

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

6 (20 ILCS 3855/1-10)

7 Sec. 1-10. Definitions.

8 "Agency" means the Illinois Power Agency.

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

17 "Authority" means the Illinois Finance Authority.

18 "Clean coal facility" means an electric generating
19 facility that uses primarily coal as a feedstock and that
20 captures and sequesters carbon dioxide emissions at the
21 following levels: at least 50% of the total carbon dioxide
22 emissions that the facility would otherwise emit if, at the
23 time construction commences, the facility is scheduled to

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

20 "Clean coal SNG facility" means a facility that uses a
21 gasification process to produce substitute natural gas, that
22 sequesters at least 90% of the total carbon emissions that the
23 facility would otherwise emit, ~~and~~ and that uses at least 90%
24 ~~petroleum coke or~~ coal as a feedstock, with all such coal
25 having a high bituminous rank and greater than 1.7 pounds of
26 sulfur per million btu content, and that has a valid and

1 effective permit to construct emission sources and air
2 pollution control equipment and approval with respect to the
3 federal regulations for Prevention of Significant
4 Deterioration of Air Quality (PSD) for the plant pursuant to
5 the federal Clean Air Act.

6 "Commission" means the Illinois Commerce Commission.

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

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

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

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

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

25 (5) the costs of plans, specifications, site study and
26 investigation, installation, surveys, other Agency costs

1 and estimates of costs, and other expenses necessary or
2 incidental to determining the feasibility of any project,
3 together with such other expenses as may be necessary or
4 incidental to the financing, insuring, acquisition, and
5 construction of a specific project and starting up,
6 commissioning, and placing that project in operation.

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

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

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

13 "Energy efficiency" means measures that reduce the amount
14 of electricity or natural gas required to achieve a given end
15 use.

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

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

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

26 "Local government" means a unit of local government as

1 defined in Article VII of Section 1 of the Illinois
2 Constitution.

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

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

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

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

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

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

23 "Renewable energy resources" includes energy and its
24 associated renewable energy credit or renewable energy credits
25 from wind, solar thermal energy, photovoltaic cells and panels,
26 biodiesel, crops and untreated and unadulterated organic waste

1 biomass, tree waste, hydropower that does not involve new
2 construction or significant expansion of hydropower dams, and
3 other alternative sources of environmentally preferable
4 energy. For purposes of this Act, landfill gas produced in the
5 State is considered a renewable energy resource. "Renewable
6 energy resources" does not include the incineration or burning
7 of tires, garbage, general household, institutional, and
8 commercial waste, industrial lunchroom or office waste,
9 landscape waste other than tree waste, railroad crossties,
10 utility poles, or construction or demolition debris, other than
11 untreated and unadulterated waste wood.

12 "Revenue bond" means any bond, note, or other evidence of
13 indebtedness issued by the Authority, the principal and
14 interest of which is payable solely from revenues or income
15 derived from any project or activity of the Agency.

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

24 "Servicing agreement" means (i) in the case of an electric
25 utility, an agreement between the owner of a clean coal
26 facility and such electric utility, which agreement shall have

1 terms and conditions meeting the requirements of paragraph (3)
2 of subsection (d) of Section 1-75, and (ii) in the case of an
3 alternative retail electric supplier, an agreement between the
4 owner of a clean coal facility and such alternative retail
5 electric supplier, which agreement shall have terms and
6 conditions meeting the requirements of Section 16-115(d) (5) of
7 the Public Utilities Act.

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

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

1 quantify the net savings obtained by substituting the
2 demand-side program for supply resources. In calculating
3 avoided costs of power and energy that an electric utility
4 would otherwise have had to acquire, reasonable estimates shall
5 be included of financial costs likely to be imposed by future
6 regulations and legislation on emissions of greenhouse gases.
7 (Source: P.A. 95-481, eff. 8-28-07; 95-913, eff. 1-1-09;
8 95-1027, eff. 6-1-09; 96-33, eff. 7-10-09; 96-159, eff.
9 8-10-09; 96-784, eff. 8-28-09; 96-1000, eff. 7-2-10.)

