



Rep. Marlow H. Colvin

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LRB097 03519 CEL 58782 a

1 AMENDMENT TO HOUSE BILL 691

2 AMENDMENT NO. _____. Amend House Bill 691 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Public Utilities Act is amended by changing
5 Section 9-220 as follows:

6 (220 ILCS 5/9-220) (from Ch. 111 2/3, par. 9-220)

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

8 (a) Notwithstanding the provisions of Section 9-201, the
9 Commission may authorize the increase or decrease of rates and
10 charges based upon changes in the cost of fuel used in the
11 generation or production of electric power, changes in the cost
12 of purchased power, or changes in the cost of purchased gas
13 through the application of fuel adjustment clauses or purchased
14 gas adjustment clauses. The Commission may also authorize the
15 increase or decrease of rates and charges based upon
16 expenditures or revenues resulting from the purchase or sale of

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 September 30, 2011 for up to 10 years of supply with
2 any 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 clean coal SNG facility
5 by July 1, 2012 and commencement of construction shall mean
6 that material physical site work has occurred, such as site
7 clearing and excavation, water runoff prevention, water
8 retention reservoir preparation, or foundation development.
9 The contract shall contain the following provisions: (i) at
10 least 90% of feedstock to be used in the gasification process
11 shall be coal with a high volatile bituminous rank and greater
12 than 1.7 pounds of sulfur per million Btu content; (ii) at the
13 time the contract term commences, the price per million Btu may
14 not exceed \$7.95 in 2008 dollars, adjusted annually based on
15 the change in the Annual Consumer Price Index for All Urban
16 Consumers for the Midwest Region as published in April by the
17 United States Department of Labor, Bureau of Labor Statistics
18 (or a suitable Consumer Price Index calculation if this
19 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 supply contract for the purchase of SNG does not
23 exceed 15% of the annual system supply requirements of the
24 utility as of 2008; and (iv) the contract costs pursuant to
25 subsection (h-10) of this Section shall not include any
26 lobbying expenses, charitable contributions, advertising,

1 organizational memberships, carbon dioxide pipeline or
2 sequestration expenses, or marketing expenses.

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

20 Within 7 days after August 2, 2011 ~~the effective date of~~
21 ~~this amendatory Act of the 97th General Assembly~~, the owner of
22 the clean coal SNG facility shall submit to the Illinois Power
23 Agency and each gas utility that is providing service to more
24 than 150,000 customers on August 2, 2011 ~~the effective date of~~
25 ~~this amendatory Act of the 97th General Assembly~~ a copy of a
26 draft contract. Within 30 days after the receipt of the draft

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

9 During its review of the draft contract, the Illinois Power
10 Agency shall:

11 (1) review and confirm in writing that the terms stated
12 in this subsection (h) are incorporated in the SNG
13 contract;

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

1 Agency does not approve of the SNG pricing formula, then
2 the Illinois Power Agency shall modify the formula to
3 ensure that it meets the requirements of this subsection
4 (h);

5 (3) review and approve the amount of budgeted
6 miscellaneous net revenue after cost allowance, including
7 sale of SNG produced by the clean coal SNG facility above
8 the nameplate capacity of the facility and other
9 by-products produced by the facility, to be included in the
10 pricing formula; the Illinois Power Agency shall approve
11 the amount of budgeted miscellaneous net revenue to be
12 included in the pricing formula if it determines the
13 budgeted amount to be reasonable and accurate;

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

21 (5) allocate the nameplate capacity of the clean coal
22 SNG by total therms sold to ultimate customers by each gas
23 utility in 2008; provided, however, no utility shall be
24 required to purchase more than 42% of the projected annual
25 output of the facility; additionally, the Illinois Power
26 Agency shall further adjust the allocation only as required

1 to take into account (A) adverse consolidation,
2 derivative, or lease impacts to the balance sheet or income
3 statement of any gas utility or (B) the physical capacity
4 of the gas utility to accept SNG.

