

1 AN ACT concerning regulation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 Any gas utility that is providing service to more than
23 150,000 customers on August 2, 2011 (the effective date of
24 Public Act 97-239) shall either elect to enter into a contract
25 on or before September 30, 2011 for 10 years of SNG supply with
26 the owner of a clean coal SNG facility or to file biennial rate

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

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

24 During its review of the draft contract, the Illinois Power
25 Agency shall:

26 (1) review and confirm in writing that the terms stated

1 in this subsection (h) are incorporated in the SNG
2 contract;

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

20 (3) review and approve the amount of budgeted
21 miscellaneous net revenue after cost allowance, including
22 sale of SNG produced by the clean coal SNG facility above
23 the nameplate capacity of the facility and other
24 by-products produced by the facility, to be included in the
25 pricing formula; the Illinois Power Agency shall approve
26 the amount of budgeted miscellaneous net revenue to be

1 included in the pricing formula if it determines the
2 budgeted amount to be reasonable and accurate;

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

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

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

1 draft contract as necessary to confirm that the contract
2 contains only terms that are reasonable and equitable. The
3 Illinois Power Agency may, in its discretion, retain an
4 independent, qualified, and experienced expert to assist in its
5 obligations under this subsection (h). The Illinois Power
6 Agency shall adopt and make public policies detailing the
7 processes for retaining a mediator and an expert under this
8 subsection (h). Any mediator or expert retained under this
9 subsection (h) shall be retained no later than 60 days after
10 August 2, 2011.

11 The Illinois Power Agency shall complete all of its
12 responsibilities under this subsection (h) within 60 days after
13 August 2, 2011. The clean coal SNG facility shall pay a
14 reasonable fee as required by the Illinois Power Agency for its
15 services under this subsection (h) and shall pay the mediator's
16 and expert's reasonable fees, if any. A gas utility and its
17 customers shall have no obligation to reimburse the clean coal
18 SNG facility or the Illinois Power Agency of any such costs.

19 Within 30 days after commercial production of SNG has
20 begun, the Commission shall initiate a review to determine
21 whether the final capitalized plant cost of the clean coal SNG
22 facility reflects actual incurred costs and whether the
23 incurred costs were reasonable. In determining the actual
24 incurred costs included in the final capitalized plant cost and
25 the reasonableness of those costs, the Commission may in its
26 discretion retain independent, qualified, and experienced

1 experts to assist in its determination. The expert shall not
2 own or control any direct or indirect interest in the clean
3 coal SNG facility and shall have no contractual relationship
4 with the clean coal SNG facility. If an expert is retained by
5 the Commission, then the clean coal SNG facility shall pay the
6 expert's reasonable fees. The fees shall not be passed on to a
7 utility or its customers. The Commission shall adopt and make
8 public a policy detailing the process for retaining experts
9 under this subsection (h).

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

1 revenue that would have been obtained based upon the same
2 volume, from the price revised by the Commission. Any refund
3 shall include interest calculated at a rate determined by the
4 Commission and shall be returned according to procedures
5 prescribed by the Commission.

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

9 (h-1) Any Illinois gas utility may enter into a sourcing
10 agreement for up to 30 years of supply with the clean coal SNG
11 brownfield facility if the clean coal SNG brownfield facility
12 has commenced construction. Any gas utility that is providing
13 service to more than 150,000 customers on July 13, 2011 (the
14 effective date of Public Act 97-096) shall either elect to file
15 biennial rate proceedings before the Commission in the years
16 2012, 2014, and 2016 or enter into a sourcing agreement or
17 sourcing agreements with a clean coal SNG brownfield facility
18 with an initial term of 30 years for either (i) a percentage of
19 43,500,000,000 cubic feet per year, such that the utilities
20 entering into sourcing agreements with the clean coal SNG
21 brownfield facility purchase 100%, allocated by total therms
22 sold to ultimate customers by each gas utility in 2008 or (ii)
23 such lesser amount as may be available from the clean coal SNG
24 brownfield facility; provided that no utility shall be required
25 to purchase more than 42% of the projected annual output of the
26 clean coal SNG brownfield facility, with the remainder of such

1 utility's obligation to be divided proportionately between the
2 other utilities, and provided that the Illinois Power Agency
3 shall further adjust the allocation only as required to take
4 into account adverse consolidation, derivative, or lease
5 impacts to the balance sheet or income statement of any gas
6 utility.

