



Sen. James F. Clayborne, Jr.

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09600HB6267sam003

LRB096 18955 CEL 44322 a

1 AMENDMENT TO HOUSE BILL 6267

2 AMENDMENT NO. _____. Amend House Bill 6267, AS AMENDED,
3 immediately above Section 5, by inserting the following:

4 "Section 3. If and only if Senate Bill 3388 of the 96th
5 General Assembly (as amended by House Amendment Nos. 1, 2, and
6 3) becomes law, then the Illinois Power Agency Act is amended
7 by changing Section 1-10 as follows:

8 (20 ILCS 3855/1-10)
9 Sec. 1-10. Definitions.

10 "Agency" means the Illinois Power Agency.

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

1 maintenance, insurance, and other matters in respect of the
2 project.

3 "Authority" means the Illinois Finance Authority.

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

1 coal-fired electric generating facility on June 1, 2009 (the
2 effective date of Public Act 95-1027).

3 "Clean coal SNG brownfield facility" means a facility that
4 (1) has commenced construction by July 1, 2014 on an urban
5 brownfield site in a municipality with at least 1,000,000
6 residents; (2) uses a gasification process to produce
7 substitute natural gas; (3) uses coal as at least 50% of the
8 total feedstock over the term of any sourcing agreement with a
9 utility and the remainder of the feedstock may be either
10 petroleum coke or coal, with all such coal having a high
11 bituminous rank and greater than 1.7 pounds of sulfur per
12 million Btu content; and (4) captures and sequesters at least
13 85% of the total carbon dioxide emissions that the facility
14 would otherwise emit.

15 "Clean coal SNG facility" means a facility that uses a
16 gasification process to produce substitute natural gas, that
17 sequesters at least 85% ~~90%~~ of the total carbon dioxide
18 emissions that the facility would otherwise emit and that uses
19 ~~and that uses petroleum coke or coal as a feedstock, with all~~
20 ~~such~~ coal having a high bituminous rank and greater than 1.7
21 pounds of sulfur per million btu content and has commenced
22 construction by July 1, 2012 in Jefferson County; provided,
23 however, ~~a clean coal SNG brownfield facility shall not be a~~
24 clean coal SNG facility may elect to be a clean coal SNG
25 brownfield facility.

26 "Commission" means the Illinois Commerce Commission.

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

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

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

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

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

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

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

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

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

7 "Energy efficiency" means measures that reduce the amount
8 of electricity or natural gas required to achieve a given end
9 use.

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

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

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

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

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

25 "Person" means any natural person, firm, partnership,
26 corporation, either domestic or foreign, company, association,

1 limited liability company, joint stock company, or association
2 and includes any trustee, receiver, assignee, or personal
3 representative thereof.

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

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

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

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

17 "Renewable energy resources" includes energy and its
18 associated renewable energy credit or renewable energy credits
19 from wind, solar thermal energy, photovoltaic cells and panels,
20 biodiesel, crops and untreated and unadulterated organic waste
21 biomass, tree waste, hydropower that does not involve new
22 construction or significant expansion of hydropower dams, and
23 other alternative sources of environmentally preferable
24 energy. For purposes of this Act, landfill gas produced in the
25 State is considered a renewable energy resource. "Renewable
26 energy resources" does not include the incineration or burning

1 of tires, garbage, general household, institutional, and
2 commercial waste, industrial lunchroom or office waste,
3 landscape waste other than tree waste, railroad crossties,
4 utility poles, or construction or demolition debris, other than
5 untreated and unadulterated waste wood.

6 "Revenue bond" means any bond, note, or other evidence of
7 indebtedness issued by the Authority, the principal and
8 interest of which is payable solely from revenues or income
9 derived from any project or activity of the Agency.

10 "Sequester" means permanent storage of carbon dioxide by
11 injecting it into a saline aquifer, a depleted gas reservoir,
12 or an oil reservoir, directly or through an enhanced oil
13 recovery process that may involve intermediate storage,
14 regardless of whether these activities are conducted by a clean
15 coal facility, clean coal SNG facility, clean coal SNG
16 brownfield facility, or a party with which a clean coal
17 facility, clean coal SNG facility, or clean coal SNG brownfield
18 facility has contracted for such purposes.