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

12 (30 ILCS 500/1-10)

13 Sec. 1-10. Application.

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

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

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

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

10 (3) Purchase of care.

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

15 (5) Collective bargaining contracts.

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

23 (7) Contracts necessary to prepare for anticipated
24 litigation, enforcement actions, or investigations,
25 provided that the chief legal counsel to the Governor shall
26 give his or her prior approval when the procuring agency is

1 one subject to the jurisdiction of the Governor, and
2 provided that the chief legal counsel of any other
3 procuring entity subject to this Code shall give his or her
4 prior approval when the procuring entity is not one subject
5 to the jurisdiction of the Governor.

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

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

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

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

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

1 Illinois Lottery Law.

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

13 (Source: P.A. 95-481, eff. 8-28-07; 95-615, eff. 9-11-07;
14 95-876, eff. 8-21-08; 96-840, eff. 12-23-09; 96-1331, eff.
15 7-27-10.)

16 Section 15. The Public Utilities Act is amended by changing
17 Sections 3-101 and 9-220 and by adding Sections 3-123, 3-124,
18 3-125, and 3-126 as follows:

19 (220 ILCS 5/3-101) (from Ch. 111 2/3, par. 3-101)

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

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

1 (220 ILCS 5/3-123 new)

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

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

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

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

11 "SNG facility" means a facility that produces substitute
12 natural gas from feedstock that includes coal through a
13 gasification process, including a clean coal facility, and the
14 clean coal SNG facility.

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

18 (220 ILCS 5/3-124 new)

19 Sec. 3-124. Adjusted final capitalized plant cost.
20 "Adjusted final capitalized plant cost" means the final
21 capitalized plant cost reduced by the following, without
22 duplication and to the extent not already accounted for or
23 reflected on the books of the facility: (1) any State of
24 Illinois financial assistance, (2) any U.S. financial
25 assistance, and (3) any quantifiable benefit from a U.S. Clean

1 Coal Gasification Program received by the facility during a
2 period equal to the shorter of (A) the life of such program or
3 (B) the term of the agreement, such quantifiable benefit to be
4 discounted at a rate of 14% per annum over such period.

5 (220 ILCS 5/3-125 new)

6 Sec. 3-125. Final capitalized plant cost. "Final
7 capitalized plant cost" means the total capitalized asset cost
8 of the plant of the clean coal SNG facility as reflected on the
9 balance sheet of the facility at the time of the commercial
10 production date, with such capitalized cost to be accrued in
11 accordance with generally accepted accounting principles, and
12 includes, without limitation, the following items: major
13 equipment, the SNG pipeline from the plant to the receiving
14 pipeline, water lines, railroad improvements, access road
15 improvements, all coal transportation assets, including the
16 slurry line, slurry prep plant, carbon dioxide capture metering
17 and compression, licensing fees, all costs incurred in the
18 management planning, oversight and execution of the
19 construction and start-up of the plant, and all fees and costs
20 payable under engineering, procurement, and design contracts
21 for the construct of the plant accrued as of the time of the
22 commercial production date, but does not include capitalized
23 financing costs including capitalized interest during
24 construction and all fees associated with financing, coal
25 reserve leasing costs, marketing, training, any and all costs

1 payable under the contract miner agreement, the cost of coal
2 mining equipment and similar costs, and any other costs,
3 including general and administrative costs, not reasonably
4 incurred in connection with the design, construction, testing,
5 start-up, or commissioning of the plant in preparation for
6 commercial production date.

7 (220 ILCS 5/3-126 new)

8 Sec. 3-126. Total capitalized asset cost. "Total
9 capitalized asset cost" means the gross book value of the
10 plant, as determined in accordance with generally accepted
11 accounting principles at the commercial production date.