7 A gas utility electing to file biennial rate proceedings
8 before the Commission must file a notice of its election with
9 the Commission within 60 days after July 13, 2011 or its right
10 to make the election is irrevocably waived. A gas utility
11 electing to file biennial rate proceedings shall make such
12 filings no later than August 1 of the years 2012, 2014, and
13 2016, consistent with all requirements of 83 Ill. Adm. Code 255
14 and 285 as though the gas utility were filing for an increase
15 in its rates, without regard to whether such filing would
16 produce an increase, a decrease, or no change in the gas
17 utility's rates, and notwithstanding any other provisions of
18 this Act, the Commission shall fully review the gas utility's
19 filing and shall issue its order in accordance with the
20 provisions of Section 9-201 of this Act, regardless of whether
21 the Commission has approved a formula rate for the gas utility.

22 Within 15 days after July 13, 2011, the owner of the clean
23 coal SNG brownfield facility shall submit to the Illinois Power
24 Agency and each gas utility that is providing service to more
25 than 150,000 customers on July 13, 2011 a copy of a draft
26 sourcing agreement. Within 45 days after receipt of the draft

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

11 If the parties to the sourcing agreement do not agree on
12 the terms therein, then the Illinois Power Agency shall retain
13 an independent mediator to mediate the dispute between the
14 parties. If the parties are in agreement on the terms of the
15 sourcing agreement, the Illinois Power Agency shall approve the
16 final draft sourcing agreement. If after mediation the parties
17 have failed to come to agreement, then the Illinois Power
18 Agency shall revise the draft sourcing agreement as necessary
19 to confirm that the final draft sourcing agreement contains
20 only terms that are reasonable and equitable. The Illinois
21 Power Agency shall adopt and make public a policy detailing the
22 process for retaining a mediator under this subsection (h-1).
23 Any mediator retained to assist with mediating disputes between
24 the parties regarding the sourcing agreement shall be retained
25 no later than 60 days after July 13, 2011.

26 Upon approval of a final draft agreement, the Illinois

1 Power Agency shall submit the final draft agreement to the
2 Capital Development Board and the Commission no later than 90
3 days after July 13, 2011. The gas utility and the clean coal
4 SNG brownfield facility shall pay a reasonable fee as required
5 by the Illinois Power Agency for its services under this
6 subsection (h-1) and shall pay the mediator's reasonable fees,
7 if any. The Illinois Power Agency shall adopt and make public a
8 policy detailing the process for retaining a mediator under
9 this Section.

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

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

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

26 (3) The sourcing agreement has an initial term that

1 once entered into terminates no more than 30 years after
2 the commencement of the commercial production of SNG at the
3 clean coal SNG brownfield facility.

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

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

1 agreed upon by the clean coal SNG brownfield facility, the
2 utilities, and the Commission in an interest-bearing
3 account in accordance with subsection (h-2) of this
4 Section.

5 "Consumer protection reserve account principal maximum
6 amount" shall mean the maximum amount of principal to be
7 maintained in the consumer protection reserve account.
8 During the first 2 years of operation of the facility,
9 there shall be no consumer protection reserve account
10 maximum amount. After the first 2 years of operation of the
11 facility, the consumer protection reserve account maximum
12 amount shall be \$150,000,000. After 5 years of operation,
13 and every 5 years thereafter, the trustee shall calculate
14 the 5-year average balance of the consumer protection
15 reserve account. If the trustee determines that during the
16 prior 5 years the consumer protection reserve account has
17 had an average account balance of less than \$75,000,000,
18 then the consumer protection reserve account principal
19 maximum amount shall be increased by \$5,000,000. If the
20 trustee determines that during the prior 5 years the
21 consumer protection reserve account has had an average
22 account balance of more than \$75,000,000, then the consumer
23 protection reserve account principal maximum amount shall
24 be decreased by \$5,000,000.

