

AN ACT concerning utilities.

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

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

(20 ILCS 3855/1-10)

Sec. 1-10. Definitions.

"Agency" means the Illinois Power Agency.

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

"Authority" means the Illinois Finance Authority.

"Clean coal facility" means an electric generating facility that uses primarily coal as a feedstock and that captures and sequesters carbon dioxide emissions at the following levels: at least 50% of the total carbon dioxide emissions that the facility would otherwise emit if, at the

time construction commences, the facility is scheduled to commence operation before 2016, at least 70% of the total carbon dioxide emissions that the facility would otherwise emit if, at the time construction commences, the facility is scheduled to commence operation during 2016 or 2017, and at least 90% of the total carbon dioxide emissions that the facility would otherwise emit if, at the time construction commences, the facility is scheduled to commence operation after 2017. The power block of the clean coal facility shall not exceed allowable emission rates for sulfur dioxide, nitrogen oxides, carbon monoxide, particulates and mercury for a natural gas-fired combined-cycle facility the same size as and in the same location as the clean coal facility at the time the clean coal facility obtains an approved air permit. All coal used by a clean coal facility shall have high volatile bituminous rank and greater than 1.7 pounds of sulfur per million btu content, unless the clean coal facility does not use gasification technology and was operating as a conventional coal-fired electric generating facility on June 1, 2009 (the effective date of Public Act 95-1027).

"Clean coal SNG brownfield facility" means a facility that (1) has commenced construction by July 1, 2015 on an urban brownfield site in a municipality with at least 1,000,000 residents; (2) uses a gasification process to produce substitute natural gas; (3) uses coal as at least 50% of the total feedstock over the term of any sourcing agreement with a

utility and the remainder of the feedstock may be either petroleum coke or coal, with all such coal having a high bituminous rank and greater than 1.7 pounds of sulfur per million Btu content unless the facility reasonably determines that it is necessary to use additional petroleum coke to deliver additional consumer savings, in which case the facility shall use coal for at least 35% of the total feedstock over the term of any sourcing agreement; and (4) captures and sequesters at least 85% of the total carbon dioxide emissions that the facility would otherwise emit.

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

"Commission" means the Illinois Commerce Commission.

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

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

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

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

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

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

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

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

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

"Energy efficiency" means measures that reduce the amount

of electricity or natural gas required to achieve a given end use.

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

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

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

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

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

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

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

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

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

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

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

"Revenue bond" means any bond, note, or other evidence of indebtedness issued by the Authority, the principal and

interest of which is payable solely from revenues or income derived from any project or activity of the Agency.

"Sequester" means permanent storage of carbon dioxide by injecting it into a saline aquifer, a depleted gas reservoir, or an oil reservoir, directly or through an enhanced oil recovery process that may involve intermediate storage, regardless of whether these activities are conducted by a clean coal facility, clean coal SNG facility, clean coal SNG brownfield facility, or a party with which a clean coal facility, clean coal SNG facility, or clean coal SNG brownfield facility has contracted for such purposes ~~in a salt dome.~~

"Sourcing ~~Service~~ agreement" means (i) in the case of an electric utility, an agreement between the owner of a clean coal facility and such electric utility, which agreement shall have terms and conditions meeting the requirements of paragraph (3) of subsection (d) of Section 1-75, ~~and~~ (ii) in the case of an alternative retail electric supplier, an agreement between the owner of a clean coal facility and such alternative retail electric supplier, which agreement shall have terms and conditions meeting the requirements of Section 16-115(d) (5) of the Public Utilities Act, and (iii) in case of a gas utility, an agreement between the owner of a clean coal SNG brownfield facility and the gas utility, which agreement shall have the terms and conditions meeting the requirements of subsection (h-1) of Section 9-220 of the Public Utilities Act.

"Substitute natural gas" or "SNG" means a gas manufactured

by gasification of hydrocarbon feedstock, which is substantially interchangeable in use and distribution with conventional natural gas.

"Total resource cost test" or "TRC test" means a standard that is met if, for an investment in energy efficiency or demand-response measures, the benefit-cost ratio is greater than one. The benefit-cost ratio is the ratio of the net present value of the total benefits of the program to the net present value of the total costs as calculated over the lifetime of the measures. A total resource cost test compares the sum of avoided electric utility costs, representing the benefits that accrue to the system and the participant in the delivery of those efficiency measures, as well as other quantifiable societal benefits, including avoided natural gas utility costs, to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus costs to administer, deliver, and evaluate each demand-side program, to quantify the net savings obtained by substituting the demand-side program for supply resources. In calculating avoided costs of power and energy that an electric utility would otherwise have had to acquire, reasonable estimates shall be included of financial costs likely to be imposed by future regulations and legislation on emissions of greenhouse gases.

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

8-10-09; 96-784, eff. 8-28-09; 96-1000, eff. 7-2-10.)

(20 ILCS 3855/1-20)

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

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

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

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

(3) Develop electric generation and co-generation facilities that use indigenous coal or renewable resources, or both, financed with bonds issued by the Illinois Finance Authority.

(4) Supply electricity from the Agency's facilities at cost to one or more of the following: municipal electric systems, governmental aggregators, or rural electric

cooperatives in Illinois.

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

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

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

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

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

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

(6) To acquire real or personal property, whether tangible or intangible, including without limitation property rights, interests in property, franchises, obligations, contracts, and debt and equity securities, and to do so by the exercise of the power of eminent domain

in accordance with Section 1-21; except that any real property acquired by the exercise of the power of eminent domain must be located within the State.

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

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

(9) To make and execute agreements, contracts, and other instruments necessary or convenient in the exercise of the powers and functions of the Agency under this Act, including contracts with any person, local government, State agency, or other entity; and all State agencies and all local governments are authorized to enter into and do all things necessary to perform any such agreement, contract, or other instrument with the Agency. No such agreement, contract, or other instrument shall exceed 40 years.

(10) To lend money, invest and reinvest its funds in

accordance with the Public Funds Investment Act, and take and hold real and personal property as security for the payment of funds loaned or invested.

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

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

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

(14) To negotiate and enter into agreements with trustees or receivers appointed by United States bankruptcy courts or federal district courts or in other proceedings involving adjustment of debts and authorize proceedings involving adjustment of debts and authorize legal counsel for the Agency to appear in any such proceedings.

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

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

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

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

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

(20) To request information, and to make any inquiry, investigation, survey, or study that the Agency may deem necessary to enable it effectively to carry out the provisions of this Act.

(21) To accept and expend appropriations.

(22) To engage in any activity or operation that is incidental to and in furtherance of efficient operation to

accomplish the Agency's purposes.

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

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

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

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

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

(20 ILCS 3855/1-77 new)

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) ten years of experience in the energy sector, including risk management experience;

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

(E) expertise in credit and contract protocols;

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

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

(3) The Agency shall provide the clean coal SNG brownfield facility and other interested parties with the lists of qualified experts or expert consulting firms identified through the request for qualifications processes that are under consideration to develop the feedstock procurement plans and to serve as the feedstock procurement administrator. The Agency shall also provide the clean coal SNG brownfield facility and other interested parties with each qualified expert's or expert consulting firm's response to the request for qualifications. All information provided under this subparagraph (3) shall also be provided to the Commission. The Agency may provide by rule for fees associated with supplying the information to the clean coal SNG brownfield facility and other interested parties. The clean coal SNG brownfield facility and other interested parties must, within 5 business days after receiving the lists and information, notify the Agency in writing if they object to any experts or expert consulting firms on the lists. Objections shall be based on:

(A) failure to satisfy qualification criteria;

(B) identification of a conflict of interest; or
(C) evidence of inappropriate bias for or against
potential bidders or the clean coal SNG brownfield
facility.