19 "Sourcing agreement" means (i) in the case of an electric
20 utility, an agreement between the owner of a clean coal
21 facility and such electric utility, which agreement shall have
22 terms and conditions meeting the requirements of paragraph (3)
23 of subsection (d) of Section 1-75, (ii) in the case of an
24 alternative retail electric supplier, an agreement between the
25 owner of a clean coal facility and such alternative retail
26 electric supplier, which agreement shall have terms and

1 conditions meeting the requirements of Section 16-115(d) (5) of
2 the Public Utilities Act, and (iii) in case of a gas utility,
3 an agreement between the owner of a clean coal SNG brownfield
4 facility and the gas utility, which agreement shall have the
5 terms and conditions meeting the requirements of subsection
6 (h-1) of Section 9-220 of the Public Utilities Act.

7 "Substitute natural gas" or "SNG" means a gas manufactured
8 by gasification of hydrocarbon feedstock, which is
9 substantially interchangeable in use and distribution with
10 conventional natural gas.

11 "Total resource cost test" or "TRC test" means a standard
12 that is met if, for an investment in energy efficiency or
13 demand-response measures, the benefit-cost ratio is greater
14 than one. The benefit-cost ratio is the ratio of the net
15 present value of the total benefits of the program to the net
16 present value of the total costs as calculated over the
17 lifetime of the measures. A total resource cost test compares
18 the sum of avoided electric utility costs, representing the
19 benefits that accrue to the system and the participant in the
20 delivery of those efficiency measures, as well as other
21 quantifiable societal benefits, including avoided natural gas
22 utility costs, to the sum of all incremental costs of end-use
23 measures that are implemented due to the program (including
24 both utility and participant contributions), plus costs to
25 administer, deliver, and evaluate each demand-side program, to
26 quantify the net savings obtained by substituting the

1 demand-side program for supply resources. In calculating
2 avoided costs of power and energy that an electric utility
3 would otherwise have had to acquire, reasonable estimates shall
4 be included of financial costs likely to be imposed by future
5 regulations and legislation on emissions of greenhouse gases.

6 (Source: P.A. 95-481, eff. 8-28-07; 95-913, eff. 1-1-09;
7 95-1027, eff. 6-1-09; 96-33, eff. 7-10-09; 96-159, eff.
8 8-10-09; 96-784, eff. 8-28-09; 96-1000, eff. 7-2-10;
9 09600SB3388ham001 and ham003.)

10 Section 4. If and only if Senate Bill 3388 of the 96th
11 General Assembly (as amended by House Amendment Nos. 1, 2, and
12 3), then the Public Utilities Act is amended by changing
13 Section 9-220 as follows:

14 (220 ILCS 5/9-220) (from Ch. 111 2/3, par. 9-220)

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

16 (a) Notwithstanding the provisions of Section 9-201, the
17 Commission may authorize the increase or decrease of rates and
18 charges based upon changes in the cost of fuel used in the
19 generation or production of electric power, changes in the cost
20 of purchased power, or changes in the cost of purchased gas
21 through the application of fuel adjustment clauses or purchased
22 gas adjustment clauses. The Commission may also authorize the
23 increase or decrease of rates and charges based upon
24 expenditures or revenues resulting from the purchase or sale of

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

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

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

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

1 adjustment clause.

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

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

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

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

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

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

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

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

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

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

1 or before March 31, 2011 for up to 10 years of supply with any
2 company for the purchase of substitute natural gas (SNG)
3 produced from coal through the gasification process if the
4 company has commenced construction of a coal gasification
5 facility by July 1, 2012 in Jefferson County and commencement
6 of construction shall mean that material physical site work has
7 occurred, such as site clearing and excavation, water runoff
8 prevention, water retention reservoir preparation, or
9 foundation development. The contract shall contain the
10 following provisions: (i) the only coal to be used in the
11 gasification process has high volatile bituminous rank and
12 greater than 1.7 pounds of sulfur per million Btu content; (ii)
13 at the time the contract term commences, the price per million
14 Btu may not exceed \$7.95 in 2008 dollars, adjusted annually
15 based on the change in the Annual Consumer Price Index for All
16 Urban Consumers for the Midwest Region as published in April by
17 the United States Department of Labor, Bureau of Labor
18 Statistics (or a suitable Consumer Price Index calculation if
19 this Consumer Price Index is not available) for the previous
20 calendar year; provided that the price per million Btu shall
21 not exceed \$9.95 at any time during the contract; (iii) the
22 utility's aggregate long-term supply contracts for the
23 purchase of SNG does not exceed 25% of the annual system supply
24 requirements of the utility as of 2008 and the quantity of SNG
25 supplied to a utility may not exceed 16 million MMBtus; and
26 (iv) contract costs pursuant to subsection (h-10) of this