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

1 by the facility.

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

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

1 any, from the consumer protection reserve account pursuant
2 to subsection (h-2) of this Section. The delivered SNG
3 price per million Btu shall proportionately reflect these
4 elements over the term of the sourcing agreement.

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

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

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

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

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

1 gas.

2 (14) Nothing in the sourcing agreement will require a
3 utility to construct any facilities to accept delivery of
4 SNG. Provided, however, if a utility is required by law or
5 otherwise elects to connect the clean coal SNG brownfield
6 facility to an interstate pipeline, then the utility shall
7 be entitled to recover pursuant to its tariffs all just and
8 reasonable costs that are prudently incurred. Any costs
9 incurred by the utility to receive, deliver, manage, or
10 otherwise accommodate purchases under the SNG sourcing
11 agreement will be fully recoverable through a utility's
12 purchased gas adjustment clause rider mechanism in
13 conjunction with a SNG brownfield facility rider
14 mechanism. The SNG brownfield facility rider mechanism (A)
15 shall be applicable to all customers who receive
16 transportation service from the utility, (B) shall be
17 designed to have an equal percent impact on the
18 transportation services rates of each class of the
19 utility's customers, and (C) shall accurately reflect the
20 net consumer savings, if any, and above-market costs, if
21 any, associated with the utility receiving, delivering,
22 managing, or otherwise accommodating purchases under the
23 SNG sourcing agreement.

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

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

14 (17) Prior to the clean coal SNG brownfield facility
15 issuing a notice to proceed to construction, the clean coal
16 SNG brownfield facility shall file with the Commission a
17 certificate from an independent engineer that the clean
18 coal SNG brownfield facility has (A) obtained all
19 applicable State and federal environmental permits
20 required for construction; (B) obtained approval from the
21 Commission of a carbon capture and sequestration plan; and
22 (C) obtained all necessary permits required for
23 construction for the transportation and sequestration of
24 carbon dioxide as set forth in the Commission-approved
25 carbon capture and sequestration plan.

26 (h-2) Consumer protection reserve account. The clean coal

1 SNG brownfield facility shall guarantee a minimum of
2 \$100,000,000 in consumer savings to customers of the utilities
3 that have entered into sourcing agreements with the clean coal
4 SNG brownfield facility, calculated in real 2010 dollars at the
5 conclusion of the term of the sourcing agreement by comparing
6 the delivered SNG price to the Chicago City-gate price on a
7 weighted daily basis for each day over the entire term of the
8 sourcing agreement. Prior to the clean coal SNG brownfield
9 facility issuing a notice to proceed to construction, the clean
10 coal SNG brownfield facility shall establish a consumer
11 protection reserve account for the benefit of the retail
12 customers of the utilities that have entered into sourcing
13 agreements with the clean coal SNG brownfield facility pursuant
14 to subsection (h-1), with cash principal in the amount of
15 \$150,000,000. Such cash principal shall only be recovered
16 through the consumer protection reserve account and not as a
17 cost to be recovered in the delivered SNG price pursuant to
18 subsection (h-3) of this Section. The consumer protection
19 reserve account shall be maintained and administered by an
20 independent trustee that is mutually agreed upon by the clean
21 coal SNG brownfield facility, the utilities, and the Commission
22 in an interest-bearing account in accordance with the
23 following:

- 24 (1) The clean coal SNG brownfield facility monthly
25 shall calculate (A) the difference between the monthly
26 delivered SNG price and the Chicago City-gate price, by

