A. 95-481, eff. 8-28-07; 95-913, eff. 1-1-09;
15 95-1027, eff. 6-1-09; 96-33, eff. 7-10-09; 96-159, eff.
16 8-10-09; 96-784, eff. 8-28-09; 96-1000, eff. 7-2-10.)

17 Section 10. The Illinois Procurement Code is amended by
18 changing Section 1-10 as follows:

19 (30 ILCS 500/1-10)

20 Sec. 1-10. Application.

21 (a) This Code applies only to procurements for which
22 contractors were first solicited on or after July 1, 1998. This
23 Code shall not be construed to affect or impair any contract,
24 or any provision of a contract, entered into based on a

1 solicitation prior to the implementation date of this Code as
2 described in Article 99, including but not limited to any
3 covenant entered into with respect to any revenue bonds or
4 similar instruments. All procurements for which contracts are
5 solicited between the effective date of Articles 50 and 99 and
6 July 1, 1998 shall be substantially in accordance with this
7 Code and its intent.

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

11 (1) Contracts between the State and its political
12 subdivisions or other governments, or between State
13 governmental bodies except as specifically provided in
14 this Code.

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

17 (3) Purchase of care.

18 (4) Hiring of an individual as employee and not as an
19 independent contractor, whether pursuant to an employment
20 code or policy or by contract directly with that
21 individual.

22 (5) Collective bargaining contracts.

23 (6) Purchase of real estate, except that notice of this
24 type of contract with a value of more than \$25,000 must be
25 published in the Procurement Bulletin within 7 days after
26 the deed is recorded in the county of jurisdiction. The

1 notice shall identify the real estate purchased, the names
2 of all parties to the contract, the value of the contract,
3 and the effective date of the contract.

4 (7) Contracts necessary to prepare for anticipated
5 litigation, enforcement actions, or investigations,
6 provided that the chief legal counsel to the Governor shall
7 give his or her prior approval when the procuring agency is
8 one subject to the jurisdiction of the Governor, and
9 provided that the chief legal counsel of any other
10 procuring entity subject to this Code shall give his or her
11 prior approval when the procuring entity is not one subject
12 to the jurisdiction of the Governor.

13 (8) Contracts for services to Northern Illinois
14 University by a person, acting as an independent
15 contractor, who is qualified by education, experience, and
16 technical ability and is selected by negotiation for the
17 purpose of providing non-credit educational service
18 activities or products by means of specialized programs
19 offered by the university.

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

22 (10) Procurement expenditures by the Illinois Health
23 Information Exchange Authority involving private funds
24 from the Health Information Exchange Fund. "Private funds"
25 means gifts, donations, and private grants.

26 (c) This Code does not apply to the electric power

1 procurement process provided for under Section 1-75 of the
2 Illinois Power Agency Act and Section 16-111.5 of the Public
3 Utilities Act.

4 (d) Except for Section 20-160 and Article 50 of this Code,
5 and as expressly required by Section 9.1 of the Illinois
6 Lottery Law, the provisions of this Code do not apply to the
7 procurement process provided for under Section 9.1 of the
8 Illinois Lottery Law.

9 (e) This Code does not apply to the processes used by the
10 Illinois Power Agency to retain a mediator to mediate contract
11 disputes between gas utilities and the clean coal SNG facility
12 and to retain an expert to assist in the review of contracts
13 under subsection (h) of Section 9-220 of the Public Utilities
14 Act. This Code does not apply to the process used by the
15 Illinois Commerce Commission to retain an expert to assist in
16 determining the actual incurred costs of the clean coal SNG
17 facility and the reasonableness of those costs as required
18 under subsection (h) of Section 9-220 of the Public Utilities
19 Act.

20 (Source: P.A. 95-481, eff. 8-28-07; 95-615, eff. 9-11-07;
21 95-876, eff. 8-21-08; 96-840, eff. 12-23-09; 96-1331, eff.
22 7-27-10.)

23 Section 15. The Public Utilities Act is amended by changing
24 Sections 3-101 and 9-220 and by adding Sections 3-123, 3-124,
25 3-125, and 3-126 as follows:

1 (220 ILCS 5/3-101) (from Ch. 111 2/3, par. 3-101)

2 Sec. 3-101. Definitions. Unless otherwise specified, the
3 terms set forth in Sections 3-102 through 3-126 ~~3-121~~ are used
4 in this Act as therein defined.

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

6 (220 ILCS 5/3-123 new)

7 Sec. 3-123. Clean coal facility; clean coal SNG facility;
8 sequester; SNG facility; substitute natural gas or SNG. As used
9 in this Act:

10 "Clean coal facility" shall have the same meaning as
11 provided in Section 1-10 of the Illinois Power Agency Act.

12 "Clean coal SNG facility" shall have the same meaning as
13 provided in Section 1-10 of the Illinois Power Agency Act.