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

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

(5) The Agency shall select an expert or expert
consulting firm to develop feedstock procurement plans
based on the proposals submitted and shall award one-year
contracts to those selected with an option for the Agency
for a one-year renewal.

(6) The Agency shall select, with the approval of the
Commission, an expert or expert consulting firm to serve as

feedstock procurement administrator based on the proposals submitted. If the Commission rejects the Agency's selection within 5 days after being notified of the Agency's selection, then the Agency shall submit another recommendation within 3 days after the Commission's rejection based on the proposals submitted. The Agency shall award at least a one-year contract to the expert or expert consulting firm selected with the Commission's approval with an option for the Agency for renewal for a term equal to the term of the contract.

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

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

(d) The Agency shall assess fees to each bidder to recover the costs incurred in connection with the competitive procurement process.

(20 ILCS 3855/1-78 new)

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

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

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

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

(B) known or projected changes to future loads.

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

(A) coal and petroleum coke mix, as set by the clean coal SNG brownfield facility with coal comprising at least 50% of the total feedstock over the term of any sourcing agreement unless the facility reasonably determines that it is necessary to use additional petroleum coke to deliver additional consumer savings, in which case the facility shall use coal for at least 35% of the total feedstock over the term of any sourcing agreement;

(B) volume of each feedstock required;

(C) quality standards of each feedstock;

(D) delivery requirements, including cost implications; and

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

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

(1) The feedstock procurement administrator shall:

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

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

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

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

(D) manage the bidder prequalification and registration process;

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

(F) administer the request for feedstock proposals process;

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

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

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

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

(K) administer related contingency feedstock procurement events.

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

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

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

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

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

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

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

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

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

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

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

(2) Beginning in 2015, the Agency shall at least every 5 years prepare a feedstock procurement plan by June 15, or such other date as may be required by the Commission. The clean coal SNG brownfield facility also may submit a feedstock procurement plan. Each feedstock procurement plan shall identify the portfolio of feedstocks to be

procured. Copies of each feedstock procurement plan shall be posted and made publicly available on the Agency's and Commission's websites, and copies of the Agency's feedstock procurement plan shall also be provided to the clean coal SNG brownfield facility. The clean coal SNG brownfield facility shall have 30 days following the date of posting to provide comment to the Agency on the feedstock procurement plan. Other interested entities also may comment on each feedstock procurement plan. All comments submitted to the Agency shall be specific, supported by data or other detailed analyses, and, if objecting to all or a portion of the feedstock procurement plan, accompanied by specific alternative wording or proposals. All comments shall be posted on the Agency's and Commission's websites. During this 30-day comment period, the Agency shall hold at least one public hearing for the purpose of receiving public comment on the procurement plan. Within 14 days following the end of the 30-day comment period, the clean coal SNG brownfield facility may revise its feedstock procurement plan, if any, and the Agency shall revise the feedstock procurement plan as necessary based on the comments received, and each shall file its feedstock procurement plan with the Commission, and post the feedstock procurement plan on the websites.

(3) Within 5 days after the filing of a feedstock procurement plan, any person objecting to the feedstock

procurement plan shall file an objection with the Commission. Within 10 days after the filing, the Commission shall determine whether a hearing is necessary. The Commission shall enter its order confirming or modifying a feedstock procurement plan within 90 days after the filing of the feedstock procurement plan by the Agency.

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

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

(1) Solicitation, prequalification, and registration of bidders. The feedstock procurement administrator shall disseminate information to potential bidders to promote a feedstock procurement event, notify potential bidders that the feedstock procurement administrator may enter into a post-bid price negotiation with bidders that meet the applicable benchmarks, provide supply requirements, and otherwise explain the competitive feedstock procurement process. In addition to such other publication as the feedstock procurement administrator determines is appropriate, this information shall be posted on the

Agency's and the Commission's websites. The feedstock procurement administrator shall also administer the prequalification process, including evaluation of creditworthiness, compliance with feedstock procurement rules, and agreement to the standard form contract developed pursuant to paragraph (2) of this subsection (d). The feedstock procurement administrator shall then identify and register bidders to participate in the feedstock procurement event.

(2) Standard contract forms and credit terms and instruments. The feedstock procurement administrator, in consultation with the clean coal SNG brownfield facility, gas utilities, the Commission, and other interested parties and subject to Commission oversight, shall develop and provide standard contract forms for the supplier contracts that meet generally accepted industry practices. Standard credit terms and instruments that meet generally accepted industry practices shall be similarly developed. The feedstock procurement administrator shall make available to the Commission all written comments it receives on the contract forms, credit terms, or instruments. If the feedstock procurement administrator cannot reach agreement with the applicable clean coal SNG brownfield facility as to the contract terms and conditions, then the feedstock procurement administrator must notify the Commission of any disputed terms and the

Commission shall resolve the dispute. The terms of the contracts shall not be subject to negotiation by winning bidders and the bidders must agree to the terms of the contract in advance so that winning bids are selected solely on the basis of price.

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

(4) Request for proposals. The feedstock procurement administrator shall design and issue a request for

proposals to supply coal or petroleum coke in accordance with the clean coal SNG brownfield facility's usage plan, as approved by the Commission. The request for proposals shall set forth a procedure for sealed, binding commitment bidding with pay-as-bid settlement, and provision for selection of bids on the basis of price.

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

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

(e) Within 2 business days after opening the sealed bids, the feedstock procurement administrator shall submit a confidential report to the Commission. The report shall contain the results of the bidding for each of the feedstock types along with the feedstock procurement administrator's recommendation for the acceptance and rejection of bids based on the price benchmark criteria and other factors observed in the process. The feedstock procurement monitor also shall submit a confidential report to the Commission within 2 business days after opening the sealed bids. The report shall

contain the feedstock procurement monitor's assessment of bidder behavior in the process, as well as an assessment of the feedstock procurement administrator's compliance with the feedstock procurement process and rules. The Commission shall review the confidential reports submitted by the feedstock procurement administrator and feedstock procurement monitor and shall accept or reject the recommendations of the feedstock procurement administrator within 2 business days after receipt of the reports.

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

(g) The names of the successful bidders and the amount of feedstock to be delivered for each contract type and for each contract term shall be made available to the public at the time of Commission approval of a feedstock procurement event. The Commission, the procurement monitor, the feedstock procurement administrator, the Agency, and all participants in the feedstock procurement process shall maintain the confidentiality of all other supplier and bidding information in a manner consistent with all applicable laws, rules, regulations, and tariffs. Confidential information, including the confidential reports submitted by the feedstock procurement administrator and feedstock procurement monitor

pursuant to subsection (e) of this Section, shall not be publicly available or discoverable by any party in any proceeding absent a compelling demonstration of need. The reports shall not be admissible in any proceeding other than one for law enforcement purposes.

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

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

(j) The Commission has the authority to adopt rules to carry out the provisions of this Section. For the public

interest, safety, and welfare, the Commission also has the authority to adopt rules to carry out the provisions of this Section on an emergency basis.