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

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

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

17 (B) to the extent the monthly delivered SNG price
18 is less than or equal to the Chicago City-gate price,
19 the utility shall credit the difference between the
20 monthly delivered SNG price and the monthly Chicago
21 City-gate price, if any, to the consumer protection
22 reserve account. Such credit issued pursuant to this
23 paragraph (B) shall be deemed prudent and reasonable
24 and not subject to a Commission prudence review;

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

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

10 (B) any amounts in the consumer protection reserve
11 account in excess of the consumer protection reserve
12 account principal maximum amount shall be distributed
13 as follows: (i) if retail customers have not realized
14 net consumer savings, calculated by comparing the
15 delivered SNG price to the weighted average of the
16 daily Chicago City-gate price on a daily basis over the
17 entire term of the sourcing agreement to date, then 50%
18 of any amounts in the consumer protection reserve
19 account in excess of the consumer protection reserve
20 account principal maximum shall be distributed to the
21 clean coal SNG brownfield facility, with the remaining
22 50% of any such additional amounts being credited to
23 retail customers, and (ii) if retail customers have
24 realized net consumer savings, then 100% of any amounts
25 in the consumer protection reserve account in excess of
26 the consumer protection reserve account principal

1 maximum shall be distributed to the clean coal SNG
2 brownfield facility; provided, however, that under no
3 circumstances shall the total cumulative amount
4 distributed to the clean coal SNG brownfield facility
5 under this subparagraph (B) exceed \$150,000,000;

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

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

1 brownfield facility, and 100% of such additional
2 amounts shall be credited to the retail customers to
3 the extent the consumer protection reserve account
4 exceeds the consumer protection reserve account
5 principal maximum amount.

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

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

25 (6) If, at the conclusion of the term of the sourcing
26 agreement, the customers have not saved the minimum

1 \$100,000,000 in savings as guaranteed in this subsection
2 (h-2) and the consumer protection reserve account has been
3 depleted, then the clean coal SNG brownfield facility shall
4 be liable for any remaining amount owed to the retail
5 customers to the extent that the customers are provided
6 with the \$100,000,000 in savings as guaranteed in this
7 subsection (h-2). The retail customers shall have first
8 priority in recovering that debt above any creditors,
9 except the original senior secured lender to the extent
10 that the original senior secured lender has any senior
11 secured debt outstanding, including any clean coal SNG
12 brownfield facility parent companies or affiliates.

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

18 (8) The clean coal SNG brownfield facility shall each
19 month, starting in the facility's first year of commercial
20 operation, file with the Commission, in such form as the
21 Commission shall require, a report as to the consumer
22 protection reserve account. The monthly report must
23 contain the following information:

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

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

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

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

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

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

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

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

24 All reports made to the Commission by the clean coal
25 SNG brownfield facility and the contents of the reports
26 shall be open to public inspection and shall be deemed a

1 public record under the Freedom of Information Act. Such
2 reports shall be preserved in the office of the Commission.
3 The Commission shall publish an annual summary of the
4 reports prior to February 1 of the following year. The
5 annual summary shall be made available to the public on the
6 Commission's website and shall be submitted to the General
7 Assembly.

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

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

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

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

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

1 investigation it deems necessary.

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

16 (i) direct previous experience conducting
17 front-end engineering and design studies for
18 large-scale energy facilities and administering
19 large-scale energy operations and maintenance
20 contracts, which may be particularized to the
21 specific type of financing associated with the
22 clean coal SNG brownfield facility;

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

26 (iii) ten years of experience in the energy

1 sector, including construction and risk management
2 experience;

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

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

12 (vi) expertise in credit and contract
13 protocols;

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

17 (viii) the absence of a conflict of interest
18 and inappropriate bias for or against an affected
19 gas utility or the clean coal SNG brownfield
20 facility.