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

16 "SNG facility" means a facility that produces substitute
17 natural gas from feedstock that includes coal through a
18 gasification process, including a clean coal facility, and the
19 clean coal SNG facility described in subsection (h) of Section
20 9-220 of this Act.

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

1 (220 ILCS 5/3-124 new)

2 Sec. 3-124. Adjusted final capitalized plant cost.
3 "Adjusted final capitalized plant cost" means the final
4 capitalized plant cost reduced by the following, without
5 duplication and to the extent not already accounted for or
6 reflected on the books of the facility: (1) any State of
7 Illinois financial assistance, (2) any U.S. financial
8 assistance, and (3) any quantifiable benefit from a U.S. Clean
9 Coal Gasification Program received by the facility during a
10 period equal to the shorter of (A) the life of such program or
11 (B) the term of the agreement, such quantifiable benefit to be
12 discounted at a rate of 14% per annum over such period.

13 (220 ILCS 5/3-125 new)

14 Sec. 3-125. Final capitalized plant cost. "Final
15 capitalized plant cost" means the total capitalized asset cost
16 of the plant of the clean coal SNG facility as reflected on the
17 balance sheet of the facility at the time of the commercial
18 production date, with such capitalized cost to be accrued in
19 accordance with generally accepted accounting principles, and
20 includes, without limitation, the following items: major
21 equipment, the SNG pipeline from the plant to the receiving
22 pipeline, water lines, railroad improvements, access road
23 improvements, all coal transportation assets, including the
24 slurry line, slurry prep plant, carbon dioxide capture metering
25 and compression, licensing fees, all costs incurred in the

1 management planning, oversight and execution of the
2 construction and start-up of the plant, and all fees and costs
3 payable under engineering, procurement, and design contracts
4 for the construct of the plant accrued as of the time of the
5 commercial production date, but does not include capitalized
6 financing costs including capitalized interest during
7 construction and all fees associated with financing, coal
8 reserve leasing costs, marketing, training, any and all costs
9 payable under the contract miner agreement, the cost of coal
10 mining equipment and similar costs, and any other costs,
11 including general and administrative costs, not reasonably
12 incurred in connection with the design, construction, testing,
13 start-up, or commissioning of the plant in preparation for
14 commercial production date.

15 (220 ILCS 5/3-126 new)

16 Sec. 3-126. Total capitalized asset cost. "Total
17 capitalized asset cost" means the gross book value of the
18 plant, as determined in accordance with generally accepted
19 accounting principles at the commercial production date.

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

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

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

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

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

1 annual proceeding for the years 1996 and earlier by December
2 31, 1998.

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

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

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

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

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

1 recover the reasonable, prudent and necessary jurisdictional
2 power supply costs or gas supply costs incurred or to be
3 incurred by the public utility during a 12 month period found
4 by the Commission to be appropriate for these purposes,
5 provided, that such period shall be either (i) a 12 month
6 historical period occurring during the 15 months ending on the
7 date of the public utility's filing, or (ii) a 12 month future
8 period ending no later than 15 months following the date of the
9 public utility's filing. The public utility shall include with
10 its tariff filing information showing both (1) its actual
11 jurisdictional power supply costs or gas supply costs for a 12
12 month historical period conforming to (i) above and (2) its
13 projected jurisdictional power supply costs or gas supply costs
14 for a future 12 month period conforming to (ii) above. If the
15 Commission's order requires modifications in the tariff sheets
16 filed by the public utility, the public utility shall have 7
17 days following the date of the order to notify the Commission
18 whether the public utility will implement the modified tariffs
19 or elect to continue its fuel or purchased gas adjustment
20 clause in force as though no order had been entered. The
21 Commission's order shall provide for any reconciliation of
22 power supply costs or gas supply costs, as the case may be, and
23 associated revenues through the date that the public utility's
24 fuel or purchased gas adjustment clause is eliminated. During
25 the 5 years following the date of the Commission's order, a
26 public utility whose fuel or purchased gas adjustment clause

1 has been eliminated pursuant to this subsection shall not file
2 proposed tariff sheets seeking, or otherwise petition the
3 Commission for, reinstatement or adoption of a fuel or
4 purchased gas adjustment clause. Nothing in this subsection (d)
5 shall be construed as limiting the Commission's authority to
6 eliminate a public utility's fuel adjustment clause or
7 purchased gas adjustment clause in accordance with any other
8 applicable provisions of this Act.

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

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

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

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

1 sheet seeking, or otherwise petition the Commission for,
2 reinstatement of the fuel adjustment clause prior to January 1,
3 2007.