5 If the parties to the contract do not agree on the terms
6 therein, then the Illinois Power Agency shall retain an
7 independent mediator to mediate the dispute between the
8 parties. If the parties are in agreement on the terms of the
9 contract, then the Illinois Power Agency shall approve the
10 contract. If after mediation the parties have failed to come to
11 agreement, then the Illinois Power Agency shall revise the
12 draft contract as necessary to confirm that the contract
13 contains only terms that are reasonable and equitable. The
14 Illinois Power Agency may, in its discretion, retain an
15 independent, qualified, and experienced expert to assist in its
16 obligations under this subsection (h). The Illinois Power
17 Agency shall adopt and make public policies detailing the
18 processes for retaining a mediator and an expert under this
19 subsection (h). Any mediator or expert retained under this
20 subsection (h) shall be retained no later than 60 days after
21 August 2, 2011 ~~the effective date of this amendatory Act of the~~
22 ~~97th General Assembly.~~

23 The Illinois Power Agency shall complete all of its
24 responsibilities under this subsection (h) within 60 days after
25 August 2, 2011 ~~the effective date of this amendatory Act of the~~
26 ~~97th General Assembly.~~ The clean coal SNG facility shall pay a

1 reasonable fee as required by the Illinois Power Agency for its
2 services under this subsection (h) and shall pay the mediator's
3 and expert's reasonable fees, if any. A gas utility and its
4 customers shall have no obligation to reimburse the clean coal
5 SNG facility or the Illinois Power Agency of any such costs.

6 Within 30 days after commercial production of SNG has
7 begun, the Commission shall initiate a review to determine
8 whether the final capitalized plant cost of the clean coal SNG
9 facility reflects actual incurred costs and whether the
10 incurred costs were reasonable. In determining the actual
11 incurred costs included in the final capitalized plant cost and
12 the reasonableness of those costs, the Commission may in its
13 discretion retain independent, qualified, and experienced
14 experts to assist in its determination. The expert shall not
15 own or control any direct or indirect interest in the clean
16 coal SNG facility and shall have no contractual relationship
17 with the clean coal SNG facility. If an expert is retained by
18 the Commission, then the clean coal SNG facility shall pay the
19 expert's reasonable fees. The fees shall not be passed on to a
20 utility or its customers. The Commission shall adopt and make
21 public a policy detailing the process for retaining experts
22 under this subsection (h).

23 Within 30 days after completion of its review, the
24 Commission shall initiate a formal proceeding on the final
25 capitalized plant cost of the clean coal SNG facility at which
26 comments and testimony may be submitted by any interested

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

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

22 (h-1) Any Illinois gas utility may enter into a sourcing
23 agreement for up to 30 years of supply with the clean coal SNG
24 brownfield facility if the clean coal SNG brownfield facility
25 has commenced construction. Any gas utility that is providing
26 service to more than 150,000 customers on July 13, 2011 (the

1 effective date of Public Act 97-096) ~~this amendatory Act of the~~
2 ~~97th General Assembly~~ shall either elect to file biennial rate
3 proceedings before the Commission in the years 2012, 2014, and
4 2016 or enter into a sourcing agreement or sourcing agreements
5 with a clean coal SNG brownfield facility with an initial term
6 of 30 years for either (i) a percentage of 43,500,000,000 cubic
7 feet per year, such that the utilities entering into sourcing
8 agreements with the clean coal SNG brownfield facility purchase
9 100%, allocated by total therms sold to ultimate customers by
10 each gas utility in 2008 or (ii) such lesser amount as may be
11 available from the clean coal SNG brownfield facility; provided
12 that no utility shall be required to purchase more than 42% of
13 the projected annual output of the clean coal SNG brownfield
14 facility, with the remainder of such utility's obligation to be
15 divided proportionately between the other utilities, and
16 provided that the Illinois Power Agency shall further adjust
17 the allocation only as required to take into account adverse
18 consolidation, derivative, or lease impacts to the balance
19 sheet or income statement of any gas utility.

20 A gas utility electing to file biennial rate proceedings
21 before the Commission must file a notice of its election with
22 the Commission within 60 days after July 13, 2011 ~~the effective~~
23 ~~date of this amendatory Act of the 97th General Assembly~~ or its
24 right to make the election is irrevocably waived. A gas utility
25 electing to file biennial rate proceedings shall make such
26 filings no later than August 1 of the years 2012, 2014, and

1 2016, consistent with all requirements of 83 Ill. Adm. Code 255
2 and 285 as though the gas utility were filing for an increase
3 in its rates, without regard to whether such filing would
4 produce an increase, a decrease, or no change in the gas
5 utility's rates, and notwithstanding any other provisions of
6 this Act, the Commission shall fully review the gas utility's
7 filing and shall issue its order in accordance with the
8 provisions of Section 9-201 of this Act, regardless of whether
9 the Commission has approved a formula rate for the gas utility.