1 Section shall not include any lobbying expenses, charitable
2 contributions, advertising, organizational memberships, or
3 marketing expenses per year.

4 (h-1) Any Illinois gas utility may enter into a sourcing
5 agreement for up to 30 years of supply with a ~~the~~ clean coal
6 SNG brownfield facility if the clean coal SNG brownfield
7 facility has commenced construction. Any gas utility that is
8 providing service to more than 150,000 customers on the
9 effective date of this amendatory Act of the 96th General
10 Assembly shall either elect to file biennial rate proceedings
11 before the Commission in the years 2011, 2013, and 2015 or
12 enter into a sourcing agreement or sourcing agreements with all
13 ~~a~~ clean coal SNG brownfield facilities ~~each facility~~ for 30
14 years for either (i) 43,500,000,000 cubic feet per year times a
15 percentage calculated by dividing 100 by the number of
16 utilities entering into sourcing agreements with the clean coal
17 SNG brownfield facility or (ii) such lesser amount as may be
18 available from the clean coal SNG brownfield facility.

19 Provided, however, that the Illinois Power Agency may
20 allocate the purchase obligations more proportionately based
21 upon total therms sold to ultimate customers, if it is
22 demonstrated with certainty that such alternative allocation
23 will not result in adverse consolidation, derivative, or lease
24 impacts to the balance sheet or income statement of any
25 purchasing utility. In any event, no utility shall be required
26 to purchase more than 42% of the projected annual output of the

1 clean coal SNG brownfield facility, with the remainder of such
2 utility's obligation to be divided proportionately between the
3 other utilities.

4 A gas utility electing to file biennial rate proceedings
5 before the Commission must file a notice of its election with
6 the Commission within 60 days after the effective date of this
7 amendatory Act of the 96th General Assembly or its right to
8 make the election is irrevocably waived. A gas utility electing
9 to file biennial rate proceedings shall make such filings no
10 later than August 1 of the years 2011, 2013, and 2015,
11 consistent with all requirements of 83 Ill. Adm. Code 255 and
12 285 as though the gas utility were filing for an increase in
13 its rates, without regard to whether such filing would produce
14 an increase, a decrease, or no change in the gas utility's
15 rates, and the Commission shall review the gas utility's filing
16 and shall issue its order in accordance with the provisions of
17 Section 9-201 of this Act.

18 Within 15 days after the effective date of this amendatory
19 Act of the 96th General Assembly, the owner of the clean coal
20 SNG brownfield facility shall submit to the Illinois Power
21 Agency and each gas utility that is providing service to more
22 than 150,000 customers on the effective date of this amendatory
23 Act of the 96th General Assembly a copy of a draft sourcing
24 agreement. Within 45 days after receipt of the draft sourcing
25 agreement, each such gas utility shall provide the Illinois
26 Power Agency and the owner of a clean coal SNG brownfield

1 facility with its comments and recommended revisions to the
2 draft sourcing agreement. Within 15 days after the receipt of
3 the gas utility's comments and recommended revisions, the owner
4 of the clean coal SNG brownfield facility shall submit its
5 responsive comments and a further revised draft of the sourcing
6 agreement to the Illinois Power Agency. The Illinois Power
7 Agency shall review the draft sourcing agreement and comments.