(k) On or before April 1 of each year, the Commission may hold an informal hearing for the purpose of receiving comments on the prior year's feedstock procurement process and any recommendations for change.

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

(30 ILCS 500/1-10)

Sec. 1-10. Application.

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

(b) This Code shall apply regardless of the source of the funds with which the contracts are paid, including federal

assistance moneys. This Code shall not apply to:

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

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

(3) Purchase of care.

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

(5) Collective bargaining contracts.

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

(7) Contracts necessary to prepare for anticipated litigation, enforcement actions, or investigations, provided that the chief legal counsel to the Governor shall give his or her prior approval when the procuring agency is one subject to the jurisdiction of the Governor, and provided that the chief legal counsel of any other

procuring entity subject to this Code shall give his or her prior approval when the procuring entity is not one subject to the jurisdiction of the Governor.

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

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

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

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

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

(e) This Code does not apply to the process used by the

Capital Development Board to retain a person or entity to assist the Capital Development Board with its duties related to the determination of costs of a clean coal SNG brownfield facility, as defined by Section 1-10 of the Illinois Power Agency Act, as required in subsection (h-3) of Section 9-220 of the Public Utilities Act, including calculating the range of capital costs, the range of operating and maintenance costs, or the sequestration costs or monitoring the construction of clean coal SNG brownfield facility for the full duration of construction.

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

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

(30 ILCS 500/20-10)

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

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

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

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

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

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

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

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

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

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

(i) Alternative procedures. Notwithstanding any other

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

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

An invitation for bids shall be issued and shall include (i) a procurement description, (ii) all contractual terms, whenever practical, and (iii) conditions applicable to the procurement, including a notice that bids will be received in

an electronic auction manner.

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

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

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

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

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

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

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

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

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

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

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

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

(e) Bid acceptance and bid evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Code. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and

suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award, such as discounts, transportation costs, and total or life cycle costs, shall be objectively measurable. The invitation for bids shall set forth the evaluation criteria to be used.

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

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

- (1) a description of the agency's needs;
- (2) a determination that the anticipated cost will be

fair and reasonable;

(3) a listing of all responsible and responsive bidders; and

(4) the name of the bidder selected, pricing, and the reasons for selecting that bidder.

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

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

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

(i) Alternative procedures. Notwithstanding any other provision of this Act to the contrary, the Director of the Illinois Power Agency may create alternative bidding procedures to be used in procuring professional services under subsection (a) of Section 1-75 and subsection (d) of Section 1-78 ~~1-75(a)~~ of the Illinois Power Agency Act and Section 16-111.5(c) of the Public Utilities Act and to procure renewable energy resources under Section 1-56 of the Illinois

Power Agency Act. These alternative procedures shall be set forth together with the other criteria contained in the invitation for bids, and shall appear in the appropriate volume of the Illinois Procurement Bulletin.

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

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

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

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

shall be open to public inspection.

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

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

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

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

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

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

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

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

(220 ILCS 5/3-123 new)

Sec. 3-123. Clean coal SNG brownfield facility; sequester; SNG facility; sourcing agreement; substitute natural gas or SNG. As used in this Act:

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

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

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

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

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

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

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

(a) Notwithstanding the provisions of Section 9-201, the Commission may authorize the increase or decrease of rates and charges based upon changes in the cost of fuel used in the generation or production of electric power, changes in the cost of purchased power, or changes in the cost of purchased gas through the application of fuel adjustment clauses or purchased gas adjustment clauses. The Commission may also authorize the increase or decrease of rates and charges based upon expenditures or revenues resulting from the purchase or sale of emission allowances created under the federal Clean Air Act Amendments of 1990, through such fuel adjustment clauses, as a cost of fuel. For the purposes of this paragraph, cost of fuel used in the generation or production of electric power shall include the amount of any fees paid by the utility for the implementation and operation of a process for the desulfurization of the flue gas when burning high sulfur coal at any location within the State of Illinois irrespective of the attainment status designation of such location; but shall not include transportation costs of coal (i) except to the extent that for contracts entered into on and after the effective date of this amendatory Act of 1997, the cost of the coal, including transportation costs, constitutes the lowest cost for adequate and reliable fuel supply reasonably available to the public utility in comparison to the cost, including transportation costs, of other adequate and reliable sources of fuel supply reasonably available to the public utility, or (ii)

except as otherwise provided in the next 3 sentences of this paragraph. Such costs of fuel shall, when requested by a utility or at the conclusion of the utility's next general electric rate proceeding, whichever shall first occur, include transportation costs of coal purchased under existing coal purchase contracts. For purposes of this paragraph "existing coal purchase contracts" means contracts for the purchase of coal in effect on the effective date of this amendatory Act of 1991, as such contracts may thereafter be amended, but only to the extent that any such amendment does not increase the aggregate quantity of coal to be purchased under such contract. Nothing herein shall authorize an electric utility to recover through its fuel adjustment clause any amounts of transportation costs of coal that were included in the revenue requirement used to set base rates in its most recent general rate proceeding. Cost shall be based upon uniformly applied accounting principles. Annually, the Commission shall initiate public hearings to determine whether the clauses reflect actual costs of fuel, gas, power, or coal transportation purchased to determine whether such purchases were prudent, and to reconcile any amounts collected with the actual costs of fuel, power, gas, or coal transportation prudently purchased. In each such proceeding, the burden of proof shall be upon the utility to establish the prudence of its cost of fuel, power, gas, or coal transportation purchases and costs. The Commission shall issue its final order in each such annual proceeding for an electric

utility by December 31 of the year immediately following the year to which the proceeding pertains, provided, that the Commission shall issue its final order with respect to such annual proceeding for the years 1996 and earlier by December 31, 1998.

(b) A public utility providing electric service, other than a public utility described in subsections (e) or (f) of this Section, may at any time during the mandatory transition period file with the Commission proposed tariff sheets that eliminate the public utility's fuel adjustment clause and adjust the public utility's base rate tariffs by the amount necessary for the base fuel component of the base rates to recover the public utility's average fuel and power supply costs per kilowatt-hour for the 2 most recent years for which the Commission has issued final orders in annual proceedings pursuant to subsection (a), where the average fuel and power supply costs per kilowatt-hour shall be calculated as the sum of the public utility's prudent and allowable fuel and power supply costs as found by the Commission in the 2 proceedings divided by the public utility's actual jurisdictional kilowatt-hour sales for those 2 years. Notwithstanding any contrary or inconsistent provisions in Section 9-201 of this Act, in subsection (a) of this Section or in any rules or regulations promulgated by the Commission pursuant to subsection (g) of this Section, the Commission shall review and shall by order approve, or approve as modified, the proposed tariff sheets within 60 days after the

date of the public utility's filing. The Commission may modify the public utility's proposed tariff sheets only to the extent the Commission finds necessary to achieve conformance to the requirements of this subsection (b). During the 5 years following the date of the Commission's order, but in any event no earlier than January 1, 2007, a public utility whose fuel adjustment clause has been eliminated pursuant to this subsection shall not file proposed tariff sheets seeking, or otherwise petition the Commission for, reinstatement of a fuel adjustment clause.