12 (220 ILCS 5/9-220) (from Ch. 111 2/3, par. 9-220)

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

14 (a) Notwithstanding the provisions of Section 9-201, the
15 Commission may authorize the increase or decrease of rates and
16 charges based upon changes in the cost of fuel used in the
17 generation or production of electric power, changes in the cost
18 of purchased power, or changes in the cost of purchased gas
19 through the application of fuel adjustment clauses or purchased
20 gas adjustment clauses. The Commission may also authorize the
21 increase or decrease of rates and charges based upon
22 expenditures or revenues resulting from the purchase or sale of
23 emission allowances created under the federal Clean Air Act
24 Amendments of 1990, through such fuel adjustment clauses, as a

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

1 Nothing herein shall authorize an electric utility to recover
2 through its fuel adjustment clause any amounts of
3 transportation costs of coal that were included in the revenue
4 requirement used to set base rates in its most recent general
5 rate proceeding. Cost shall be based upon uniformly applied
6 accounting principles. Annually, the Commission shall initiate
7 public hearings to determine whether the clauses reflect actual
8 costs of fuel, gas, power, or coal transportation purchased to
9 determine whether such purchases were prudent, and to reconcile
10 any amounts collected with the actual costs of fuel, power,
11 gas, or coal transportation prudently purchased. In each such
12 proceeding, the burden of proof shall be upon the utility to
13 establish the prudence of its cost of fuel, power, gas, or coal
14 transportation purchases and costs. The Commission shall issue
15 its final order in each such annual proceeding for an electric
16 utility by December 31 of the year immediately following the
17 year to which the proceeding pertains, provided, that the
18 Commission shall issue its final order with respect to such
19 annual proceeding for the years 1996 and earlier by December
20 31, 1998.

21 (b) A public utility providing electric service, other than
22 a public utility described in subsections (e) or (f) of this
23 Section, may at any time during the mandatory transition period
24 file with the Commission proposed tariff sheets that eliminate
25 the public utility's fuel adjustment clause and adjust the
26 public utility's base rate tariffs by the amount necessary for

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

26 (c) Notwithstanding any contrary or inconsistent

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

25 (d) A public utility providing electric service, or a
26 public utility providing gas service may file with the

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

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

1 (e) 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 promulgated by the Commission
4 pursuant to subsection (g) of this Section, a public utility
5 providing electric service to more than 1,000,000 customers in
6 this State may, within the first 6 months after the effective
7 date of this amendatory Act of 1997, file with the Commission
8 proposed tariff sheets that eliminate, effective January 1,
9 1997, the public utility's fuel adjustment clause without
10 adjusting its base rates, and such tariff sheets shall be
11 effective upon filing. To the extent the application of the
12 fuel adjustment clause had resulted in net charges to customers
13 after January 1, 1997, the utility shall also file a tariff
14 sheet that provides for a refund stated on a per kilowatt-hour
15 basis of such charges over a period not to exceed 6 months;
16 provided however, that such refund shall not include the
17 proportional amounts of taxes paid under the Use Tax Act,
18 Service Use Tax Act, Service Occupation Tax Act, and Retailers'
19 Occupation Tax Act on fuel used in generation. The Commission
20 shall issue an order within 45 days after the date of the
21 public utility's filing approving or approving as modified such
22 tariff sheet. If the fuel adjustment clause is eliminated
23 pursuant to this subsection, the Commission shall not conduct
24 the annual hearings specified in the last 3 sentences of
25 subsection (a) of this Section for the utility for any period
26 after December 31, 1996 and prior to any reinstatement of such

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

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

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

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

24 (h) Any Illinois gas utility may enter into a contract on
25 or before September 30 ~~March 31~~, 2011 for up to 10 years of
26 supply with any company for the purchase of substitute natural