21 The clean coal SNG brownfield facility and the
22 Illinois Power Agency shall cooperate with the Capital
23 Development Board in any investigation it deems
24 necessary. The Capital Development Board shall make
25 its final determination of the range of capital costs
26 confidentially and shall submit that range to the

1 Commission in a confidential filing within 120 days
2 after July 13, 2011 (the effective date of Public Act
3 97-096). The clean coal SNG brownfield facility shall
4 submit to the Commission its estimate of the capital
5 costs to be recovered under the sourcing agreement.
6 Only after the clean coal SNG brownfield facility has
7 submitted this estimate shall the Commission publicly
8 announce the range of capital costs submitted by the
9 Capital Development Board.

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

1 brownfield facility.

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

19 (B) Rate of Return. No later than 30 days after the
20 date on which the Illinois Power Agency submits a final
21 draft sourcing agreement, the Commission shall hold a
22 public hearing to determine the rate of return to be
23 recovered under the sourcing agreement. Rate of return
24 shall be comprised of the clean coal SNG brownfield
25 facility's actual cost of debt, including
26 mortgage-style amortization, and a reasonable return

1 on equity. The Commission shall post notice of the
2 hearing on its website no later than 10 days prior to
3 the date of the hearing. The Commission shall provide
4 the public and all interested parties, including the
5 gas utilities, the Attorney General, and the Illinois
6 Power Agency, an opportunity to be heard.

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

1 clean coal brownfield facility. Within 30 days after
2 obtaining debt financing for the clean coal SNG
3 brownfield facility, the clean coal SNG brownfield
4 facility shall file a notice with the Commission
5 identifying the actual cost of debt.

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

13 The Capital Development Board shall calculate a range
14 of operations and maintenance costs that it believes would
15 be reasonable for the clean coal SNG brownfield facility to
16 recover under the sourcing agreement, incorporating an
17 inflation index or combination of inflation indices to most
18 accurately reflect the actual costs of operating the clean
19 coal SNG brownfield facility. In making this
20 determination, the Capital Development Board shall review
21 the facility cost report, if any, of the clean coal SNG
22 brownfield facility, adjusting the results for inflation
23 based on the change in the Annual Consumer Price Index for
24 All Urban Consumers for the Midwest Region as published in
25 April by the United States Department of Labor, Bureau of
26 Labor Statistics, the final draft of the sourcing

1 agreement, and the rate of return approved by the
2 Commission. In addition, the Capital Development Board may
3 consult as much as it deems necessary with the clean coal
4 SNG brownfield facility and conduct whatever research and
5 investigation it deems necessary. As set forth in
6 subparagraph (A) of paragraph (1) of this subsection (h-3),
7 the Capital Development Board shall retain an independent
8 engineering expert to assist in determining both the range
9 of operations and maintenance costs that it believes would
10 be reasonable for the clean coal SNG brownfield facility to
11 recover under the sourcing agreement. The clean coal SNG
12 brownfield facility and the Illinois Power Agency shall
13 cooperate with the Capital Development Board in any
14 investigation it deems necessary. The Capital Development
15 Board shall make its final determination of the range of
16 operations and maintenance costs confidentially and shall
17 submit that range to the Commission in a confidential
18 filing within 120 days after July 13, 2011.

19 The clean coal SNG brownfield facility shall submit to
20 the Commission its estimate of the operations and
21 maintenance costs to be recovered under the sourcing
22 agreement. Only after the clean coal SNG brownfield
23 facility has submitted this estimate shall the Commission
24 publicly announce the range of operations and maintenance
25 costs submitted by the Capital Development Board. In the
26 event that the estimate submitted by the clean coal SNG

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

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

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

7 (A) capture carbon dioxide;

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

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

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

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

23 The Commission may, in its discretion, retain an expert
24 to assist in its review of sequestration costs. The clean
25 coal SNG brownfield facility shall pay for the expert's
26 reasonable fees if an expert is retained by the Commission,

1 and such costs shall not be passed through to a utility or
2 its customers. Once made, the Commission's determination
3 of the amount of recoverable sequestration costs shall not
4 be increased unless the clean coal SNG brownfield facility
5 can show by clear and convincing evidence that (i) the
6 costs were not reasonably foreseeable; (ii) the costs were
7 due to circumstances beyond the clean coal SNG brownfield
8 facility's control; and (iii) the clean coal SNG brownfield
9 facility took all reasonable steps to mitigate the costs.
10 If the Commission determines that sequestration costs may
11 be increased, the Commission shall provide for notice and a
12 public hearing for approval of the increased sequestration
13 costs.