8 If the parties to the sourcing agreement do not agree on
9 the terms therein, then the Illinois Power Agency shall retain
10 an independent mediator to mediate the dispute between the
11 parties. If the parties are in agreement on the terms of the
12 sourcing agreement, the Illinois Power Agency shall approve the
13 final draft sourcing agreement. If after mediation the parties
14 have failed to come to agreement, then the Illinois Power
15 Agency shall revise the draft sourcing agreement as necessary
16 to confirm that the final draft sourcing agreement contains
17 only terms that are reasonable and equitable. The Illinois
18 Power Agency shall adopt and make public a policy detailing the
19 process for retaining a mediator under this subsection (h-1).
20 Any mediator retained to assist with mediating disputes between
21 the parties regarding the sourcing agreement shall be retained
22 no later than 60 days after the effective date of this
23 amendatory Act of the 96th General Assembly.

24 Upon approval of a final draft agreement, the Illinois
25 Power Agency shall submit the final draft agreement to the
26 Capital Development Board and the Commission no later than 90

1 days after the effective date of this amendatory Act of the
2 96th General Assembly. The gas utility and the clean coal SNG
3 brownfield facility shall pay a reasonable fee as required by
4 the Illinois Power Agency for its services under this
5 subsection (h-1) and shall pay the mediator's reasonable fees,
6 if any. The Illinois Power Agency shall adopt and make public a
7 policy detailing the process for retaining a mediator under
8 this Section.

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

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

15 (2) Coal and petroleum coke are feedstocks for the
16 gasification process, with coal comprising at least 50% of
17 the total feedstock over the term of the sourcing agreement
18 and with the feedstocks to be procured in accordance with
19 requirements of Section 1-78 of the Illinois Power Agency
20 Act.

21 (3) The sourcing agreement once entered into
22 terminates no more than 30 years after the commencement of
23 the commercial production of SNG at the clean coal SNG
24 brownfield facility.

25 (4) The clean coal SNG brownfield facility guarantees a
26 minimum of \$100,000,000 in consumer savings, calculated in

1 real 2010 dollars at the conclusion of the term of the
2 sourcing agreement by comparing the delivered SNG price to
3 the Chicago City-gate price on a weighted daily basis for
4 each day over the entire term of the sourcing agreement, to
5 be provided in accordance with subsection (h-2) of this
6 Section.

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

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

1 (7) 50% of all additional net revenue, defined as
2 miscellaneous net revenue after cost allowance for costs
3 associated with additional net revenue that are not
4 otherwise recoverable pursuant to subsection (h-3) of this
5 Section, including net revenue from sales of substitute
6 natural gas derived from the facility above the nameplate
7 capacity of the facility and other by-products produced by
8 the facility, shall be credited to the consumer protection
9 reserve account pursuant to subsection (h-2) of this
10 Section.

11 (8) The delivered SNG price per million btu to be paid
12 monthly by the utility to the clean coal SNG brownfield
13 facility, which shall be based only upon the following: (A)
14 a capital recovery charge, operations and maintenance
15 costs, and sequestration costs, only to the extent approved
16 by the Commission pursuant to paragraphs (1), (2), and (3)
17 of subsection (h-3) of this Section; (B) the actual
18 delivered and processed fuel costs pursuant to paragraph
19 (4) of subsection (h-3) of this Section; (C) actual costs
20 of SNG transportation pursuant to paragraph (6) of
21 subsection (h-3) of this Section; (D) certain taxes and
22 fees imposed by the federal government, the State, or any
23 unit of local government as provided in paragraph (6) of
24 subsection (h-3) of this Section; and (E) the credit, if
25 any, from the consumer protection reserve account pursuant
26 to subsection (h-2) of this Section. The delivered SNG

1 price per million Btu shall proportionately reflect these
2 elements over the term of the sourcing agreement.

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

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

14 (11) A utility may exit the sourcing agreement without
15 penalty if the clean coal SNG brownfield facility does not
16 commence construction by July 1, 2014.

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

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

26 (14) Nothing in the sourcing agreement will require a

1 utility to construct any facilities to accept delivery of
2 SNG. Provided, however, if a utility is required by law or
3 otherwise elects to connect the clean coal SNG brownfield
4 facility to an interstate pipeline, then the utility shall
5 be entitled to recover pursuant to its tariffs all just and
6 reasonable costs that are prudently incurred. Any costs
7 incurred by the utility to receive, deliver, manage, or
8 otherwise accommodate purchases under the SNG sourcing
9 agreement will be fully recoverable through a utility's
10 purchased gas adjustment clause rider mechanism.