1 gas (SNG) produced from coal through the gasification process
2 if the company has commenced construction of a clean coal SNG
3 ~~gasification~~ facility by July 1, 2012 ~~in Jefferson County~~ and
4 commencement of construction shall mean that material physical
5 site work has occurred, such as site clearing and excavation,
6 water runoff prevention, water retention reservoir
7 preparation, or foundation development. The contract shall
8 contain the following provisions: (i) at least 90% of feedstock
9 ~~the only coal~~ to be used in the gasification process shall be
10 coal with a ~~has~~ high volatile bituminous rank and greater than
11 1.7 pounds of sulfur per million Btu content; (ii) at the time
12 the contract term commences, the price per million Btu may not
13 exceed \$7.95 in 2008 dollars, adjusted annually based on the
14 change in the Annual Consumer Price Index for All Urban
15 Consumers for the Midwest Region as published in April by the
16 United States Department of Labor, Bureau of Labor Statistics
17 (or a suitable Consumer Price Index calculation if this
18 Consumer Price Index is not available) for the previous
19 calendar year; provided that the price per million Btu shall
20 not exceed \$9.95 at any time during the contract; (iii) the
21 utility's ~~aggregate long term~~ supply contract ~~contracts~~ for
22 the purchase of SNG does not exceed 15% ~~25%~~ of the annual
23 system supply requirements of the utility as of 2008 ~~and the~~
24 ~~quantity of SNG supplied to a utility may not exceed 16 million~~
25 ~~MMBtus~~; and (iv) the contract costs pursuant to subsection
26 (h-10) of this Section shall not include any lobbying expenses,

1 charitable contributions, advertising, organizational
2 memberships, carbon dioxide pipeline or sequestration
3 expenses, or marketing expenses ~~per year~~.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (h-5) All contracts entered into under subsection (h) of
23 this Section, regardless of duration, shall require the owner
24 of any facility supplying SNG under the contract to provide
25 certified documentation to the Commission each year, starting
26 in the facility's first year of commercial operation,

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

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

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

19 If the Commission finds that the facility has not satisfied
20 each of these requirements, then the facility shall be subject
21 to the penalty. If the owner of the clean coal SNG facility
22 captured and sequestered more than 90% of the total carbon
23 dioxide emissions that the facility would otherwise emit, then
24 the owner of the facility may credit such additional amounts to
25 reduce the amount of any future penalty to be paid. The penalty
26 resulting from the failure to capture and sequester at least

1 the minimum amount of carbon dioxide shall not be passed on to
2 a utility or its customers.

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

17 Compliance with the sequestration requirements and any
18 penalty requirements specified in this subsection (h-5) for the
19 clean coal SNG facility shall be assessed annually by the
20 Commission, which may in its discretion retain an expert to
21 facilitate its assessment. If any expert is retained by the
22 Commission, then the clean coal SNG facility shall pay for the
23 expert's reasonable fees, and such costs shall not be passed
24 through to the utility or its customers.

25 In addition, carbon dioxide emission credits received by
26 the clean coal SNG facility in connection with sequestration of

1 carbon dioxide from the facility must be sold in a timely
2 fashion with any revenue, less applicable fees and expenses and
3 any expenses required to be paid by facility for carbon dioxide
4 transportation or sequestration, deposited into the
5 reconciliation account within 30 days after receipt of such
6 funds by the owner of the clean coal SNG facility.

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

20 (h-7) Sequestration permitting, oversight, and
21 investigations. No clean coal facility may transport or
22 sequester carbon dioxide unless the Commission approves the
23 method of carbon dioxide transportation or sequestration. Such
24 approval shall be required regardless of whether the facility
25 has contracted with another to transport or sequester the
26 carbon dioxide. Nothing in this subsection (h-7) shall release

1 the owner or operator of a carbon dioxide sequestration site or
2 carbon dioxide pipeline from any other permitting requirements
3 under applicable State and federal laws, statutes, rules, or
4 regulations.