(c) Notwithstanding any contrary or inconsistent provisions in Section 9-201 of this Act, in subsection (a) of this Section or in any rules or regulations promulgated by the Commission pursuant to subsection (g) of this Section, a public utility providing electric service, other than a public utility described in subsection (e) or (f) of this Section, may at any time during the mandatory transition period file with the Commission proposed tariff sheets that establish the rate per kilowatt-hour to be applied pursuant to the public utility's fuel adjustment clause at the average value for such rate during the preceding 24 months, provided that such average rate results in a credit to customers' bills, without making any revisions to the public utility's base rate tariffs. The proposed tariff sheets shall establish the fuel adjustment rate for a specific time period of at least 3 years but not more than 5 years, provided that the terms and conditions for any

reinstatement earlier than 5 years shall be set forth in the proposed tariff sheets and subject to modification or approval by the Commission. The Commission shall review and shall by order approve the proposed tariff sheets if it finds that the requirements of this subsection are met. The Commission shall not conduct the annual hearings specified in the last 3 sentences of subsection (a) of this Section for the utility for the period that the factor established pursuant to this subsection is in effect.

(d) A public utility providing electric service, or a public utility providing gas service may file with the Commission proposed tariff sheets that eliminate the public utility's fuel or purchased gas adjustment clause and adjust the public utility's base rate tariffs to provide for recovery of power supply costs or gas supply costs that would have been recovered through such clause; provided, that the provisions of this subsection (d) shall not be available to a public utility described in subsections (e) or (f) of this Section to eliminate its fuel adjustment clause. Notwithstanding any contrary or inconsistent provisions in Section 9-201 of this Act, in subsection (a) of this Section, or in any rules or regulations promulgated by the Commission pursuant to subsection (g) of this Section, the Commission shall review and shall by order approve, or approve as modified in the Commission's order, the proposed tariff sheets within 240 days after the date of the public utility's filing. The Commission's

order shall approve rates and charges that the Commission, based on information in the public utility's filing or on the record if a hearing is held by the Commission, finds will recover the reasonable, prudent and necessary jurisdictional power supply costs or gas supply costs incurred or to be incurred by the public utility during a 12 month period found by the Commission to be appropriate for these purposes, provided, that such period shall be either (i) a 12 month historical period occurring during the 15 months ending on the date of the public utility's filing, or (ii) a 12 month future period ending no later than 15 months following the date of the public utility's filing. The public utility shall include with its tariff filing information showing both (1) its actual jurisdictional power supply costs or gas supply costs for a 12 month historical period conforming to (i) above and (2) its projected jurisdictional power supply costs or gas supply costs for a future 12 month period conforming to (ii) above. If the Commission's order requires modifications in the tariff sheets filed by the public utility, the public utility shall have 7 days following the date of the order to notify the Commission whether the public utility will implement the modified tariffs or elect to continue its fuel or purchased gas adjustment clause in force as though no order had been entered. The Commission's order shall provide for any reconciliation of power supply costs or gas supply costs, as the case may be, and associated revenues through the date that the public utility's

fuel or purchased gas adjustment clause is eliminated. During the 5 years following the date of the Commission's order, a public utility whose fuel or purchased gas adjustment clause has been eliminated pursuant to this subsection shall not file proposed tariff sheets seeking, or otherwise petition the Commission for, reinstatement or adoption of a fuel or purchased gas adjustment clause. Nothing in this subsection (d) shall be construed as limiting the Commission's authority to eliminate a public utility's fuel adjustment clause or purchased gas adjustment clause in accordance with any other applicable provisions of this Act.

(e) Notwithstanding any contrary or inconsistent provisions in Section 9-201 of this Act, in subsection (a) of this Section, or in any rules promulgated by the Commission pursuant to subsection (g) of this Section, a public utility providing electric service to more than 1,000,000 customers in this State may, within the first 6 months after the effective date of this amendatory Act of 1997, file with the Commission proposed tariff sheets that eliminate, effective January 1, 1997, the public utility's fuel adjustment clause without adjusting its base rates, and such tariff sheets shall be effective upon filing. To the extent the application of the fuel adjustment clause had resulted in net charges to customers after January 1, 1997, the utility shall also file a tariff sheet that provides for a refund stated on a per kilowatt-hour basis of such charges over a period not to exceed 6 months;

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

(f) Notwithstanding any contrary or inconsistent provisions in Section 9-201 of this Act, in subsection (a) of this Section, or in any rules or regulations promulgated by the Commission pursuant to subsection (g) of this Section, a public utility providing electric service to more than 500,000 customers but fewer than 1,000,000 customers in this State may, within the first 6 months after the effective date of this amendatory Act of 1997, file with the Commission proposed tariff sheets that eliminate, effective January 1, 1997, the public utility's fuel adjustment clause and adjust its base

rates by the amount necessary for the base fuel component of the base rates to recover 91% of the public utility's average fuel and power supply costs for the 2 most recent years for which the Commission, as of January 1, 1997, has issued final orders in annual proceedings pursuant to subsection (a), where the average fuel and power supply costs per kilowatt-hour shall be calculated as the sum of the public utility's prudent and allowable fuel and power supply costs as found by the Commission in the 2 proceedings divided by the public utility's actual jurisdictional kilowatt-hour sales for those 2 years, provided, that such tariff sheets shall be effective upon filing. To the extent the application of the fuel adjustment clause had resulted in net charges to customers after January 1, 1997, the utility shall also file a tariff sheet that provides for a refund stated on a per kilowatt-hour basis of such charges over a period not to exceed 6 months. Provided however, that such refund shall not include the proportional amounts of taxes paid under the Use Tax Act, Service Use Tax Act, Service Occupation Tax Act, and Retailers' Occupation Tax Act on fuel used in generation. The Commission shall issue an order within 45 days after the date of the public utility's filing approving or approving as modified such tariff sheet. If the fuel adjustment clause is eliminated pursuant to this subsection, the Commission shall not conduct the annual hearings specified in the last 3 sentences of subsection (a) of this Section for the utility for any period after December 31,

1996 and prior to any reinstatement of such clause. A public utility whose fuel adjustment clause has been eliminated pursuant to this subsection shall not file a proposed tariff sheet seeking, or otherwise petition the Commission for, reinstatement of the fuel adjustment clause prior to January 1, 2007.

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

(h) Any Illinois gas utility may enter into a contract on or before March 31, 2011 for up to 10 years of supply with any company for the purchase of substitute natural gas (SNG) produced from coal through the gasification process if the company has commenced construction of a coal gasification facility by July 1, 2012 in Jefferson County and commencement of construction shall mean that material physical site work has occurred, such as site clearing and excavation, water runoff prevention, water retention reservoir preparation, or foundation development. The contract shall contain the following provisions: (i) the only coal to be used in the gasification process has high volatile bituminous rank and greater than 1.7 pounds of sulfur per million Btu content; (ii) at the time the contract term commences, the price per million Btu may not exceed \$7.95 in 2008 dollars, adjusted annually based on the change in the Annual Consumer Price Index for All Urban Consumers for the Midwest Region as published in April by the United States Department of Labor, Bureau of Labor

Statistics (or a suitable Consumer Price Index calculation if this Consumer Price Index is not available) for the previous calendar year; provided that the price per million Btu shall not exceed \$9.95 at any time during the contract; (iii) the utility's aggregate long-term supply contracts for the purchase of SNG does not exceed 25% of the annual system supply requirements of the utility as of 2008 and the quantity of SNG supplied to a utility may not exceed 16 million MMBtus; and (iv) contract costs pursuant to subsection (h-10) of this Section shall not include any lobbying expenses, charitable contributions, advertising, organizational memberships, or marketing expenses per year.