10 Within 15 days after July 13, 2011 ~~the effective date of~~
11 ~~this amendatory Act of the 97th General Assembly~~, the owner of
12 the clean coal SNG brownfield facility shall submit to the
13 Illinois Power Agency and each gas utility that is providing
14 service to more than 150,000 customers on July 13, 2011 ~~the~~
15 ~~effective date of this amendatory Act of the 97th General~~
16 ~~Assembly~~ a copy of a draft sourcing agreement. Within 45 days
17 after receipt of the draft sourcing agreement, each such gas
18 utility shall provide the Illinois Power Agency and the owner
19 of a clean coal SNG brownfield facility with its comments and
20 recommended revisions to the draft sourcing agreement. Within
21 15 days after the receipt of the gas utility's comments and
22 recommended revisions, the owner of the clean coal SNG
23 brownfield facility shall submit its responsive comments and a
24 further revised draft of the sourcing agreement to the Illinois
25 Power Agency. The Illinois Power Agency shall review the draft
26 sourcing agreement and comments.

1 If the parties to the sourcing agreement do not agree on
2 the terms therein, then the Illinois Power Agency shall retain
3 an independent mediator to mediate the dispute between the
4 parties. If the parties are in agreement on the terms of the
5 sourcing agreement, the Illinois Power Agency shall approve the
6 final draft sourcing agreement. If after mediation the parties
7 have failed to come to agreement, then the Illinois Power
8 Agency shall revise the draft sourcing agreement as necessary
9 to confirm that the final draft sourcing agreement contains
10 only terms that are reasonable and equitable. The Illinois
11 Power Agency shall adopt and make public a policy detailing the
12 process for retaining a mediator under this subsection (h-1).
13 Any mediator retained to assist with mediating disputes between
14 the parties regarding the sourcing agreement shall be retained
15 no later than 60 days after July 13, 2011 ~~the effective date of~~
16 ~~this amendatory Act of the 97th General Assembly.~~

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

1 under this Section.

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

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

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

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

22 (4) The clean coal SNG brownfield facility guarantees a
23 minimum of \$100,000,000 in consumer savings to customers of
24 the utilities that have entered into sourcing agreements
25 with the clean coal SNG brownfield facility, calculated in
26 real 2010 dollars at the conclusion of the term of the

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

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

23 "Consumer protection reserve account principal maximum
24 amount" shall mean the maximum amount of principal to be
25 maintained in the consumer protection reserve account.
26 During the first 2 years of operation of the facility,

1 there shall be no consumer protection reserve account
2 maximum amount. After the first 2 years of operation of the
3 facility, the consumer protection reserve account maximum
4 amount shall be \$150,000,000. After 5 years of operation,
5 and every 5 years thereafter, the trustee shall calculate
6 the 5-year average balance of the consumer protection
7 reserve account. If the trustee determines that during the
8 prior 5 years the consumer protection reserve account has
9 had an average account balance of less than \$75,000,000,
10 then the consumer protection reserve account principal
11 maximum amount shall be increased by \$5,000,000. If the
12 trustee determines that during the prior 5 years the
13 consumer protection reserve account has had an average
14 account balance of more than \$75,000,000, then the consumer
15 protection reserve account principal maximum amount shall
16 be decreased by \$5,000,000.

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

20 (7) Fifty percent of all additional net revenue,
21 defined as miscellaneous net revenue from products
22 produced by the facility and delivered during the month
23 after cost allowance for costs associated with additional
24 net revenue that are not otherwise recoverable pursuant to
25 subsection (h-3) of this Section, including net revenue
26 from sales of substitute natural gas derived from the

1 facility above the nameplate capacity of the facility and
2 other by-products produced by the facility, shall be
3 credited to the consumer protection reserve account
4 pursuant to subsection (h-2) of this Section.