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

6 (h) Any Illinois gas utility may enter into a contract on
7 or before March 31, 2011 for up to 10 years of supply with any
8 company for the purchase of substitute natural gas (SNG)
9 produced from coal through the gasification process if the
10 company has commenced construction of a clean coal SNG
11 ~~gasification~~ facility by July 1, 2012 ~~in Jefferson County~~ and
12 commencement of construction shall mean that material physical
13 site work has occurred, such as site clearing and excavation,
14 water runoff prevention, water retention reservoir
15 preparation, or foundation development. The contract shall
16 contain the following provisions: (i) at least 90% of feedstock
17 ~~the only coal~~ to be used in the gasification process shall be
18 coal with a ~~has~~ high volatile bituminous rank and greater than
19 1.7 pounds of sulfur per million Btu content; (ii) at the time
20 the contract term commences, the price per million Btu may not
21 exceed \$7.95 in 2008 dollars, adjusted annually based on the
22 change in the Annual Consumer Price Index for All Urban
23 Consumers for the Midwest Region as published in April by the
24 United States Department of Labor, Bureau of Labor Statistics
25 (or a suitable Consumer Price Index calculation if this
26 Consumer Price Index is not available) for the previous

1 calendar year; provided that the price per million Btu shall
2 not exceed \$9.95 at any time during the contract; (iii) the
3 utility's ~~aggregate long-term~~ supply contract ~~contracts~~ for
4 the purchase of SNG does not exceed 15% ~~25%~~ of the annual
5 system supply requirements of the utility as of 2008 ~~and the~~
6 ~~quantity of SNG supplied to a utility may not exceed 16 million~~
7 ~~MMBtus~~; and (iv) the contract costs pursuant to subsection
8 (h-10) of this Section shall not include any lobbying expenses,
9 charitable contributions, advertising, organizational
10 memberships, carbon dioxide pipeline or sequestration
11 expenses, or marketing expenses ~~per year~~.

12 Any gas utility that is providing service to more than
13 150,000 customers on the effective date of this amendatory Act
14 of the 97th General Assembly shall either elect to enter into a
15 contract on or before September 30, 2011 for 10 years of SNG
16 supply with the owner of a clean coal SNG facility or to file
17 biennial rate proceedings before the Commission in the years
18 2012, 2014, and 2016, with such filings made after the
19 effective date of this amendatory Act of the 97th General
20 Assembly and no later than September 30 of the years 2012,
21 2014, and 2016 consistent with all requirements of 83 Ill. Adm.
22 Code 255 and 285 as though the gas utility were filing for an
23 increase in its rates, without regard to whether such filing
24 would produce an increase, a decrease, or no change in the gas
25 utility's rates, and the Commission shall review the gas
26 utility's filing and shall issue its order in accordance with

1 the provisions of Section 9-201 of this Act.

2 Within 7 days after the effective date of this amendatory
3 Act of the 97th General Assembly, the owner of the clean coal
4 SNG facility shall submit to the Illinois Power Agency and each
5 gas utility that is providing service to more than 150,000
6 customers on the effective date of this amendatory Act of the
7 97th General Assembly a copy of a draft contract. Within 30
8 days after the receipt of the draft contract, each such gas
9 utility shall provide the Illinois Power Agency and the owner
10 of the clean coal SNG facility with its comments and
11 recommended revisions to the draft contract. Within 7 days
12 after the receipt of the gas utility's comments and recommended
13 revisions, the owner of the facility shall submit its
14 responsive comments and a further revised draft of the contract
15 to the Illinois Power Agency. The Illinois Power Agency shall
16 review the draft contract and comments.

17 During its review of the draft contract, the Illinois Power
18 Agency shall:

19 (1) review and confirm in writing that the terms stated
20 in this subsection (h) are incorporated in the SNG
21 contract;

22 (2) review the SNG pricing formula included in the
23 contract and approve that formula if the Illinois Power
24 Agency determines that the formula, at the time the
25 contract term commences: (A) starts with a price of \$6.50
26 per MMBtu adjusted by the adjusted final capitalized plant

1 cost; (B) takes into account budgeted miscellaneous net
2 revenue after cost allowance, including sale of SNG
3 produced by the clean coal SNG facility above the nameplate
4 capacity of the facility and other by-products produced by
5 the facility, as approved by the Illinois Power Agency; (C)
6 does not include carbon dioxide transportation or
7 sequestration expenses; and (D) includes all provisions
8 required under this subsection (h); if the Illinois Power
9 Agency does not approve of the SNG pricing formula, then
10 the Illinois Power Agency shall modify the formula to
11 ensure that it meets the requirements of this subsection
12 (h);

13 (3) review and approve the amount of budgeted
14 miscellaneous net revenue after cost allowance, including
15 sale of SNG produced by the clean coal SNG facility above
16 the nameplate capacity of the facility and other
17 by-products produced by the facility, to be included in the
18 pricing formula; the Illinois Power Agency shall approve
19 the amount of budgeted miscellaneous net revenue to be
20 included in the pricing formula if it determines the
21 budgeted amount to be reasonable and accurate;

22 (4) review and confirm in writing that using the EIA
23 Annual Energy Outlook-2011 Henry Hub Spot Price, the
24 contract terms set out in subsection (h), the
25 reconciliation account terms as set out in subsection
26 (h-15), and an estimated inflation rate of 2.5%, that there

1 will be no cumulative estimated increase for residential
2 customers; and

3 (5) allocate the nameplate capacity of the clean coal
4 SNG by total therms sold to ultimate customers by each gas
5 utility in 2008; provided, however, no utility shall be
6 required to purchase more than 42% of the projected annual
7 output of the facility; additionally, the Illinois Power
8 Agency shall further adjust the allocation only as required
9 to take into account (A) adverse consolidation,
10 derivative, or lease impacts to the balance sheet or income
11 statement of any gas utility or (B) the physical capacity
12 of the gas utility to accept SNG.