5 The Commission shall review carbon dioxide transportation
6 and sequestration methods proposed by a clean coal facility and
7 shall approve those methods it deems reasonable and
8 cost-effective. For purposes of this review, "cost-effective"
9 means a commercially reasonable price for similar carbon
10 dioxide transportation or sequestration techniques. In
11 determining whether sequestration is reasonable and
12 cost-effective, the Commission may consult with the Illinois
13 State Geological Survey and retain third parties to assist in
14 its determination, provided that such third parties shall not
15 own or control any direct or indirect interest in the facility
16 that is proposing the carbon dioxide transportation or the
17 carbon dioxide sequestration method and shall have no
18 contractual relationship with that facility. If a third party
19 is retained by the Commission, then the facility proposing the
20 carbon dioxide transportation or sequestration method shall
21 pay for the expert's reasonable fees, and these costs shall not
22 be passed through to a utility or its customers.

23 No later than 6 months prior to the date upon which the
24 owner intends to commence construction of a clean coal
25 facility, the owner of the facility shall file with the
26 Commission a carbon dioxide transportation or sequestration

1 plan. The Commission shall hold a public hearing within 30 days
2 after receipt of the facility's carbon dioxide transportation
3 or sequestration plan. The Commission shall post notice of the
4 review on its website upon submission of a carbon dioxide
5 transportation or sequestration method and shall accept
6 written public comments. The Commission shall take the comments
7 into account when making its decision.

8 The Commission may not approve a carbon dioxide
9 sequestration method if the owner or operator of the
10 sequestration site has not received (i) an Underground
11 Injection Control permit from the Illinois Environmental
12 Protection Agency pursuant to the Environmental Protection
13 Act; (ii) an Underground Injection Control permit from the
14 Illinois Department of Natural Resources pursuant to the
15 Illinois Oil and Gas Act; or (iii) a permit similar to items
16 (i) or (ii) from the state in which the sequestration site is
17 located if the sequestration will take place outside of
18 Illinois. The Commission shall approve or deny the carbon
19 dioxide transportation or sequestration method within 90 days
20 after the receipt of all required information.

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

1 Agency investigations of carbon dioxide sequestration sites.

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

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

26 In circumstances whereby a carbon dioxide pipeline creates

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

16 ~~(h 5) The Attorney General, on behalf of the people of the~~
17 ~~State of Illinois, may specifically enforce the requirements of~~
18 ~~this subsection (h 5). All contracts, regardless of duration,~~
19 ~~shall require the owner of any facility supplying SNG under the~~
20 ~~contract to provide documentation to the Commission each year,~~
21 ~~starting in the facility's first year of commercial operation,~~
22 ~~accurately reporting the quantity of carbon dioxide emissions~~
23 ~~from the facility that have been captured and sequestered and~~
24 ~~reporting any quantities of carbon dioxide released from the~~
25 ~~site or sites at which carbon dioxide emissions were~~
26 ~~sequestered in prior years, based on continuous monitoring of~~

1 ~~those sites. If, in any year, the owner of the facility fails~~
2 ~~to demonstrate that the SNG facility captured and sequestered~~
3 ~~at least 90% of the total carbon dioxide emissions that the~~
4 ~~facility would otherwise emit or that sequestration of~~
5 ~~emissions from prior years has failed, resulting in the release~~
6 ~~of carbon dioxide into the atmosphere, then the owner of the~~
7 ~~facility must offset excess emissions. Any such carbon dioxide~~
8 ~~offsets must be permanent, additional, verifiable, real,~~
9 ~~located within the State of Illinois, and legally and~~
10 ~~practicably enforceable; provided that the owner of the~~
11 ~~facility shall not be obligated to acquire carbon dioxide~~
12 ~~emission offsets to the extent that the cost of acquiring such~~
13 ~~offsets would exceed \$40 million in any given year. No costs of~~
14 ~~any purchases of carbon offsets may be recovered from a utility~~
15 ~~or its customers. All carbon offsets purchased for this purpose~~
16 ~~must be permanently retired. In addition, carbon dioxide~~
17 ~~emission credits equivalent to 50% of the amount of credits~~
18 ~~associated with the required sequestration of carbon dioxide~~
19 ~~from the facility must be permanently retired. Compliance with~~
20 ~~the sequestration requirements and the offset purchase~~
21 ~~requirements specified in this subsection (h-5) shall be~~
22 ~~assessed annually by an independent expert retained by the~~
23 ~~owner of the SNG facility, with the advance written approval of~~
24 ~~the Attorney General. A SNG facility operating pursuant to this~~
25 ~~subsection (h-5) shall not forfeit its designation as a clean~~
26 ~~coal SNG facility if the facility fails to fully comply with~~