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

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

26 (10) Title to the SNG shall pass at a mutually

1 agreeable point in Illinois, and may provide that, rather
2 than the utility taking title to the SNG, a mutually agreed
3 upon third-party gas marketer pursuant to a contract
4 approved by the Illinois Power Agency or its designee may
5 take title to the SNG pursuant to an agreement between the
6 utility, the owner of the clean coal SNG brownfield
7 facility, and the third-party gas marketer.

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

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

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

20 (14) Nothing in the sourcing agreement will require a
21 utility to construct any facilities to accept delivery of
22 SNG. Provided, however, if a utility is required by law or
23 otherwise elects to connect the clean coal SNG brownfield
24 facility to an interstate pipeline, then the utility shall
25 be entitled to recover pursuant to its tariffs all just and
26 reasonable costs that are prudently incurred. Any costs

1 incurred by the utility to receive, deliver, manage, or
2 otherwise accommodate purchases under the SNG sourcing
3 agreement will be fully recoverable through a utility's
4 purchased gas adjustment clause rider mechanism in
5 conjunction with a SNG brownfield facility rider
6 mechanism. The SNG brownfield facility rider mechanism (A)
7 shall be applicable to all customers who receive
8 transportation service from the utility, (B) shall be
9 designed to have an equal percent impact on the
10 transportation services rates of each class of the
11 utility's customers, and (C) shall accurately reflect the
12 net consumer savings, if any, and above-market costs, if
13 any, associated with the utility receiving, delivering,
14 managing, or otherwise accommodating purchases under the
15 SNG sourcing agreement.

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

19 (16) The clean coal SNG brownfield facility shall make
20 a good faith effort to ensure that an amount equal to not
21 less than 15% of the value of its prime construction
22 contract for the facility shall be established as a goal to
23 be awarded to minority owned businesses, female owned
24 businesses, and businesses owned by a person with a
25 disability; provided that at least 75% of the amount of
26 such total goal shall be for minority owned businesses.

1 "Minority owned business", "female owned business", and
2 "business owned by a person with a disability" shall have
3 the meanings ascribed to them in Section 2 of the Business
4 Enterprise for Minorities, Females and Persons with
5 Disabilities Act.

6 (17) Prior to the clean coal SNG brownfield facility
7 issuing a notice to proceed to construction, the clean coal
8 SNG brownfield facility shall file with the Commission a
9 certificate from an independent engineer that the clean
10 coal SNG brownfield facility has (A) obtained all
11 applicable State and federal environmental permits
12 required for construction; (B) obtained approval from the
13 Commission of a carbon capture and sequestration plan; and
14 (C) obtained all necessary permits required for
15 construction for the transportation and sequestration of
16 carbon dioxide as set forth in the Commission-approved
17 carbon capture and sequestration plan.

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

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

16 (1) The clean coal SNG brownfield facility monthly
17 shall calculate (A) the difference between the monthly
18 delivered SNG price and the Chicago City-gate price, by
19 comparing the delivered SNG price, which shall include the
20 cost of transportation to the delivery point, if any, to
21 the Chicago City-gate price on a weighted daily basis for
22 each day of the prior month based upon a mutually agreed
23 upon published index and (B) the overage amount, if any, by
24 calculating the annualized incremental additional cost, if
25 any, of the delivered SNG in excess of 2.015% of the
26 average annual inflation-adjusted amounts paid by all gas

1 distribution customers in connection with natural gas
2 service during the 5 years ending May 31, 2010.

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

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

9 (B) to the extent the monthly delivered SNG price
10 is less than or equal to the Chicago City-gate price,
11 the utility shall credit the difference between the
12 monthly delivered SNG price and the monthly Chicago
13 City-gate price, if any, to the consumer protection
14 reserve account. Such credit issued pursuant to this
15 paragraph (B) shall be deemed prudent and reasonable
16 and not subject to a Commission prudence review;

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

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

1 to a Commission prudence review;