14 (4) Actual delivered and processed fuel costs shall be
15 set by the Illinois Power Agency through a SNG feedstock
16 procurement, pursuant to Sections 1-20, 1-77, and 1-78 of
17 the Illinois Power Agency Act, to be performed at least
18 every 5 years and purchased by the clean coal SNG
19 brownfield facility pursuant to feedstock procurement
20 contracts developed by the Illinois Power Agency, with coal
21 comprising at least 50% of the total feedstock over the
22 term of the sourcing agreement and petroleum coke
23 comprising the remainder of the SNG feedstock. If the
24 Commission fails to approve a feedstock procurement plan or
25 fails to approve the results of a feedstock procurement
26 event, then the fuel shall be purchased by the company

1 month-by-month on the spot market and those actual
2 delivered and processed fuel costs shall be recoverable
3 under the sourcing agreement. If a supplier defaults under
4 the terms of a procurement contract, then the Illinois
5 Power Agency shall immediately initiate a feedstock
6 procurement process to obtain a replacement supply, and,
7 prior to the conclusion of that process, fuel shall be
8 purchased by the company month-by-month on the spot market
9 and those actual delivered and processed fuel costs shall
10 be recoverable under the sourcing agreement.

11 (5) Taxes and fees imposed by the federal government,
12 the State, or any unit of local government applicable to
13 the clean coal SNG brownfield facility, excluding income
14 tax, shall be recoverable by the clean coal SNG brownfield
15 facility under the sourcing agreement to the extent such
16 taxes and fees were not applicable to the facility on July
17 13, 2011.

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

25 (7) Unless otherwise provided, within 30 days after a
26 decision of the Commission on recoverable costs under this

1 Section, any interested party to the Commission's decision
2 may apply for a rehearing with respect to the decision. The
3 Commission shall receive and consider the application for
4 rehearing and shall grant or deny the application in whole
5 or in part within 20 days after the date of the receipt of
6 the application by the Commission. If no rehearing is
7 applied for within the required 30 days or an application
8 for rehearing is denied, then the Commission decision shall
9 be final. If an application for rehearing is granted, then
10 the Commission shall hold a rehearing within 30 days after
11 granting the application. The decision of the Commission
12 upon rehearing shall be final.

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

24 (8) The Capital Development Board shall adopt and make
25 public a policy detailing the process for retaining experts
26 under this Section. Any experts retained to assist with

1 calculating the range of capital costs or operations and
2 maintenance costs shall be retained no later than 45 days
3 after July 13, 2011.

4 (h-4) No later than 90 days after the Illinois Power Agency
5 submits the final draft sourcing agreement pursuant to
6 subsection (h-1), the Commission shall approve a sourcing
7 agreement containing (i) the capital costs, rate of return, and
8 operations and maintenance costs established pursuant to
9 subsection (h-3) and (ii) all other terms and conditions,
10 rights, provisions, exceptions, and limitations contained in
11 the final draft sourcing agreement; provided, however, the
12 Commission shall correct typographical and scrivener's errors
13 and modify the contract only as necessary to provide that the
14 gas utility does not have the right to terminate the sourcing
15 agreement due to any future events that may occur other than
16 the clean coal SNG brownfield facility's failure to timely meet
17 milestones, uncured default, extended force majeure, or
18 abandonment. Once the sourcing agreement is approved, then the
19 gas utility subject to that sourcing agreement shall have 45
20 days after the date of the Commission's approval to enter into
21 the sourcing agreement.

22 (h-5) Sequestration enforcement.