1 ~~the applicable carbon sequestration requirements in any given~~
2 ~~year, provided the requisite offsets are purchased.~~

3 (h-10) Contract costs for SNG incurred by an Illinois gas
4 utility are reasonable and prudent and recoverable through the
5 purchased gas adjustment clause and are not subject to review
6 or disallowance by the Commission. Contract costs are costs
7 incurred by the utility under the terms of a contract that
8 incorporates the terms stated in subsection (h) of this Section
9 as confirmed in writing by the Illinois Power Agency as set
10 forth in subsection (h) ~~(h-20)~~ of this Section, which
11 confirmation shall be deemed conclusive, or as a consequence of
12 or condition to its performance under the contract, including
13 (i) amounts paid for SNG under the SNG contract and (ii) costs
14 of transportation and storage services of SNG purchased from
15 interstate pipelines under federally approved tariffs. The
16 Illinois gas utility shall initiate a clean coal SNG facility
17 rider mechanism that (A) shall be applicable to all customers
18 who receive transportation service from the utility, (B) shall
19 be designed to have an equal percentage impact on the
20 transportation services rates of each class of the utility's
21 total customers, and (C) shall accurately reflect the net
22 customer savings, if any, and above market costs, if any, under
23 the SNG contract. Any contract, the terms of which have been
24 confirmed in writing by the Illinois Power Agency as set forth
25 in subsection (h) ~~(h-20)~~ of this Section and the performance of
26 the parties under such contract cannot be grounds for

1 challenging prudence or cost recovery by the utility through
2 the purchased gas adjustment clause, and in such cases, the
3 Commission is directed not to consider, and has no authority to
4 consider, any attempted challenges.

5 The contracts entered into by Illinois gas utilities
6 pursuant to subsection (h) of this Section shall provide that
7 the utility retains the right to terminate the contract without
8 further obligation or liability to any party if the contract
9 has been impaired as a result of any legislative,
10 administrative, judicial, or other governmental action that is
11 taken that eliminates all or part of the prudence protection of
12 this subsection (h-10) or denies the recoverability of all or
13 part of the contract costs through the purchased gas adjustment
14 clause. Should any Illinois gas utility exercise its right
15 under this subsection (h-10) to terminate the contract, all
16 contract costs incurred prior to termination are and will be
17 deemed reasonable, prudent, and recoverable as and when
18 incurred and not subject to review or disallowance by the
19 Commission. Any order, issued by the State requiring or
20 authorizing the discontinuation of the merchant function,
21 defined as the purchase and sale of natural gas by an Illinois
22 gas utility for the ultimate consumer in its service territory
23 shall include provisions necessary to prevent the impairment of
24 the value of any contract hereunder over its full term.

25 (h-15) Reconciliation account. The clean coal SNG facility
26 shall establish a reconciliation account for the benefit of the

1 retail customers of the utilities that have entered into
2 contracts with the clean coal SNG facility pursuant to
3 subsection (h). The reconciliation account shall be maintained
4 and administered by an independent trustee that is mutually
5 agreed upon by the owners of the clean coal SNG facility, the
6 utilities, and the Commission in an interest-bearing account in
7 accordance with the following:

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

1 utility during the year; (iii) the cost differential, which
2 shall be the difference between the average annual contract
3 SNG cost and the average annual natural gas purchase cost;
4 and (iv) the revenue share target which shall be the cost
5 differential multiplied by the total amount of SNG
6 purchased over the preceding 12 months under such utility
7 contract.