13 If the parties to the contract do not agree on the terms
14 therein, then the Illinois Power Agency shall retain an
15 independent mediator to mediate the dispute between the
16 parties. If the parties are in agreement on the terms of the
17 contract, then the Illinois Power Agency shall approve the
18 contract. If after mediation the parties have failed to come to
19 agreement, then the Illinois Power Agency shall revise the
20 draft contract as necessary to confirm that the contract
21 contains only terms that are reasonable and equitable. The
22 Illinois Power Agency may, in its discretion, retain an
23 independent, qualified, and experienced expert to assist in its
24 obligations under this subsection (h). The Illinois Power
25 Agency shall adopt and make public policies detailing the
26 processes for retaining a mediator and an expert under this

1 subsection (h). Any mediator or expert retained under this
2 subsection (h) shall be retained no later than 60 days after
3 the effective date of this amendatory Act of the 97th General
4 Assembly.

5 The Illinois Power Agency shall complete all of its
6 responsibilities under this subsection (h) within 60 days after
7 the effective date of this amendatory Act of the 97th General
8 Assembly. The clean coal SNG facility shall pay a reasonable
9 fee as required by the Illinois Power Agency for its services
10 under this subsection (h) and shall pay the mediator's and
11 expert's reasonable fees, if any. A gas utility and its
12 customers shall have no obligation to reimburse the clean coal
13 SNG facility or the Illinois Power Agency of any such costs.

14 Within 30 days after commercial production of SNG has
15 begun, the Commission shall initiate a review to determine
16 whether the final capitalized plant cost of the clean coal SNG
17 facility reflects actual incurred costs and whether the
18 incurred costs were reasonable. In determining the actual
19 incurred costs included in the final capitalized plant cost and
20 the reasonableness of those costs, the Commission may in its
21 discretion retain independent, qualified, and experienced
22 experts to assist in its determination. The expert shall not
23 own or control any direct or indirect interest in the clean
24 coal SNG facility and shall have no contractual relationship
25 with the clean coal SNG facility. If an expert is retained by
26 the Commission, then the clean coal SNG facility shall pay the

1 expert's reasonable fees. The fees shall not be passed on to a
2 utility or its customers. The Commission shall adopt and make
3 public a policy detailing the process for retaining experts
4 under this subsection (h).

5 Within 30 days after completion of its review, the
6 Commission shall initiate a formal proceeding on the final
7 capitalized plant cost of the clean coal SNG facility at which
8 comments and testimony may be submitted by any interested
9 parties and the public. If the Commission finds that the final
10 capitalized plant cost includes costs that were not actually
11 incurred or costs that were unreasonably incurred, then the
12 Commission shall disallow the amount of non-incurred or
13 unreasonable costs from the SNG price under contracts entered
14 into under this subsection (h). If the Commission disallows any
15 costs, then the Commission shall adjust the SNG price using the
16 price formula in the contract approved by the Illinois Power
17 Agency under this subsection (h) to reflect the disallowed
18 costs and shall enter an order specifying the revised price. In
19 addition, the Commission's order shall direct the clean coal
20 SNG facility to issue refunds of such sums as shall represent
21 the difference between actual gross revenues and the gross
22 revenue that would have been obtained based upon the same
23 volume, from the price revised by the Commission. Any refund
24 shall include interest calculated at a rate determined by the
25 Commission and shall be returned according to procedures
26 prescribed by the Commission.

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

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

14 If, in any year, the owner of the clean coal SNG facility
15 fails to demonstrate that the SNG facility captured and
16 sequestered at least 90% of the total carbon dioxide emissions
17 that the facility would otherwise emit or that sequestration of
18 emissions from prior years has failed, resulting in the release
19 of carbon dioxide into the atmosphere, then the owner of the
20 clean coal SNG facility must pay a penalty of \$20 per ton of
21 excess carbon dioxide emissions not to exceed \$40,000,000, in
22 any given year which shall be deposited into the Energy
23 Efficiency Trust Fund and distributed pursuant to the
24 subsection (b) of Section 6-6 of the Renewable Energy, Energy
25 Efficiency, and Coal Resources Development Law of 1997. On or
26 before the 5-year anniversary of the execution of the contract