2 (B) any amounts in the consumer protection reserve
3 account in excess of the consumer protection reserve
4 account principal maximum amount shall be distributed
5 as follows: (i) if retail customers have not realized
6 net consumer savings, calculated by comparing the
7 delivered SNG price to the weighted average of the
8 daily Chicago City-gate price on a daily basis over the
9 entire term of the sourcing agreement to date, then 50%
10 of any amounts in the consumer protection reserve
11 account in excess of the consumer protection reserve
12 account principal maximum shall be distributed to the
13 clean coal SNG brownfield facility, with the remaining
14 50% of any such additional amounts being credited to
15 retail customers, and (ii) if retail customers have
16 realized net consumer savings, then 100% of any amounts
17 in the consumer protection reserve account in excess of
18 the consumer protection reserve account principal
19 maximum shall be distributed to the clean coal SNG
20 brownfield facility; provided, however, that under no
21 circumstances shall the total cumulative amount
22 distributed to the clean coal SNG brownfield facility
23 under this subparagraph (B) exceed \$150,000,000;

24 (C) to the extent there is an overage amount, after
25 distributing the amounts pursuant to subparagraph (B)
26 of this paragraph (3), if any, the consumer protection

1 reserve account shall be used to provide a credit to
2 reduce the SNG price by an amount equal to the overage
3 amount;

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

24 (4) Fifty percent of all additional net revenue,
25 defined as miscellaneous net revenue after cost allowance
26 for costs associated with additional net revenue that are

1 not otherwise recoverable pursuant to subsection (h-3) of
2 this Section, including net revenue from sales of
3 substitute natural gas derived from the facility above the
4 nameplate capacity of the facility and other by-products
5 produced by the facility, shall be credited to the consumer
6 protection reserve account.

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

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

1 except the original senior secured lender to the extent
2 that the original senior secured lender has any senior
3 secured debt outstanding, including any clean coal SNG
4 brownfield facility parent companies or affiliates.

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

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

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

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

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

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

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

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

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

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

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

26 Any facility that fails to file a report required under

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

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

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

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

1 the Capital Development Board deems appropriate to be
2 recovered in the capital recovery charge.

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

20 The Capital Development Board shall retain an
21 engineering expert to assist in determining both the
22 range of capital costs and the range of operations and
23 maintenance costs that it believes would be reasonable
24 for the clean coal SNG brownfield facility to recover
25 under the sourcing agreement. Provided, however, that
26 such expert shall: (i) not have been involved in the

1 clean coal SNG brownfield facility's facility cost
2 report, if any, (ii) not own or control any direct or
3 indirect interest in the initial clean coal facility,
4 and (iii) have no contractual relationship with the
5 clean coal SNG brownfield facility. In order to qualify
6 as an independent expert, a person or company must
7 have:

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

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

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

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

26 (v) expertise in operations and maintenance

1 which may be particularized to the specific type of
2 operations and maintenance associated with the
3 clean coal SNG brownfield facility;

4 (vi) expertise in credit and contract
5 protocols;

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

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

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

1 announce the range of capital costs submitted by the
2 Capital Development Board.

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

21 The Capital Development Board shall monitor the
22 construction of the clean coal SNG brownfield facility
23 for the full duration of construction to assess
24 potential cost overruns. The Capital Development
25 Board, in its discretion, may retain an expert to
26 facilitate such monitoring. The clean coal SNG

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

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

26 In determining the return on equity, the

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

25 (2) Operations and maintenance costs approved by the
26 Commission shall be recoverable by the clean coal SNG

1 brownfield facility under the sourcing agreement. The
2 operations and maintenance costs mean costs that have been
3 incurred for the administration, supervision, operation,
4 maintenance, preservation, and protection of the clean
5 coal SNG brownfield facility's physical plant.

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

1 engineering expert to assist in determining both the range
2 of operations and maintenance costs that it believes would
3 be reasonable for the clean coal SNG brownfield facility to
4 recover under the sourcing agreement. The clean coal SNG
5 brownfield facility and the Illinois Power Agency shall
6 cooperate with the Capital Development Board in any
7 investigation it deems necessary. The Capital Development
8 Board shall make its final determination of the range of
9 operations and maintenance costs confidentially and shall
10 submit that range to the Commission in a confidential
11 filing within 120 days after July 13, 2011 ~~the effective~~
12 ~~date of this amendatory Act of the 97th General Assembly.~~

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

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

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

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

- 1 (A) capture carbon dioxide;
- 2 (B) build, operate, and maintain a sequestration
3 site in which carbon dioxide may be injected;
- 4 (C) build, operate, and maintain a carbon dioxide
5 pipeline; and
- 6 (D) transport the carbon dioxide to the
7 sequestration site or a pipeline.