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

22 (B) To the extent the annual average contract SNG
23 cost is greater than the annual average natural gas
24 purchase cost, the reconciliation account shall be
25 used to provide a credit equal to the revenue share
26 target to the utilities to be used to reduce the

1 utility's natural gas costs through the purchased gas
2 adjustment clause. Such payment shall be made within 30
3 days after the completed analysis pursuant to this
4 subsection (h-15), but only to the extent that the
5 reconciliation account has a positive balance.

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

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

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

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

25 (3) 50% of all additional net revenue, defined as
26 miscellaneous net revenue after cost allowance and above

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

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

15 (A) the revenue share target amount;

16 (B) the amount credited or debited to the
17 reconciliation account during the year;

18 (C) the amount credited to the utilities to be used
19 to reduce the utilities natural gas costs through the
20 purchase gas adjustment clause;

21 (D) the total amount of reconciliation account at
22 the beginning and end of the year;

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

24 and

25 (F) any additional information the Commission may
26 require.

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

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

19 Any facility that fails to file the report required under
20 this paragraph (4) to the Commission within the time specified
21 or to make specific answer to any question propounded by the
22 Commission within 30 days after the time it is lawfully
23 required to do so, or within such further time not to exceed 90
24 days as may be allowed by the Commission in its discretion,
25 shall pay a penalty of \$500 to the Commission for each day it
26 is in default.

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

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

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

21 (h-20) The General Assembly authorizes the Illinois
22 Finance Authority to issue bonds to the maximum extent
23 permitted to finance coal gasification facilities described in
24 this Section, which constitute both "industrial projects"
25 under Article 801 of the Illinois Finance Authority Act and
26 "clean coal and energy projects" under Sections 825-65 through

1 825-75 of the Illinois Finance Authority Act. ~~The General~~
2 ~~Assembly further authorizes the Illinois Power Agency to become~~
3 ~~party to agreements and take such actions as necessary to~~
4 ~~enable the Illinois Power Agency or its designate to (i) review~~
5 ~~and confirm in writing that the terms stated in subsection (h)~~
6 ~~of this Section are incorporated in the SNG contract, and (ii)~~
7 ~~conduct an analysis pursuant to subsection (h 15) of this~~
8 ~~Section.~~

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

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

1 holders of bonds or other obligations issued or incurred to
2 finance or refinance the clean coal SNG facility. The
3 beneficiaries are authorized to include and refer to these
4 pledges in any finance agreement into which they may enter in
5 regard to such contracts.

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

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

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

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

22 (220 ILCS 20/2.02) (from Ch. 111 2/3, par. 552.2)

23 Sec. 2.02.

24 "Gas" means natural gas, flammable gas or gas which is

1 toxic or corrosive. "Gas" also means carbon dioxide in any
2 physical form, whenever transported by pipeline for the purpose
3 of sequestration.

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

5 (220 ILCS 20/2.03) (from Ch. 111 2/3, par. 552.3)

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

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

22 (220 ILCS 20/2.04) (from Ch. 111 2/3, par. 552.4)

23 Sec. 2.04. "Pipeline facilities" includes new and existing
24 pipe rights-of-way and any equipment, facility, or building

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

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

1 (220 ILCS 20/3) (from Ch. 111 2/3, par. 553)

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

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

26 (c) Standards established by the Commission under this Act

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

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

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

14 Section 25. The Environmental Protection Act is amended by
15 adding Section 13.7 as follows:

16 (415 ILCS 5/13.7 new)

17 Sec. 13.7. Carbon dioxide sequestration sites.

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

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

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

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

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

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

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

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

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