1 and every 5 years thereafter, an expert hired by the owner of
2 the facility with the approval the Attorney General shall
3 conduct an analysis to determine the cost of sequestration of
4 at least 90% of the total carbon dioxide emissions the plant
5 would otherwise emit. If the analysis shows that the actual
6 annual cost is greater than the penalty, then the penalty shall
7 be increased to equal the actual cost. Provided, however, to
8 the extent that the owner of the facility described in
9 subsection (h) of this Act can demonstrate that the failure was
10 as a result of acts of God (including fire, flood, earthquake,
11 tornado, lightning, hurricane, or other natural disaster); any
12 amendment, modification, or abrogation of any applicable law or
13 regulation that would prevent performance; war; invasion; act
14 of foreign enemies; hostilities (regardless of whether war is
15 declared); civil war; rebellion; revolution; insurrection;
16 military or usurped power or confiscation; terrorist
17 activities; civil disturbance; riots; nationalization;
18 sabotage; blockage; or embargo, the owner of the facility
19 described in subsection (h) of this Act shall not be subject to
20 a penalty if and only if (i) it promptly provides notice of its
21 failure to the Commission; (ii) as soon as practicable and
22 consistent with any order or direction from the Commission, it
23 submits to the Commission proposed modifications to its carbon
24 capture and sequestration plan; and (iii) it carries out its
25 proposed modifications in the manner and time directed by the
26 Commission.

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

11 If the clean coal SNG facility fails to meet the
12 requirements specified in this subsection (h-5), then the
13 Attorney General, on behalf of the People of the State of
14 Illinois, shall bring an action for specific performance of the
15 obligations related to the facility set forth in this
16 subsection (h-5), including any penalty payments owed, but not
17 including the physical obligation to capture and sequester at
18 least 90% of the total carbon emissions that the facility would
19 otherwise emit. Such action may be filed in any circuit court
20 in Illinois. By entering into a contract pursuant to subsection
21 (h) of this Section, the clean coal SNG facility agrees to
22 waive any objections to venue or to the jurisdiction of the
23 court with regard to the Attorney General's action for specific
24 performance under this subsection (h-5).

25 Compliance with the sequestration requirements and any
26 penalty requirements specified in this subsection (h-5) for the

1 clean coal SNG facility shall be assessed annually by the
2 Commission, which may in its discretion retain an expert to
3 facilitate its assessment. If any expert is retained by the
4 Commission, then the clean coal SNG facility shall pay for the
5 expert's reasonable fees, and such costs shall not be passed
6 through to the utility or its customers.

7 In addition, carbon dioxide emission credits received by
8 the clean coal SNG facility in connection with sequestration of
9 carbon dioxide from the facility must be sold in a timely
10 fashion with any revenue, less applicable fees and expenses and
11 any expenses required to be paid by facility for carbon dioxide
12 transportation or sequestration, deposited into the
13 reconciliation account within 30 days after receipt of such
14 funds by the owner of the clean coal SNG facility.

15 The clean coal SNG facility is prohibited from transporting
16 or sequestering carbon dioxide unless the owner of the carbon
17 dioxide pipeline that transfers the carbon dioxide from the
18 facility and the owner of the sequestration site where the
19 carbon dioxide captured by the facility is stored has acquired
20 all applicable permits under applicable State and federal laws,
21 statutes, rules, or regulations prior to the transfer or
22 sequestration of carbon dioxide. The responsibility for
23 compliance with the sequestration requirements specified in
24 this subsection (h-5) for the clean coal SNG facility shall
25 reside solely with the clean coal SNG facility, regardless of
26 the whether the facility has contracted with another party to

1 capture, transport, or sequester carbon dioxide.

2 (h-7) Sequestration permitting, oversight, and
3 investigations. No clean coal facility may transport or
4 sequester carbon dioxide unless the Commission approves the
5 method of carbon dioxide transportation or sequestration. Such
6 approval shall be required regardless of whether the facility
7 has contracted with another to transport or sequester the
8 carbon dioxide. Nothing in this subsection (h-7) shall release
9 the owner or operator of a carbon dioxide sequestration site or
10 carbon dioxide pipeline from any other permitting requirements
11 under applicable State and federal laws, statutes, rules, or
12 regulations.

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

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

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

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

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

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

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

1 At least annually, the Commission shall inspect all carbon
2 dioxide pipelines in Illinois that transport carbon dioxide to
3 ensure the safety and feasibility of those pipelines. The
4 Commission may, as often as deemed necessary, monitor and
5 conduct investigations of those pipelines. The owner or
6 operator of the pipeline must cooperate with the Commission
7 investigations of the carbon dioxide pipelines.