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

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

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

10 (1) The clean coal SNG brownfield facility monthly
11 shall calculate the difference between the monthly
12 delivered SNG price and the Chicago City-gate price, by
13 comparing the delivered SNG price, which shall include the
14 cost of transportation to the delivery point, if any, to
15 the Chicago City-gate price on a weighted daily basis for
16 each day of the prior month based upon a mutually-agreed
17 upon published index.

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

20 (A) to the extent the monthly delivered SNG price,
21 is greater than the Chicago City-gate price, the
22 consumer protection reserve account shall be used to
23 provide a credit to reduce the SNG price by an amount
24 equal to the difference between the monthly delivered
25 SNG price and the Chicago City-gate price; and

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

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

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

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

19 (B) any amounts in the consumer protection reserve
20 account in excess of \$100,000,000 shall be distributed
21 to the clean coal SNG brownfield facility; provided,
22 however, that under no circumstances shall the total
23 cumulative amount distributed to the clean coal SNG
24 brownfield facility under this subparagraph (B) exceed
25 \$150,000,000;

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

1 is greater than the Chicago City-gate price, after
2 distributing the amounts pursuant to subparagraph (B)
3 of this paragraph (3), if any, the consumer protection
4 reserve account shall be used to provide a credit to
5 reduce the SNG price by an amount equal to the
6 difference between the monthly delivered SNG price and
7 the Chicago City-gate price;

8 (D) if retail customers have realized net consumer
9 savings, calculated by comparing the delivered SNG
10 price to the weighted average of the daily Chicago
11 City-gate price on a daily basis over the entire term
12 of the sourcing agreement to date, then after
13 distributing the amounts pursuant to subparagraphs (B)
14 and (C) of this paragraph (3), 50% of any additional
15 amounts in the consumer protection reserve account in
16 excess of \$100,000,000 shall be distributed to the
17 clean coal SNG brownfield facility, with the remaining
18 50% of any such additional amounts being credited to
19 retail customers; provided, however, that if retail
20 customers have not realized such net consumer savings,
21 no such distribution shall be made to the clean coal
22 SNG brownfield facility, and 100% of such additional
23 amounts shall be credited to the retail customers to
24 the extent the consumer protection reserve account
25 exceeds \$100,000,000.

26 (4) 50% of all additional net revenue, defined as

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

9 (5) At the conclusion of the term of the sourcing
10 agreement, to the extent retail customers have not saved
11 the minimum of \$100,000,000 in consumer savings as
12 guaranteed in this subsection (h-2), amounts in the
13 consumer protection reserve account shall be credited to
14 retail customers to the extent the retail customers have
15 saved the minimum of \$100,000,000; 50% of any additional
16 amounts in the consumer protection reserve account shall be
17 distributed to the company, and the remaining 50% shall be
18 distributed to retail customers.

19 (6) If, at the conclusion of the term of the sourcing
20 agreement, the customers have not saved the minimum
21 \$100,000,000 in savings as guaranteed in this subsection
22 (h-2) and the consumer protection reserve account has been
23 depleted, then the clean coal SNG brownfield facility shall
24 be liable for any remaining amount owed to the retail
25 customers to the extent that the customers are provided
26 with the \$100,000,000 in savings as guaranteed in this

1 subsection (h-2). The retail customers shall have first
2 priority in recovering that debt above any creditors,
3 except the original senior secured lender to the extent
4 that the original senior secured lender has any senior
5 secured debt outstanding, including any clean coal SNG
6 brownfield facility parent companies or affiliates.

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

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

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

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

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

26 (D) the total amount of the consumer protection

1 reserve account at the beginning and end of the month;
2 (E) the total amount of consumer savings to date;
3 and
4 (F) any other additional information the
5 Commission shall require.

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

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

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

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

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

20 (1) A capital recovery charge approved by the
21 Commission shall be recoverable by the clean coal SNG
22 brownfield facility under a sourcing agreement. The
23 capital recovery charge shall be comprised of capital costs
24 and a reasonable rate of return. "Capital costs" means
25 costs to be incurred in connection with the construction
26 and development of a facility, as defined Section 1-10 of

1 the Illinois Power Agency Act, and such other costs as the
2 Capital Development Board deems appropriate to be
3 recovered in the capital recovery charge.