23 (A) All contracts entered into under subsection (h) of
24 this Section and all sourcing agreements under subsection
25 (h-1) of this Section, regardless of duration, shall
26 require the owner of any facility supplying SNG under the

1 contract or sourcing agreement to provide certified
2 documentation to the Commission each year, starting in the
3 facility's first year of commercial operation, accurately
4 reporting the quantity of carbon dioxide emissions from the
5 facility that have been captured and sequestered and
6 reporting any quantities of carbon dioxide released from
7 the site or sites at which carbon dioxide emissions were
8 sequestered in prior years, based on continuous monitoring
9 of those sites.

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

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

26 If the Commission finds that the facility has not

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

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

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

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

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

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

1 (h-5) for the clean coal SNG facility shall reside solely
2 with the clean coal SNG facility, regardless of whether the
3 facility has contracted with another party to capture,
4 transport, or sequester carbon dioxide.

5 (C) If, in any year, the owner of a clean coal SNG
6 brownfield facility fails to demonstrate that the clean
7 coal SNG brownfield facility captured and sequestered at
8 least 85% of the total carbon dioxide emissions that the
9 facility would otherwise emit, then the owner of the clean
10 coal SNG brownfield facility must pay a penalty of \$20 per
11 ton of excess carbon emissions up to \$20,000,000, which
12 shall be deposited into the Energy Efficiency Trust Fund
13 and distributed pursuant to subsection (b) of Section 6-6
14 of the Renewable Energy, Energy Efficiency, and Coal
15 Resources Development Law of 1997. Provided, however, to
16 the extent that the owner of the clean coal SNG brownfield
17 facility can demonstrate that the failure was as a result
18 of acts of God (including fire, flood, earthquake, tornado,
19 lightning, hurricane, or other natural disaster); any
20 amendment, modification, or abrogation of any applicable
21 law or regulation that would prevent performance; war;
22 invasion; act of foreign enemies; hostilities (regardless
23 of whether war is declared); civil war; rebellion;
24 revolution; insurrection; military or usurped power or
25 confiscation; terrorist activities; civil disturbances;
26 riots; nationalization; sabotage; blockage; or embargo,

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

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

1 court in Illinois. By entering into a sourcing agreement
2 pursuant to subsection (h-1) of this Section, the clean
3 coal SNG brownfield facility agrees to waive any objections
4 to venue or to the jurisdiction of the court with regard to
5 the Attorney General's action for specific performance
6 under this subsection (h-5).

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.

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

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

24 (1) No clean coal facility or clean coal SNG brownfield
25 facility may transport or sequester carbon dioxide unless
26 the Commission approves the method of carbon dioxide

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

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

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

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

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

1 within 90 days after the receipt of all required
2 information.

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

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

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

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

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

1 ~~with any such inspection or monitoring of the sequestration~~
2 ~~sites, and these costs shall not be recoverable from a~~
3 ~~utility or its customers.~~

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

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

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

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

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

26 The State of Illinois retains and reserves all other rights

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

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

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

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

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

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

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

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

25 (1) The clean coal SNG facility shall conduct an
26 analysis annually within 60 days after receiving the

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

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

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

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

23 (2) At the conclusion of the term of the SNG contracts
24 pursuant to subsection (h) and the completion of the final
25 annual analysis pursuant to this subsection (h-15), to the
26 extent the facility owes any amount to retail customers,

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

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

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

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

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

26 (4) The clean coal SNG facility shall each year,

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

6 (A) the revenue share target amount;

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

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

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

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

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

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

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

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

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

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

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

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

1 pledges in any finance agreement into which they may enter in
2 regard to such contracts.

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

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

16 (Source: P.A. 96-1364, eff. 7-28-10; 97-96, eff. 7-13-11;
17 97-239, eff. 8-2-11; 97-630, eff. 12-8-11.)

18 Section 10. The Illinois Gas Pipeline Safety Act is amended
19 by changing Sections 2.02, 2.03, 2.04, and 3 as follows:

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

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

1 (Source: P.A. 97-96, eff. 7-13-11; 97-239, eff. 8-2-11.)