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

24 ~~(h-5) The Attorney General, on behalf of the people of the~~
25 ~~State of Illinois, may specifically enforce the requirements of~~
26 ~~this subsection (h-5). All contracts, regardless of duration,~~

1 ~~shall require the owner of any facility supplying SNG under the~~
2 ~~contract to provide documentation to the Commission each year,~~
3 ~~starting in the facility's first year of commercial operation,~~
4 ~~accurately reporting the quantity of carbon dioxide emissions~~
5 ~~from the facility that have been captured and sequestered and~~
6 ~~reporting any quantities of carbon dioxide released from the~~
7 ~~site or sites at which carbon dioxide emissions were~~
8 ~~sequestered in prior years, based on continuous monitoring of~~
9 ~~those sites. If, in any year, the owner of the facility fails~~
10 ~~to demonstrate that the SNG facility captured and sequestered~~
11 ~~at least 90% of the total carbon dioxide emissions that the~~
12 ~~facility would otherwise emit or that sequestration of~~
13 ~~emissions from prior years has failed, resulting in the release~~
14 ~~of carbon dioxide into the atmosphere, then the owner of the~~
15 ~~facility must offset excess emissions. Any such carbon dioxide~~
16 ~~offsets must be permanent, additional, verifiable, real,~~
17 ~~located within the State of Illinois, and legally and~~
18 ~~practicably enforceable; provided that the owner of the~~
19 ~~facility shall not be obligated to acquire carbon dioxide~~
20 ~~emission offsets to the extent that the cost of acquiring such~~
21 ~~offsets would exceed \$40 million in any given year. No costs of~~
22 ~~any purchases of carbon offsets may be recovered from a utility~~
23 ~~or its customers. All carbon offsets purchased for this purpose~~
24 ~~must be permanently retired. In addition, carbon dioxide~~
25 ~~emission credits equivalent to 50% of the amount of credits~~
26 ~~associated with the required sequestration of carbon dioxide~~

1 ~~from the facility must be permanently retired. Compliance with~~
2 ~~the sequestration requirements and the offset purchase~~
3 ~~requirements specified in this subsection (h-5) shall be~~
4 ~~assessed annually by an independent expert retained by the~~
5 ~~owner of the SNG facility, with the advance written approval of~~
6 ~~the Attorney General. A SNG facility operating pursuant to this~~
7 ~~subsection (h-5) shall not forfeit its designation as a clean~~
8 ~~coal SNG facility if the facility fails to fully comply with~~
9 ~~the applicable carbon sequestration requirements in any given~~
10 ~~year, provided the requisite offsets are purchased.~~

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

1 utility, (B) shall be designed to have an equal percentage
2 impact on the transportation services rates of each class of
3 the utility's total customers, and (C) shall accurately reflect
4 the net customer savings, if any, and above market costs, if
5 any, under the SNG contract. Any contract, the terms of which
6 have been confirmed in writing by the Illinois Power Agency as
7 set forth in subsection (h) ~~(h-20)~~ of this Section and the
8 performance of the parties under such contract cannot be
9 grounds for challenging prudence or cost recovery by the
10 utility through the purchased gas adjustment clause, and in
11 such cases, the Commission is directed not to consider, and has
12 no authority to consider, any attempted challenges.

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

1 Commission. Any order, issued by the State requiring or
2 authorizing the discontinuation of the merchant function,
3 defined as the purchase and sale of natural gas by an Illinois
4 gas utility for the ultimate consumer in its service territory
5 shall include provisions necessary to prevent the impairment of
6 the value of any contract hereunder over its full term.

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

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

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

16 (A) To the extent the annual average contract SNG
17 cost is less than the annual average natural gas
18 purchase cost the utility shall credit an amount equal
19 to the revenue share target to the reconciliation
20 account. Such credit payment shall be made within 30
21 days after the completed analysis in this subsection
22 (h-15) and pursuant to this subparagraph (A) shall be
23 deemed prudent and reasonable and not subject to
24 Commission prudence review.

25 (B) To the extent the annual average contract SNG
26 cost is greater than the annual average natural gas

1 purchase cost the reconciliation account shall be used
2 to provide a credit equal to the revenue share target
3 to the utilities to be used to reduce the utility's
4 natural gas costs through the purchased gas adjustment
5 clause. Such payment shall be made within 30 days after
6 the completed analysis pursuant to this subsection
7 (h-15).

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

26 If, at the conclusion of the term of the contracts

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

22 The retail customers shall have first priority in
23 recovering that debt above any creditors, except the
24 secured lenders to the extent that the secured lenders have
25 any secured debt outstanding, including any parent
26 companies or affiliates of the clean coal SNG facility .

1 (3) 50% of all additional net revenue, defined as
2 miscellaneous net revenue after cost allowance and above
3 the budgeted estimate established for revenue pursuant to
4 subsection (h), including sale of substitute natural gas
5 derived from the clean coal SNG facility above the
6 nameplate capacity of the facility and other by-products
7 produced by the facility, shall be credited to the
8 reconciliation account on an annual basis with such payment
9 made within 30 days after the end of each calendar year
10 during the term of the contract.