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

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

1 due to circumstances beyond the clean coal SNG brownfield
2 facility's control; and (iii) the clean coal SNG brownfield
3 facility took all reasonable steps to mitigate the costs.
4 If the Commission determines that sequestration costs may
5 be increased, the Commission shall provide for notice and a
6 public hearing for approval of the increased sequestration
7 costs.

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

1 prior to the conclusion of that process, fuel shall be
2 purchased by the company month-by-month on the spot market
3 and those actual delivered and processed fuel costs shall
4 be recoverable under the sourcing agreement.

5 (5) Taxes and fees imposed by the federal government,
6 the State, or any unit of local government applicable to
7 the clean coal SNG brownfield facility, excluding income
8 tax, shall be recoverable by the clean coal SNG brownfield
9 facility under the sourcing agreement to the extent such
10 taxes and fees were not applicable to the facility on July
11 13, 2011 ~~the date of this amendatory Act of the 97th~~
12 ~~General Assembly.~~

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

20 (7) Unless otherwise provided, within 30 days after a
21 decision of the Commission on recoverable costs under this
22 Section, any interested party to the Commission's decision
23 may apply for a rehearing with respect to the decision. The
24 Commission shall receive and consider the application for
25 rehearing and shall grant or deny the application in whole
26 or in part within 20 days after the date of the receipt of

1 the application by the Commission. If no rehearing is
2 applied for within the required 30 days or an application
3 for rehearing is denied, then the Commission decision shall
4 be final. If an application for rehearing is granted, then
5 the Commission shall hold a rehearing within 30 days after
6 granting the application. The decision of the Commission
7 upon rehearing shall be final.

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

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

26 (h-4) No later than 90 days after the Illinois Power Agency

1 submits the final draft sourcing agreement pursuant to
2 subsection (h-1), the Commission shall approve a sourcing
3 agreement containing (i) the capital costs, rate of return, and
4 operations and maintenance costs established pursuant to
5 subsection (h-3) and (ii) all other terms and conditions,
6 rights, provisions, exceptions, and limitations contained in
7 the final draft sourcing agreement; provided, however, the
8 Commission shall correct typographical and scrivener's errors
9 and modify the contract only as necessary to provide that the
10 gas utility does not have the right to terminate the sourcing
11 agreement due to any future events that may occur other than
12 the clean coal SNG brownfield facility's failure to timely meet
13 milestones, uncured default, extended force majeure, or
14 abandonment. Once the sourcing agreement is approved, then the
15 gas utility subject to that sourcing agreement shall have 45
16 days after the date of the Commission's approval to enter into
17 the sourcing agreement.

18 (h-5) Sequestration enforcement.

19 (A) All contracts entered into under subsection (h) of
20 this Section ~~Act~~ and all sourcing agreements under
21 subsection (h-1) of this Section ~~Act~~, regardless of
22 duration, shall require the owner of any facility supplying
23 SNG under the contract or sourcing agreement to provide
24 certified documentation to the Commission each year,
25 starting in the facility's first year of commercial
26 operation, accurately reporting the quantity of carbon

1 dioxide emissions from the facility that have been captured
2 and sequestered and reporting any quantities of carbon
3 dioxide released from the site or sites at which carbon
4 dioxide emissions were sequestered in prior years, based on
5 continuous monitoring of those sites.

6 (B) If, in any year, the owner of the clean coal SNG
7 facility fails to demonstrate that the SNG facility
8 captured and sequestered at least 90% of the total carbon
9 dioxide emissions that the facility would otherwise emit or
10 that sequestration of emissions from prior years has
11 failed, resulting in the release of carbon dioxide into the
12 atmosphere, then the owner of the clean coal SNG facility
13 must pay a penalty of \$20 per ton of excess carbon dioxide
14 emissions not to exceed \$40,000,000, in any given year
15 which shall be deposited into the Energy Efficiency Trust
16 Fund and distributed pursuant to subsection (b) of Section
17 6-6 of the Renewable Energy, Energy Efficiency, and Coal
18 Resources Development Law of 1997. On or before the 5-year
19 anniversary of the execution of the contract and every 5
20 years thereafter, an expert hired by the owner of the
21 facility with the approval of the Attorney General shall
22 conduct an analysis to determine the cost of sequestration
23 of at least 90% of the total carbon dioxide emissions the
24 plant would otherwise emit. If the analysis shows that the
25 actual annual cost is greater than the penalty, then the
26 penalty shall be increased to equal the actual cost.