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

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

18 (Source: P.A. 97-96, eff. 7-13-11; 97-239, eff. 8-2-11.)

19 (220 ILCS 20/2.04) (from Ch. 111 2/3, par. 552.4)

20 Sec. 2.04. "Pipeline facilities" includes new and existing
21 pipe rights-of-way and any equipment, facility, or building
22 used in the transportation of gas or the treatment of gas
23 during the course of transportation and includes facilities
24 within this State that transport gas from an interstate gas

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

22 (Source: P.A. 97-96, eff. 7-13-11; 97-239, eff. 8-2-11.)

23 (220 ILCS 20/3) (from Ch. 111 2/3, par. 553)

24 Sec. 3. (a) As soon as practicable, but not later than 3
25 months after the effective date of this Act, the Commission

1 shall adopt rules establishing minimum safety standards for the
2 transportation of gas and for pipeline facilities. Such rules
3 shall be at least as inclusive, as stringent, and compatible
4 with, the minimum safety standards adopted by the Secretary of
5 Transportation under the Federal Act. Thereafter, the
6 Commission shall maintain such rules so that the rules are at
7 least as inclusive, as stringent, and compatible with, the
8 minimum standards from time to time in effect under the Federal
9 Act. ~~The Commission shall also adopt rules establishing minimum~~
10 ~~safety standards for the transportation of carbon dioxide in~~
11 ~~any physical form for the purpose of sequestration and for~~
12 ~~pipeline facilities used for that function.~~

13 (b) Standards established under this Act may apply to the
14 design, installation, inspection, testing, construction,
15 extension, operation, replacement, and maintenance of pipeline
16 facilities. Standards affecting the design, installation,
17 construction, initial inspection and initial testing are not
18 applicable to pipeline facilities in existence on the date such
19 standards are adopted. Whenever the Commission finds a
20 particular facility to be hazardous to life or property, it may
21 require the person operating such facility to take the steps
22 necessary to remove the hazard.

23 (c) Standards established by the Commission under this Act
24 shall, subject to paragraphs (a) and (b) of this Section 3, be
25 practicable and designed to meet the need for pipeline safety.
26 In prescribing such standards, the Commission shall consider:

1 similar standards established in other states; relevant
2 available pipeline safety data; whether such standards are
3 appropriate for the particular type of pipeline
4 transportation; the reasonableness of any proposed standards;
5 and the extent to which such standards will contribute to
6 public safety.

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

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

11 Section 15. The Carbon Dioxide Transportation and
12 Sequestration Act is amended by changing Section 30 as follows:

13 (220 ILCS 75/30)

14 Sec. 30. Safety. Inasmuch as the regulation of the
15 construction, maintenance, and operation of pipelines
16 transporting carbon dioxide, whether interstate or intrastate,
17 falls within the statutory and regulatory jurisdiction of the
18 Pipeline and Hazardous Material Safety Administration of the
19 federal Department of Transportation, each A carbon dioxide
20 pipeline owner shall construct, maintain, and operate all of
21 its pipelines, related facilities, and equipment in this State
22 in a manner that complies fully with all federal laws and
23 regulations governing the construction, maintenance, and
24 operation of pipelines transporting carbon dioxide, as from

1 time to time amended, and which otherwise poses no undue risk
2 to its employees or the public. This Section shall not be
3 interpreted to act in derogation of any such federal laws or
4 regulations. ~~The Commission shall not issue any certificates or~~
5 ~~permits allowing the construction of a carbon dioxide pipeline~~
6 ~~until it has adopted federal safety regulations governing the~~
7 ~~construction, maintenance, and operations of carbon dioxide~~
8 ~~pipelines, related facilities, and equipment to ensure the~~
9 ~~safety of pipeline employees and the public.~~

10 (Source: P.A. 97-534, eff. 8-23-11.)

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