4 (A) Capital costs. The Capital Development Board
5 shall calculate a range of capital costs that it
6 believes would be reasonable for the clean coal SNG
7 brownfield facility to recover under the sourcing
8 agreement. In making this determination, the Capital
9 Development Board shall review the final draft of the
10 sourcing agreement and the rate of return approved by
11 the Commission. In addition, the Capital development
12 Board may: (i) review the facility cost report, if any,
13 of the clean coal SNG brownfield facility; (ii) consult
14 as much as it deems necessary with the clean coal SNG
15 brownfield facility; and (iii) conduct whatever
16 research and investigation it deems necessary.

17 The Capital Development Board shall retain an engineering
18 expert to assist in determining both the range of
19 capital costs and the range of operations and
20 maintenance costs that it believes would be reasonable
21 for the clean coal SNG brownfield facility to recover
22 under the sourcing agreement. Provided, however, that
23 such expert shall: (i) not have been involved in the
24 clean coal SNG brownfield facility's facility cost
25 report, if any, (ii) not own or control any direct or
26 indirect interest in the initial clean coal facility;

1 and (iii) have no contractual relationship with the
2 clean coal SNG brownfield facility. In order to qualify
3 as an independent expert, a person or company must
4 have:

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

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

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

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

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

1 (vi) expertise in credit and contract
2 protocols;

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

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

10 The clean coal SNG brownfield facility and the
11 Illinois Power Agency shall cooperate with the Capital
12 Development Board in any investigation it deems
13 necessary. The Capital Development Board shall make
14 its final determination of the range of capital costs
15 confidentially and shall submit that range to the
16 Commission in a confidential filing within 120 days
17 after the effective date of this amendatory Act of the
18 96th General Assembly. The clean coal SNG brownfield
19 facility shall submit to the Commission its estimate of
20 the capital costs to be recovered under the sourcing
21 agreement. Only after the clean coal SNG brownfield
22 facility has submitted this estimate shall the
23 Commission publicly announce the range of capital
24 costs submitted by the Capital Development Board.

25 In the event that the estimate submitted by the
26 clean coal SNG brownfield facility is within or below

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

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

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

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

22 In determining the return on equity, the
23 Commission shall select a commercially reasonable
24 return on equity taking into account the return on
25 equity being received by developers of similar
26 facilities in or outside of Illinois, the need to

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

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

1 coal SNG brownfield facility's physical plant.

2 The Capital Development Board shall calculate a range
3 of operations and maintenance costs that it believes would
4 be reasonable for the clean coal SNG brownfield facility to
5 recover under the sourcing agreement. In making this
6 determination, the Capital Development Board shall review
7 the final draft of the sourcing agreement and the rate of
8 return approved by the Commission. In addition, the Capital
9 Development Board may: (i) review the facility cost report,
10 if any, of the clean coal SNG brownfield facility; (ii)
11 consult as much as it deems necessary with the clean coal
12 SNG brownfield facility; and (iii) conduct whatever
13 research and investigation it deems necessary. As set forth
14 in subparagraph (A) of paragraph (1) of this subsection
15 (h-3), the Capital Development Board shall retain an
16 independent engineering expert to assist in determining
17 both the range of operations and maintenance costs that it
18 believes would be reasonable for the clean coal SNG
19 brownfield to recover under the sourcing agreement. The
20 clean coal SNG brownfield facility and the Illinois Power
21 Agency shall cooperate with the Capital Development Board
22 in any investigation it deems necessary. The Capital
23 Development Board shall make its final determination of the
24 range of operations and maintenance costs confidentially
25 and shall submit that range to the Commission in a
26 confidential filing within 120 days after the effective

1 date of this amendatory Act of the 96th General Assembly.

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

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

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

16 (A) capture carbon dioxide;

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

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

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

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

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

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

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

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

20 (5) Taxes and fees imposed by the federal government,
21 the State, or any unit of local government applicable to
22 the clean coal SNG brownfield facility, excluding income
23 tax, shall be recoverable by the clean coal SNG brownfield
24 facility under the sourcing agreement to the extent such
25 taxes and fees were not applicable to the facility on the
26 date of this amendatory Act of the 96th General Assembly.