(h-1) Any Illinois gas utility may enter into a sourcing agreement for up to 30 years of supply with the clean coal SNG brownfield facility if the clean coal SNG brownfield facility has commenced construction. Any gas utility that is providing service to more than 150,000 customers on the effective date of this amendatory Act of the 97th General Assembly shall either elect to file biennial rate proceedings before the Commission in the years 2012, 2014, and 2016 or enter into a sourcing agreement or sourcing agreements with a clean coal SNG brownfield facility with an initial term of 30 years for either (i) a percentage of 43,500,000,000 cubic feet per year, such that the utilities entering into sourcing agreements with the clean coal SNG brownfield facility purchase 100%, allocated by total therms sold to ultimate customers by each gas utility in

2008 or (ii) such lesser amount as may be available from the clean coal SNG brownfield facility; provided that no utility shall be required to purchase more than 42% of the projected annual output of the clean coal SNG brownfield facility, with the remainder of such utility's obligation to be divided proportionately between the other utilities, and provided that the Illinois Power Agency shall further adjust the allocation only as required to take into account adverse consolidation, derivative, or lease impacts to the balance sheet or income statement of any gas utility.

A gas utility electing to file biennial rate proceedings before the Commission must file a notice of its election with the Commission within 60 days after the effective date of this amendatory Act of the 97th General Assembly or its right to make the election is irrevocably waived. A gas utility electing to file biennial rate proceedings shall make such filings no later than August 1 of the years 2012, 2014, and 2016, consistent with all requirements of 83 Ill. Adm. Code 255 and 285 as though the gas utility were filing for an increase in its rates, without regard to whether such filing would produce an increase, a decrease, or no change in the gas utility's rates, and notwithstanding any other provisions of this Act, the Commission shall fully review the gas utility's filing and shall issue its order in accordance with the provisions of Section 9-201 of this Act, regardless of whether the Commission has approved a formula rate for the gas utility.

Within 15 days after the effective date of this amendatory Act of the 97th General Assembly, the owner of the clean coal SNG brownfield facility shall submit to the Illinois Power Agency and each gas utility that is providing service to more than 150,000 customers on the effective date of this amendatory Act of the 97th General Assembly a copy of a draft sourcing agreement. Within 45 days after receipt of the draft sourcing agreement, each such gas utility shall provide the Illinois Power Agency and the owner of a clean coal SNG brownfield facility with its comments and recommended revisions to the draft sourcing agreement. Within 15 days after the receipt of the gas utility's comments and recommended revisions, the owner of the clean coal SNG brownfield facility shall submit its responsive comments and a further revised draft of the sourcing agreement to the Illinois Power Agency. The Illinois Power Agency shall review the draft sourcing agreement and comments.

If the parties to the sourcing agreement do not agree on the terms therein, then the Illinois Power Agency shall retain an independent mediator to mediate the dispute between the parties. If the parties are in agreement on the terms of the sourcing agreement, the Illinois Power Agency shall approve the final draft sourcing agreement. If after mediation the parties have failed to come to agreement, then the Illinois Power Agency shall revise the draft sourcing agreement as necessary to confirm that the final draft sourcing agreement contains only terms that are reasonable and equitable. The Illinois

Power Agency shall adopt and make public a policy detailing the process for retaining a mediator under this subsection (h-1). Any mediator retained to assist with mediating disputes between the parties regarding the sourcing agreement shall be retained no later than 60 days after the effective date of this amendatory Act of the 97th General Assembly.

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

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

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

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

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

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

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

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

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

"Consumer protection reserve account principal maximum amount" shall mean the maximum amount of principal to be maintained in the consumer protection reserve account. During the first 2 years of operation of the facility, there shall be no consumer protection reserve account maximum amount. After the first 2 years of operation of the facility, the consumer protection reserve account maximum amount shall be \$150,000,000. After 5 years of operation, and every 5 years thereafter, the trustee shall calculate the 5-year average balance of the consumer protection reserve account. If the trustee determines that during the prior 5 years the consumer protection reserve account has had an average account balance of less than \$75,000,000, then the consumer protection reserve account principal

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

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

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

(8) The delivered SNG price per million btu to be paid monthly by the utility to the clean coal SNG brownfield facility, which shall be based only upon the following: (A) a capital recovery charge, operations and maintenance costs, and sequestration costs, only to the extent approved by the Commission pursuant to paragraphs (1), (2), and (3)

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

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

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

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

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

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

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

utility's customers, and (C) shall accurately reflect the net consumer savings, if any, and above-market costs, if any, associated with the utility receiving, delivering, managing, or otherwise accommodating purchases under the SNG sourcing agreement.

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

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

(17) Prior to the clean coal SNG brownfield facility issuing a notice to proceed to construction, the clean coal SNG brownfield facility shall file with the Commission a certificate from an independent engineer that the clean coal SNG brownfield facility has (A) obtained all

applicable State and federal environmental permits required for construction; (B) obtained approval from the Commission of a carbon capture and sequestration plan; and (C) obtained all necessary permits required for construction for the transportation and sequestration of carbon dioxide as set forth in the Commission-approved carbon capture and sequestration plan.

(h-2) Consumer protection reserve account. The clean coal SNG brownfield facility shall guarantee a minimum of \$100,000,000 in consumer savings to customers of the utilities that have entered into sourcing agreements with the clean coal SNG brownfield facility, calculated in real 2010 dollars at the conclusion of the term of the sourcing agreement by comparing the delivered SNG price to the Chicago City-gate price on a weighted daily basis for each day over the entire term of the sourcing agreement. Prior to the clean coal SNG brownfield facility issuing a notice to proceed to construction, the clean coal SNG brownfield facility shall establish a consumer protection reserve account for the benefit of the retail customers of the utilities that have entered into sourcing agreements with the clean coal SNG brownfield facility pursuant to subsection (h-1), with cash principal in the amount of \$150,000,000. Such cash principal shall only be recovered through the consumer protection reserve account and not as a cost to be recovered in the delivered SNG price pursuant to subsection (h-3) of this Section. The consumer protection

reserve account shall be maintained and administered by an independent trustee that is mutually agreed upon by the clean coal SNG brownfield facility, the utilities, and the Commission in an interest-bearing account in accordance with the following:

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

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

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

(B) to the extent the monthly delivered SNG price is less than or equal to the Chicago City-gate price,

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

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

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

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

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

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

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

amounts in the consumer protection reserve account in excess of the consumer protection reserve account principal maximum shall be distributed to the clean coal SNG brownfield facility, with the remaining 50% of any such additional amounts being credited to retail customers; provided, however, that if retail customers have not realized such net consumer savings, no such distribution shall be made to the clean coal SNG brownfield facility, and 100% of such additional amounts shall be credited to the retail customers to the extent the consumer protection reserve account exceeds the consumer protection reserve account principal maximum amount.