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

17 (A) the revenue share target amount;

18 (B) the amount credited or debited to the
19 reconciliation account during the year;

20 (C) the amount credited to the utilities to be used
21 to reduce the utilities natural gas costs though the
22 purchase gas adjustment clause;

23 (D) the total amount of reconciliation account at
24 the beginning and end of the year;

25 (E) the total amount of consumer saving to date;

26 and

1 (F) any additional information the Commission may
2 require.

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

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

21 Any facility that fails to file the report required under
22 this paragraph (4) to the Commission within the time specified
23 or to make specific answer to any question propounded by the
24 Commission within 30 days after the time it is lawfully
25 required to do so, or within such further time not to exceed 90
26 days as may be allowed by the Commission in its discretion,

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

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

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

1 ~~of MMBtus of natural gas (excluding SNG) actually purchased by~~
2 ~~the utility during the contract term; (iii) the cost~~
3 ~~differential, which shall be the difference between the average~~
4 ~~contract SNG cost and the average natural gas purchase cost;~~
5 ~~and (iv) the revenue share target, which shall be the cost~~
6 ~~differential multiplied by the total amount of SNG purchased~~
7 ~~under such utility contract.~~

8 ~~If the average contract SNG cost is equal to or less than~~
9 ~~the average natural gas purchase cost, then the company shall~~
10 ~~have no further obligation to the utility. If the~~

11 ~~average contract SNG cost for such SNG contract is greater~~
12 ~~than the average natural gas purchase cost~~

13 ~~for such utility, then the company shall market the daily~~
14 ~~production of SNG and distribute on a monthly basis 5% of~~
15 ~~amounts collected with respect to such future sales to the~~
16 ~~utilities in proportion to each utility's SNG purchases from~~
17 ~~the company during the term of the SNG contract to be used to~~
18 ~~reduce the utility's natural gas costs through the purchased~~
19 ~~gas adjustment clause; such payments to the utility shall~~
20 ~~continue until such time as the sum of such payments equals the~~
21 ~~revenue share target of that utility. The company or utilities~~
22 ~~shall have no obligation to repay the revenue share target~~
23 ~~except as provided for in this subsection (h-15).~~

24 (h-20) The General Assembly authorizes the Illinois
25 Finance Authority to issue bonds to the maximum extent
26 permitted to finance coal gasification facilities described in

1 this Section, which constitute both "industrial projects"
2 under Article 801 of the Illinois Finance Authority Act and
3 "clean coal and energy projects" under Sections 825-65 through
4 825-75 of the Illinois Finance Authority Act. ~~The General
5 Assembly further authorizes the Illinois Power Agency to become
6 party to agreements and take such actions as necessary to
7 enable the Illinois Power Agency or its designate to (i) review
8 and confirm in writing that the terms stated in subsection (h)
9 of this Section are incorporated in the SNG contract, and (ii)
10 conduct an analysis pursuant to subsection (h-15) of this
11 Section.~~

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

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

1 defined in subsection (h-10), that are incurred under such SNG
2 purchase contracts. These pledges are for the benefit of the
3 parties to such SNG purchase contracts and the issuers and
4 holders of bonds or other obligations issued or incurred to
5 finance or refinance the clean coal SNG facility. The
6 beneficiaries are authorized to include and refer to these
7 pledges in any finance agreement into which they may enter in
8 regard to such contracts.

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

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

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

23 Section 20. The Illinois Gas Pipeline Safety Act is amended
24 by changing Sections 2.02, 2.03, 2.04, and 3 as follows:

1 (220 ILCS 20/2.02) (from Ch. 111 2/3, par. 552.2)

2 Sec. 2.02.

3 "Gas" means natural gas, flammable gas or gas which is
4 toxic or corrosive. "Gas" also means carbon dioxide in any
5 physical form, whenever transported by pipeline for the purpose
6 of sequestration.

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

8 (220 ILCS 20/2.03) (from Ch. 111 2/3, par. 552.3)

9 Sec. 2.03. "Transportation of gas" means the gathering,
10 transmission, or distribution of gas by pipeline or its
11 storage, within this State and not subject to the jurisdiction
12 of the Federal Energy Regulatory Commission under the Natural
13 Gas Act, except that it includes the transmission of gas
14 through pipeline facilities within this State that transport
15 gas from an interstate gas pipeline to a direct sales customer
16 within this State purchasing gas for its own consumption.
17 "Transportation of gas" also includes the conveyance of gas
18 from a gas main through the primary fuel line to the outside
19 wall of residential premises. If the gas meter is placed within
20 3 feet of the structure, the utility's responsibility shall end
21 at the outlet side of the meter. "Transportation of gas" also
22 includes the conveyance of carbon dioxide in any physical form
23 for the purpose of sequestration.