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

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

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

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

7 (8) The Capital Development Board shall adopt and make
8 public a policy detailing the process for retaining experts
9 under this Section. Any experts retained to assist with
10 calculating the range of capital costs or operations and
11 maintenance costs shall be retained no later than 45 days
12 after the effective date of this amendatory Act of the 96th
13 General Assembly.

14 (h-4) No later than 60 days after the Illinois Power Agency
15 submits the final draft sourcing agreement pursuant to
16 subsection (h-1), the Commission shall approve a sourcing
17 agreement containing the capital costs, rate of return, and
18 operations and maintenance costs. Once the sourcing agreement
19 is approved, then the gas utility subject to that sourcing
20 agreement shall have 45 days after the date of the Commission's
21 approval to enter into the sourcing agreement.

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

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

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

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

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

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

25 In addition, carbon dioxide emission credits equivalent to
26 50% of the amount of credits associated with the required

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 These pledges are for the benefit of the parties to those

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

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

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

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

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

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

15 (h-11) All costs incurred by an Illinois gas utility in
16 procuring SNG, including procuring SNG from a clean coal SNG
17 brownfield facility or a third-party marketer pursuant to
18 subsection (h-1), are reasonable and prudent and recoverable
19 through the purchased gas adjustment clause and are not subject
20 to review or disallowance by the Commission. Sourcing agreement
21 costs are costs incurred by the utility under the terms of a
22 sourcing agreement that incorporates the terms stated in
23 subsection (h-1) of this Section as approved by the Commission
24 as set forth in subsection (h-4) of this Section, which
25 approval shall be deemed conclusive, or as a consequence of or
26 condition to its performance under the contract, including (i)

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

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

1 of MMBtus of natural gas (excluding SNG) actually purchased by
2 the utility during the contract term; (iii) the cost
3 differential, which shall be the difference between the average
4 contract SNG cost and the average natural gas purchase cost;
5 and (iv) the revenue share target, which shall be the cost
6 differential multiplied by the total amount of SNG purchased
7 under such utility contract. If the average contract SNG cost
8 is equal to or less than the average natural gas purchase cost,
9 then the company shall have no further obligation to the
10 utility. If the average contract SNG cost for such SNG contract
11 is greater than the average natural gas purchase cost for such
12 utility, then the company shall market the daily production of
13 SNG and distribute on a monthly basis 5% of amounts collected
14 with respect to such future sales to the utilities in
15 proportion to each utility's SNG purchases from the company
16 during the term of the SNG contract to be used to reduce the
17 utility's natural gas costs through the purchased gas
18 adjustment clause; such payments to the utility shall continue
19 until such time as the sum of such payments equals the revenue
20 share target of that utility. The company or utilities shall
21 have no obligation to repay the revenue share target except as
22 provided for in this subsection (h-15).

23 (h-20) The General Assembly authorizes the Illinois
24 Finance Authority to issue bonds to the maximum extent
25 permitted to finance coal gasification facilities described in
26 this Section, which constitute both "industrial projects"

1 under Article 801 of the Illinois Finance Authority Act and
2 "clean coal and energy projects" under Sections 825-65 through
3 825-75 of the Illinois Finance Authority Act. The General
4 Assembly further authorizes the Illinois Power Agency to become
5 party to agreements and take such actions as necessary to
6 enable the Illinois Power Agency or its designate to (i) review
7 and confirm in writing that the terms stated in subsection (h)
8 of this Section are incorporated in the SNG contract, and (ii)
9 conduct an analysis pursuant to subsection (h-15) of this
10 Section. Administrative costs incurred by the Illinois Finance
11 Authority and Illinois Power Agency in performance of this
12 subsection (h-20) shall be subject to reimbursement by the
13 company on terms as the Illinois Finance Authority, the
14 Illinois Power Agency, and the company may agree. The utility
15 and its customers shall have no obligation to reimburse the
16 company, the Illinois Finance Authority, or the Illinois Power
17 Agency for any such costs.

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

21 (Source: P.A. 95-1027, eff. 6-1-09; 96-1364, eff. 7-28-10;
22 09600SB3388ham001, ham002, and ham003.)"; and

23 by replacing Section 99 with the following:

24 "Section 99. Effective date. This Act takes effect June 1,

1 2011."