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

(5) At the conclusion of the term of the sourcing agreement, to the extent retail customers have not saved the minimum of \$100,000,000 in consumer savings as guaranteed in this subsection (h-2), amounts in the

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

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

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

(8) The clean coal SNG brownfield facility shall each

month, starting in the facility's first year of commercial operation, file with the Commission, in such form as the Commission shall require, a report as to the consumer protection reserve account. The monthly report must contain the following information:

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

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

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

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

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

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

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

When any report is erroneous or defective or appears to the Commission to be erroneous or defective, the Commission may notify the clean coal SNG brownfield facility to amend the report within 30 days, and, before or after the termination of the 30-day period, the Commission may examine the trustee of the consumer protection reserve

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

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

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

Any person who willfully makes any false report to the Commission or to any member, officer, or employee thereof, any person who willfully in a report withholds or fails to

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

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

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

(A) Capital costs. The Capital Development Board shall calculate a range of capital costs that it believes would be reasonable for the clean coal SNG brownfield facility to recover under the sourcing agreement. In making this determination, the Capital Development Board shall review the facility cost report, if any, of the clean coal SNG brownfield facility, adjusting the results based on the change in

the Annual Consumer Price Index for All Urban Consumers for the Midwest Region as published in April by the United States Department of Labor, Bureau of Labor Statistics, the final draft of the sourcing agreement, and the rate of return approved by the Commission. In addition, the Capital Development Board may consult as much as it deems necessary with the clean coal SNG brownfield facility and conduct whatever research and investigation it deems necessary.

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

(i) direct previous experience conducting front-end engineering and design studies for large-scale energy facilities and administering

large-scale energy operations and maintenance contracts, which may be particularized to the specific type of financing associated with the clean coal SNG brownfield facility;

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

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

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

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

(vi) expertise in credit and contract protocols;

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

(viii) the absence of a conflict of interest and inappropriate bias for or against an affected

gas utility or the clean coal SNG brownfield facility.

The clean coal SNG brownfield facility and the Illinois Power Agency shall cooperate with the Capital Development Board in any investigation it deems necessary. The Capital Development Board shall make its final determination of the range of capital costs confidentially and shall submit that range to the Commission in a confidential filing within 120 days after the effective date of this amendatory Act of the 97th General Assembly. The clean coal SNG brownfield facility shall submit to the Commission its estimate of the capital costs to be recovered under the sourcing agreement. Only after the clean coal SNG brownfield facility has submitted this estimate shall the Commission publicly announce the range of capital costs submitted by the Capital Development Board.

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

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

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

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

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

to customers during the term of the sourcing agreement, comparing the delivered SNG price to a daily weighted average price of natural gas, based upon an index. The Illinois Power Agency shall recommend a return on equity to the Commission using the same criteria. Within 60 days after receiving the final draft sourcing agreement from the Illinois Power Agency, the Commission shall approve the rate of return for the clean coal brownfield facility. Within 30 days after obtaining debt financing for the clean coal SNG brownfield facility, the clean coal SNG brownfield facility shall file a notice with the Commission identifying the actual cost of debt.

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

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

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

amendatory Act of the 97th General Assembly.

The clean coal SNG brownfield facility shall submit to the Commission its estimate of the operations and maintenance costs to be recovered under the sourcing agreement. Only after the clean coal SNG brownfield facility has submitted this estimate shall the Commission publicly announce the range of operations and maintenance costs submitted by the Capital Development Board. In the event that the estimate submitted by the clean coal SNG brownfield facility is within or below the range submitted by the Capital Development Board, the clean coal SNG brownfield facility's estimate shall be approved by the Commission as the amount of operations and maintenance costs to be recovered under the sourcing agreement. In the event that the estimate submitted by the clean coal SNG brownfield facility is above the range submitted by the Capital Development Board, the amount of operations and maintenance costs at the lowest end of the range submitted by the Capital Development Board shall be approved by the Commission as the amount of operations and maintenance costs to be recovered under the sourcing agreement. Within 15 days after the Capital Development Board has submitted its range and the clean coal SNG brownfield facility has submitted its estimate, the Commission shall approve the operations and maintenance costs for the clean coal SNG brownfield facility.

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

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

(A) capture carbon dioxide;

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

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

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

The Commission shall assess the prudence of the sequestration costs for the clean coal SNG brownfield facility before construction commences at the sequestration site or pipeline. Any revenues the clean coal

SNG brownfield facility receives as a result of the capture, transportation, or sequestration of carbon dioxide shall be first credited against all sequestration costs, with the positive balance, if any, treated as additional net revenue.

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

(4) Actual delivered and processed fuel costs shall be set by the Illinois Power Agency through a SNG feedstock procurement, pursuant to Sections 1-20, 1-77, and 1-78 of the Illinois Power Agency Act, to be performed at least

every 5 years and purchased by the clean coal SNG brownfield facility pursuant to feedstock procurement contracts developed by the Illinois Power Agency, with coal comprising at least 50% of the total feedstock over the term of the sourcing agreement and petroleum coke comprising the remainder of the SNG feedstock. If the Commission fails to approve a feedstock procurement plan or fails to approve the results of a feedstock procurement event, then the fuel shall be purchased by the company month-by-month on the spot market and those actual delivered and processed fuel costs shall be recoverable under the sourcing agreement. If a supplier defaults under the terms of a procurement contract, then the Illinois Power Agency shall immediately initiate a feedstock procurement process to obtain a replacement supply, and, prior to the conclusion of that process, fuel shall be purchased by the company month-by-month on the spot market and those actual delivered and processed fuel costs shall be recoverable under the sourcing agreement.

(5) Taxes and fees imposed by the federal government, the State, or any unit of local government applicable to the clean coal SNG brownfield facility, excluding income tax, shall be recoverable by the clean coal SNG brownfield facility under the sourcing agreement to the extent such taxes and fees were not applicable to the facility on the date of this amendatory Act of the 97th General Assembly.

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

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

Any person affected by a decision of the Commission under this subsection (h-3) may have the decision reviewed only under and in accordance with the Administrative Review Law. Unless otherwise provided, the provisions of the Administrative Review Law, all amendments and

modifications to that Law, and the rules adopted pursuant to that Law shall apply to and govern all proceedings for the judicial review of final administrative decisions of the Commission under this subsection (h-3). The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure.

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

(h-4) No later than 90 days after the Illinois Power Agency submits the final draft sourcing agreement pursuant to subsection (h-1), the Commission shall approve a sourcing agreement containing the capital costs, rate of return, and operations and maintenance costs. Once the sourcing agreement is approved, then the gas utility subject to that sourcing agreement shall have 45 days after the date of the Commission's approval to enter into the sourcing agreement.

(h-5) The Attorney General, on behalf of the people of the State of Illinois, may specifically enforce the requirements of this subsection (h-5). All contracts under subsection (h) of this Act and all sourcing agreements under subsection (h-1) of this Act, regardless of duration, shall require the owner of

any facility supplying SNG under the contract or sourcing agreement to provide documentation to the Commission each year, starting in the facility's first year of commercial operation, accurately reporting the quantity of carbon dioxide emissions from the facility that have been captured and sequestered and reporting any quantities of carbon dioxide released from the site or sites at which carbon dioxide emissions were sequestered in prior years, based on continuous monitoring of those sites. If, in any year, the owner of the facility described in subsection (h) of this Act fails to demonstrate that the ~~SNG~~ facility captured and sequestered at least 90% of the total carbon dioxide emissions that the facility would otherwise emit or that sequestration of emissions from prior years has failed, resulting in the release of carbon dioxide into the atmosphere, then the owner of the facility must offset excess emissions. Any such carbon dioxide offsets must be permanent, additional, verifiable, real, located within the State of Illinois, and legally and practicably enforceable; provided that the owner of the facility described in subsection (h) of this Act shall not be obligated to acquire carbon dioxide emission offsets to the extent that the cost of acquiring such offsets would exceed \$40 million in any given year. No costs of any purchases of carbon offsets may be recovered from a utility or its customers. All carbon offsets purchased for this purpose must be permanently retired.