1 Provided, however, to the extent that the owner of the
2 facility described in subsection (h) of this Section Act
3 can demonstrate that the failure was as a result of acts of
4 God (including fire, flood, earthquake, tornado,
5 lightning, hurricane, or other natural disaster); any
6 amendment, modification, or abrogation of any applicable
7 law or regulation that would prevent performance; war;
8 invasion; act of foreign enemies; hostilities (regardless
9 of whether war is declared); civil war; rebellion;
10 revolution; insurrection; military or usurped power or
11 confiscation; terrorist activities; civil disturbance;
12 riots; nationalization; sabotage; blockage; or embargo,
13 the owner of the facility described in subsection (h) of
14 this Section Act shall not be subject to a penalty if and
15 only if (i) it promptly provides notice of its failure to
16 the Commission; (ii) as soon as practicable and consistent
17 with any order or direction from the Commission, it submits
18 to the Commission proposed modifications to its carbon
19 capture and sequestration plan; and (iii) it carries out
20 its proposed modifications in the manner and time directed
21 by the Commission.

22 If the Commission finds that the facility has not
23 satisfied each of these requirements, then the facility
24 shall be subject to the penalty. If the owner of the clean
25 coal SNG facility captured and sequestered more than 90% of
26 the total carbon dioxide emissions that the facility would

1 otherwise emit, then the owner of the facility may credit
2 such additional amounts to reduce the amount of any future
3 penalty to be paid. The penalty resulting from the failure
4 to capture and sequester at least the minimum amount of
5 carbon dioxide shall not be passed on to a utility or its
6 customers.

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

21 Compliance with the sequestration requirements and any
22 penalty requirements specified in this subsection (h-5)
23 for the clean coal SNG facility shall be assessed annually
24 by the Commission, which may in its discretion retain an
25 expert to facilitate its assessment. If any expert is
26 retained by the Commission, then the clean coal SNG

1 facility shall pay for the expert's reasonable fees, and
2 such costs shall not be passed through to the utility or
3 its customers.

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

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

1 ~~subsection (h) of this Act described in subsection (h) of~~
2 ~~this Act~~

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

1 provides notice of its failure to the Commission; (ii) as
2 soon as practicable and consistent with any order or
3 direction from the Commission, it submits to the Commission
4 proposed modifications to its carbon capture and
5 sequestration plan; and (iii) it carries out its proposed
6 modifications in the manner and time directed by the
7 Commission. If the Commission finds that the facility has
8 not satisfied each of these requirements, then the facility
9 shall be subject to the penalty. If the owner of a clean
10 coal SNG brownfield facility demonstrates that the clean
11 coal SNG brownfield facility captured and sequestered more
12 than 85% of the total carbon emissions that the facility
13 would otherwise emit, the owner of the clean coal SNG
14 brownfield facility may credit such additional amounts to
15 reduce the amount of any future penalty to be paid. The
16 penalty resulting from the failure to capture and sequester
17 at least the minimum amount of carbon dioxide shall not be
18 passed on to a utility or its customers.

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

1 coal SNG brownfield facility agrees to waive any objections
2 to venue or to the jurisdiction of the court with regard to
3 the Attorney General's action for specific performance
4 under this subsection (h-5). ~~for the facility described in~~
5 ~~subsection (h) of this Act described in subsection (h) of~~
6 ~~this Act~~

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

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

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

25 (1) No clean coal facility or clean coal SNG brownfield
26 facility may transport or sequester carbon dioxide unless

1 the Commission approves the method of carbon dioxide
2 transportation or sequestration. Such approval shall be
3 required regardless of whether the facility has contracted
4 with another to transport or sequester the carbon dioxide.
5 Nothing in this subsection (h-7) shall release the owner or
6 operator of a carbon dioxide sequestration site or carbon
7 dioxide pipeline from any other permitting requirements
8 under applicable State and federal laws, statutes, rules,
9 or regulations.