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

1 (220 ILCS 20/2.04) (from Ch. 111 2/3, par. 552.4)

2 Sec. 2.04. "Pipeline facilities" includes new and existing
3 pipe rights-of-way and any equipment, facility, or building
4 used in the transportation of gas or the treatment of gas
5 during the course of transportation and includes facilities
6 within this State that transport gas from an interstate gas
7 pipeline to a direct sales customer within this State
8 purchasing gas for its own consumption, but "rights-of-way" as
9 used in this Act does not authorize the Commission to
10 prescribe, under this Act, the location or routing of any
11 pipeline facility. "Pipeline facilities" also includes new and
12 existing pipes and lines and any other equipment, facility, or
13 structure, except customer-owned branch lines connected to the
14 primary fuel lines, used to convey gas from a gas main to the
15 outside wall of residential premises, and any person who
16 provides gas service directly to its residential customer
17 through these facilities shall be deemed to operate such
18 pipeline facilities for purposes of this Act irrespective of
19 the ownership of the facilities or the location of the
20 facilities with respect to the meter, except that a person who
21 provides gas service to a "master meter system", as that term
22 is defined at 49 C.F.R. Section 191.3, shall not be deemed to
23 operate any facilities downstream of the master meter.
24 "Pipeline facilities" also includes new and existing pipe
25 rights-of-way and any equipment, facility, or building used in
26 the transportation of carbon dioxide in any physical form for

1 the purpose of sequestration.

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

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

4 Sec. 3. (a) As soon as practicable, but not later than 3
5 months after the effective date of this Act, the Commission
6 shall adopt rules establishing minimum safety standards for the
7 transportation of gas and for pipeline facilities. Such rules
8 shall be at least as inclusive, as stringent, and compatible
9 with, the minimum safety standards adopted by the Secretary of
10 Transportation under the Federal Act. Thereafter, the
11 Commission shall maintain such rules so that the rules are at
12 least as inclusive, as stringent, and compatible with, the
13 minimum standards from time to time in effect under the Federal
14 Act. The Commission shall also adopt rules establishing minimum
15 safety standards for the transportation of carbon dioxide in
16 any physical form for the purpose of sequestration and for
17 pipeline facilities used for that function.

18 (b) Standards established under this Act may apply to the
19 design, installation, inspection, testing, construction,
20 extension, operation, replacement, and maintenance of pipeline
21 facilities. Standards affecting the design, installation,
22 construction, initial inspection and initial testing are not
23 applicable to pipeline facilities in existence on the date such
24 standards are adopted. Whenever the Commission finds a
25 particular facility to be hazardous to life or property, it may

1 require the person operating such facility to take the steps
2 necessary to remove the hazard.

3 (c) Standards established by the Commission under this Act
4 shall, subject to paragraphs (a) and (b) of this Section 3, be
5 practicable and designed to meet the need for pipeline safety.
6 In prescribing such standards, the Commission shall consider:
7 similar standards established in other states; relevant
8 available pipeline safety data; whether such standards are
9 appropriate for the particular type of pipeline
10 transportation; the reasonableness of any proposed standards;
11 and the extent to which such standards will contribute to
12 public safety.

13 Rules adopted under this Act are subject to "The Illinois
14 Administrative Procedure Act", approved September 22, 1975, as
15 amended.

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

17 Section 25. The Environmental Protection Act is amended by
18 adding Section 13.7 as follows:

19 (415 ILCS 5/13.7 new)

20 Sec. 13.7. Carbon dioxide sequestration sites.

21 (a) For purposes of this Section, the term "carbon dioxide
22 sequestration site" means a site or facility for which the
23 Agency has issued a permit for the underground injection of
24 carbon dioxide.

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

4 (c) If the Agency issues a seal order under Section 34 of
5 this Act in relation to a carbon dioxide sequestration site, or
6 if a civil action for an injunction to halt activity at a
7 carbon dioxide sequestration site is initiated under Section 43
8 of this Act at the request of the Agency, then the Agency shall
9 post notice of such action on its website.

10 (d) Persons seeking a permit or permit modification for the
11 underground injection of carbon dioxide shall be liable to the
12 Agency for all reasonable and documented costs incurred by the
13 Agency that are associated with review and issuance of the
14 permit, including, but not limited to, costs associated with
15 public hearings and the review of permit applications. Once a
16 permit is issued, the permittee shall be liable to the Agency
17 for all reasonable and documented costs incurred by the Agency
18 that are associated with inspections and other oversight of the
19 carbon dioxide sequestration site. Persons liable for costs
20 under this subsection (d) must pay the costs upon invoicing, or
21 other request or demand for payment, by the Agency. Costs for
22 which a person is liable under this subsection (d) are in
23 addition to any other fees, penalties, or other relief provided
24 under this Act or any other law.

25 Moneys collected under this subsection (d) shall be
26 deposited into the Environmental Protection Permit and

1 Inspection Fund established under Section 22.8 of this Act. The
2 Agency may adopt rules relating to the collection of costs due
3 under this subsection (d).

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

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

10 Section 97. Inseverability. The provisions of this Act are
11 mutually dependent and inseverable. If any provision is held
12 invalid, then this entire Act, including all new and amendatory
13 provisions, is invalid.

14 Section 99. Effective date. This Act takes effect upon
15 becoming law."