If, in any year, the owner of a clean coal SNG brownfield

facility fails to demonstrate that the clean coal SNG brownfield facility captured and sequestered at least 85% of the total carbon dioxide emissions that the facility would otherwise emit, then the owner of the clean coal SNG brownfield facility must pay a penalty of \$20 per ton of excess carbon emissions up to \$20,000,000, which shall be deposited into the Energy Efficiency Trust Fund and distributed pursuant to subsection (b) of Section 6-6 of the Renewable Energy, Energy Efficiency, and Coal Resources Development Law of 1997. Provided, however, to the extent that the owner of the clean coal SNG brownfield facility can demonstrate that the failure was as a result of acts of God (including fire, flood, earthquake, tornado, lightning, hurricane, or other natural disaster); any amendment, modification, or abrogation of any applicable law or regulation that would prevent performance; war; invasion; act of foreign enemies; hostilities (regardless of whether war is declared); civil war; rebellion; revolution; insurrection; military or usurped power or confiscation; terrorist activities; civil disturbances; riots; nationalization; sabotage; blockage; or embargo, the owner of the clean coal SNG brownfield facility shall not be subject to a penalty if and only if (i) it promptly provides notice of its failure to the Commission; (ii) as soon as practicable and consistent with any order or direction from the Commission, it submits to the Commission proposed modifications to its carbon capture and sequestration plan; and (iii) it carries out its

proposed modifications in the manner and time directed by the Commission. If the Commission finds that the facility has not satisfied each of these requirements, then the facility shall be subject to the penalty. If the owner of a clean coal SNG brownfield facility demonstrates that the clean coal SNG brownfield facility captured and sequestered more than 85% of the total carbon emissions that the facility would otherwise emit, the owner of the clean coal SNG brownfield facility may credit such additional amounts to reduce the amount of any future penalty to be paid. The penalty resulting from the failure to capture and sequester at least the minimum amount of carbon dioxide shall not be passed on to a utility or its customers.

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

In addition, carbon dioxide emission credits equivalent to 50% of the amount of credits associated with the required

sequestration of carbon dioxide from the facility must be permanently retired. Compliance with the sequestration requirements and the offset purchase requirements specified in this subsection (h-5) for the facility described in subsection (h) of this Act shall be assessed annually by an independent expert retained by the owner of the ~~SNG~~ facility described in subsection (h) of this Act, with the advance written approval of the Attorney General. Compliance with the sequestration requirements and penalty requirements specified in this subsection (h-5) for the clean coal SNG brownfield facility shall be assessed annually by the Commission, which may in its discretion retain an expert to facilitate its assessment. If an expert is retained by the Commission, then the clean coal SNG brownfield facility shall pay for the expert's reasonable fees, and such costs shall not be passed through to a utility or its customers. A SNG facility operating pursuant to this subsection (h-5) shall not forfeit its designation as a clean coal SNG facility or a clean coal SNG brownfield facility if the facility fails to fully comply with the applicable carbon sequestration requirements in any given year, provided the requisite offsets are purchased or requisite penalties are paid.

Responsibility for compliance with the sequestration requirements specified in this subsection (h-5) for the clean coal SNG brownfield facility shall reside solely with the clean coal SNG brownfield facility regardless of whether the facility

has contracted with another party to capture, transport, or sequester carbon dioxide.

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

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

(2) The Commission shall review carbon dioxide transportation and sequestration methods proposed by a clean coal facility or a clean coal SNG brownfield facility and shall approve those methods it deems reasonable and cost-effective. For purposes of this review, "cost-effective" means a commercially reasonable price for similar carbon dioxide transportation or sequestration techniques. In determining whether sequestration is reasonable and cost-effective, the Commission may consult with the Illinois State Geological Survey and retain third parties to assist in its determination, provided that such

third parties shall not own or control any direct or indirect interest in the facility that is proposing the carbon dioxide transportation or the carbon dioxide sequestration method and shall have no contractual relationship with that facility. If a third party is retained by the Commission, then the facility proposing the carbon dioxide transportation or sequestration method shall pay for the expert's reasonable fees, and these costs shall not be passed through to a utility or its customers.

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

The Commission may not approve a carbon dioxide sequestration method if the owner or operator of the sequestration site has not received (i) an Underground Injection Control permit from the Illinois Environmental Protection Agency pursuant to the Environmental Protection

Act; (ii) an Underground Injection Control permit from the Illinois Department of Natural Resources pursuant to the Illinois Oil and Gas Act; or (iii) a permit similar to items (i) or (ii) from the state in which the sequestration site is located if the sequestration will take place outside of Illinois. The Commission shall approve or deny the carbon dioxide transportation or sequestration method within 90 days after the receipt of all required information.

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

If the Illinois Environmental Protection Agency determines at any time a site creates conditions that warrant the issuance of a seal order under Section 34 of the Environmental Protection Act, then the Illinois Environmental Protection Agency shall seal the site pursuant to the Environmental Protection Act. If the Illinois Environmental Protection Agency determines at any time a carbon dioxide sequestration site creates

conditions that warrant the institution of a civil action for an injunction under Section 43 of the Environmental Protection Act, then the Illinois Environmental Protection Agency shall request the State's Attorney or the Attorney General institute such action. The Illinois Environmental Protection Agency shall provide notice of any such actions as soon as possible on its website. The SNG facility shall incur all reasonable costs associated with any such inspection or monitoring of the sequestration sites, and these costs shall not be recoverable from utilities or their customers.

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

In circumstances whereby a carbon dioxide pipeline creates a substantial danger to the environment or to the public health of persons or to the welfare of persons where such danger is to the livelihood of such persons, the State's Attorney or Attorney General, upon the request of the Commission or on his or her own motion, may institute a civil action for an immediate injunction to halt any

discharge or other activity causing or contributing to the danger or to require such other action as may be necessary. The court may issue an ex parte order and shall schedule a hearing on the matter not later than 3 working days after the date of injunction. The Commission shall provide notice of any such actions as soon as possible on its website. The SNG facility shall incur all reasonable costs associated with any such inspection or monitoring of the sequestration sites, and these costs shall not be recoverable from a utility or its customers.

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

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

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

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

These pledges are for the benefit of the parties to those

sourcing agreements and the issuers and holders of bonds or other obligations issued or incurred to finance or refinance the clean coal SNG brownfield facility. The clean coal SNG brownfield facility is authorized to include and refer to these pledges in any financing agreement into which it may enter in regard to those sourcing agreements.

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

(h-10) Contract costs for SNG incurred by an Illinois gas

utility are reasonable and prudent and recoverable through the purchased gas adjustment clause and are not subject to review or disallowance by the Commission. Contract costs are costs incurred by the utility under the terms of a contract that incorporates the terms stated in subsection (h) of this Section as confirmed in writing by the Illinois Power Agency as set forth in subsection (h-20) of this Section, which confirmation shall be deemed conclusive, or as a consequence of or condition to its performance under the contract, including (i) amounts paid for SNG under the SNG contract and (ii) costs of transportation and storage services of SNG purchased from interstate pipelines under federally approved tariffs. Any contract, the terms of which have been confirmed in writing by the Illinois Power Agency as set forth in subsection (h-20) of this Section and the performance of the parties under such contract cannot be grounds for challenging prudence or cost recovery by the utility through the purchased gas adjustment clause, and in such cases, the Commission is directed not to consider, and has no authority to consider, any attempted challenges.