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

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

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

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

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

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

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

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

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

14 In circumstances whereby a carbon dioxide pipeline
15 creates a substantial danger to the environment or to the
16 public health of persons or to the welfare of persons where
17 such danger is to the livelihood of such persons, the
18 State's Attorney or Attorney General, upon the request of
19 the Commission or on his or her own motion, may institute a
20 civil action for an immediate injunction to halt any
21 discharge or other activity causing or contributing to the
22 danger or to require such other action as may be necessary.
23 The court may issue an ex parte order and shall schedule a
24 hearing on the matter not later than 3 working days after
25 the date of injunction. The Commission shall provide notice
26 of any such actions as soon as possible on its website. The

1 SNG facility shall incur all reasonable costs associated
2 with any such inspection or monitoring of the sequestration
3 sites, and these costs shall not be recoverable from a
4 utility or its customers.

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

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

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

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

20 These pledges are for the benefit of the parties to those
21 sourcing agreements and the issuers and holders of bonds or
22 other obligations issued or incurred to finance or refinance
23 the clean coal SNG brownfield facility. The clean coal SNG
24 brownfield facility is authorized to include and refer to these
25 pledges in any financing agreement into which it may enter in
26 regard to those sourcing agreements.

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

20 (h-10) Contract costs for SNG incurred by an Illinois gas
21 utility are reasonable and prudent and recoverable through the
22 purchased gas adjustment clause and are not subject to review
23 or disallowance by the Commission. Contract costs are costs
24 incurred by the utility under the terms of a contract that
25 incorporates the terms stated in subsection (h) of this Section
26 as confirmed in writing by the Illinois Power Agency as set

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

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

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

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

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

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

26 (1) The clean coal SNG facility shall conduct an

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

26 (A) To the extent the annual average contract SNG

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

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

24 (2) At the conclusion of the term of the SNG contracts
25 pursuant to subsection (h) and the completion of the final
26 annual analysis pursuant to this subsection (h-15), to the

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

16 If, at the conclusion of the term of the contracts
17 pursuant to subsection (h) and the completion of the final
18 annual analysis pursuant to this subsection (h-15), the
19 facility owes any amount to retail customers and the
20 account has been depleted, then the clean coal SNG facility
21 shall be liable for any remaining amount owed to the retail
22 customers. The clean coal SNG facility shall market the
23 daily production of SNG and distribute on a monthly basis
24 5% of the amounts collected with respect to such future
25 sales to the utilities in proportion to each utility's SNG
26 contract to be used to reduce the utility's natural gas

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

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

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

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

7 (A) the revenue share target amount;

8 (B) the amount credited or debited to the
9 reconciliation account during the year;

10 (C) the amount credited to the utilities to be used
11 to reduce the utilities natural gas costs though the
12 purchase gas adjustment clause;

13 (D) the total amount of reconciliation account at
14 the beginning and end of the year;

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

17 (F) any additional information the Commission may
18 require.

19 When any report is erroneous or defective or appears to the
20 Commission to be erroneous or defective, the Commission may
21 notify the clean coal SNG facility to amend the report within
22 30 days; before or after the termination of the 30-day period,
23 the Commission may examine the trustee of the reconciliation
24 account or the officers, agents, employees, books, records, or
25 accounts of the clean coal SNG facility and correct such items
26 in the report as upon such examination the Commission may find

1 defective or erroneous. All reports shall be under oath.

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

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

19 Any person who willfully makes any false report to the
20 Commission or to any member, officer, or employee thereof, any
21 person who willfully in a report withholds or fails to provide
22 material information to which the Commission is entitled under
23 this paragraph (4) and which information is either required to
24 be filed by statute, rule, regulation, order, or decision of
25 the Commission or has been requested by the Commission, and any
26 person who willfully aids or abets such person shall be guilty

1 of a Class A misdemeanor.

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

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

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

1 beneficiaries are authorized to include and refer to these
2 pledges in any finance agreement into which they may enter in
3 regard to such contracts.

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

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

17 (Source: P.A. 96-1364, eff. 7-28-10; 97-96, eff. 7-13-11;
18 97-239, eff. 8-2-11; revised 9-12-11.)

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