The contracts entered into by Illinois gas utilities pursuant to subsection (h) of this Section shall provide that the utility retains the right to terminate the contract without further obligation or liability to any party if the contract has been impaired as a result of any legislative, administrative, judicial, or other governmental action that is

taken that eliminates all or part of the prudence protection of this subsection (h-10) or denies the recoverability of all or part of the contract costs through the purchased gas adjustment clause. Should any Illinois gas utility exercise its right under this subsection (h-10) to terminate the contract, all contract costs incurred prior to termination are and will be deemed reasonable, prudent, and recoverable as and when incurred and not subject to review or disallowance by the Commission. Any order, issued by the State requiring or authorizing the discontinuation of the merchant function, defined as the purchase and sale of natural gas by an Illinois gas utility for the ultimate consumer in its service territory shall include provisions necessary to prevent the impairment of the value of any contract hereunder over its full term.

(h-11) All costs incurred by an Illinois gas utility in procuring SNG from a clean coal SNG brownfield facility pursuant to subsection (h-1) or a third-party marketer pursuant to subsection (h-1) are reasonable and prudent and recoverable through the purchased gas adjustment clause in conjunction with a SNG brownfield facility rider mechanism and are not subject to review or disallowance by the Commission; provided that if a utility is required by law or otherwise elects to connect the clean coal SNG brownfield facility to an interstate pipeline, then the utility shall be entitled to recover pursuant to its tariffs all just and reasonable costs that are prudently incurred. Sourcing agreement costs are costs incurred by the

utility under the terms of a sourcing agreement that incorporates the terms stated in subsection (h-1) of this Section as approved by the Commission as set forth in subsection (h-4) of this Section, which approval shall be deemed conclusive, or as a consequence of or condition to its performance under the contract, including (i) amounts paid for SNG under the SNG contract and (ii) costs of transportation and storage services of SNG purchased from interstate pipelines under federally approved tariffs. Any sourcing agreement, the terms of which have been approved by the Commission as set forth in subsection (h-4) of this Section, and the performance of the parties under the sourcing agreement cannot be grounds for challenging prudence or cost recovery by the utility, and in these cases, the Commission is directed not to consider, and has no authority to consider, any attempted challenges.

(h-15) With respect to each contract entered into by the company with an Illinois utility in accordance with the terms stated in subsection (h) of this Section, within 60 days following the completion of purchases of SNG, the Illinois Power Agency shall conduct an analysis to determine (i) the average contract SNG cost, which shall be calculated as the total amount paid to a company for SNG over the contract term, plus the cost to the utility of the required transportation and storage services of SNG, divided by the total number of MMBtus of SNG actually purchased under the utility contract; (ii) the average natural gas purchase cost, which shall be calculated as

the total annual supply costs paid for natural gas (excluding SNG) purchased by such utility over the contract term, plus the costs of transportation and storage services of such natural gas (excluding such costs for SNG), divided by the total number of MMBtus of natural gas (excluding SNG) actually purchased by the utility during the contract term; (iii) the cost differential, which shall be the difference between the average contract SNG cost and the average natural gas purchase cost; and (iv) the revenue share target, which shall be the cost differential multiplied by the total amount of SNG purchased under such utility contract. If the average contract SNG cost is equal to or less than the average natural gas purchase cost, then the company shall have no further obligation to the utility. If the average contract SNG cost for such SNG contract is greater than the average natural gas purchase cost for such utility, then the company shall market the daily production of SNG and distribute on a monthly basis 5% of amounts collected with respect to such future sales to the utilities in proportion to each utility's SNG purchases from the company during the term of the SNG contract to be used to reduce the utility's natural gas costs through the purchased gas adjustment clause; such payments to the utility shall continue until such time as the sum of such payments equals the revenue share target of that utility. The company or utilities shall have no obligation to repay the revenue share target except as provided for in this subsection (h-15).

(h-20) The General Assembly authorizes the Illinois Finance Authority to issue bonds to the maximum extent permitted to finance coal gasification facilities described in this Section, which constitute both "industrial projects" under Article 801 of the Illinois Finance Authority Act and "clean coal and energy projects" under Sections 825-65 through 825-75 of the Illinois Finance Authority Act. The General Assembly further authorizes the Illinois Power Agency to become party to agreements and take such actions as necessary to enable the Illinois Power Agency or its designate to (i) review and confirm in writing that the terms stated in subsection (h) of this Section are incorporated in the SNG contract, and (ii) conduct an analysis pursuant to subsection (h-15) of this Section. Administrative costs incurred by the Illinois Finance Authority and Illinois Power Agency in performance of this subsection (h-20) shall be subject to reimbursement by the company on terms as the Illinois Finance Authority, the Illinois Power Agency, and the company may agree. The utility and its customers shall have no obligation to reimburse the company, the Illinois Finance Authority, or the Illinois Power Agency for any such costs.

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

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

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

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

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

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

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

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

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

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

Sec. 2.04. "Pipeline facilities" includes new and existing pipe rights-of-way and any equipment, facility, or building used in the transportation of gas or the treatment of gas during the course of transportation and includes facilities within this State that transport gas from an interstate gas pipeline to a direct sales customer within this State purchasing gas for its own consumption, but "rights-of-way" as used in this Act does not authorize the Commission to prescribe, under this Act, the location or routing of any pipeline facility. "Pipeline facilities" also includes new and existing pipes and lines and any other equipment, facility, or structure, except customer-owned branch lines connected to the primary fuel lines, used to convey gas from a gas main to the outside wall of residential premises, and any person who provides gas service directly to its residential customer through these facilities shall be deemed to operate such pipeline facilities for purposes of this Act irrespective of the ownership of the facilities or the location of the facilities with respect to the meter, except that a person who provides gas service to a "master meter system", as that term is defined at 49 C.F.R. Section 191.3, shall not be deemed to operate any facilities downstream of the master meter. "Pipeline facilities" also includes new and existing pipe

rights-of-way and any equipment, facility, or building used in the transportation of carbon dioxide in any physical form for the purpose of sequestration.

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

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

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

(b) Standards established under this Act may apply to the design, installation, inspection, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities. Standards affecting the design, installation, construction, initial inspection and initial testing are not applicable to pipeline facilities in existence on the date such

standards are adopted. Whenever the Commission finds a particular facility to be hazardous to life or property, it may require the person operating such facility to take the steps necessary to remove the hazard.

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

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

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

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

(415 ILCS 5/13.7 new)

Sec. 13.7. Carbon dioxide sequestration sites.

(a) For purposes of this Section, the term "carbon dioxide sequestration site" means a site or facility for which the

Agency has issued a permit for the underground injection of carbon dioxide.

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

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

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

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

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

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

Section 85. Rulemaking. The Illinois Environmental Protection Agency, the Illinois Commerce Commission, the Capital Development Board, and the Illinois Department of Natural Resources shall have rulemaking authority to implement the provisions of this amendatory Act of the 97th General Assembly.

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

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