



Rep. Joseph M. Lyons

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1 AMENDMENT TO SENATE BILL 3766

2 AMENDMENT NO. _____. Amend Senate Bill 3766 by replacing
3 everything after the enacting clause with the following:

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

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

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

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

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

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

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

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

1 adjustment clause.

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

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

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

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

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

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

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

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

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

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

1 or before September 30, 2011 for up to 10 years of supply with
2 any company for the purchase of substitute natural gas (SNG)
3 produced from coal through the gasification process if the
4 company has commenced construction of a clean coal SNG facility
5 by July 1, 2012 and commencement of construction shall mean
6 that material physical site work has occurred, such as site
7 clearing and excavation, water runoff prevention, water
8 retention reservoir preparation, or foundation development.
9 The contract shall contain the following provisions: (i) at
10 least 90% of feedstock to be used in the gasification process
11 shall be coal with a high volatile bituminous rank and greater
12 than 1.7 pounds of sulfur per million Btu content; (ii) at the
13 time the contract term commences, the price per million Btu may
14 not exceed \$7.95 in 2008 dollars, adjusted annually based on
15 the change in the Annual Consumer Price Index for All Urban
16 Consumers for the Midwest Region as published in April by the
17 United States Department of Labor, Bureau of Labor Statistics
18 (or a suitable Consumer Price Index calculation if this
19 Consumer Price Index is not available) for the previous
20 calendar year; provided that the price per million Btu shall
21 not exceed \$9.95 at any time during the contract; (iii) the
22 utility's supply contract for the purchase of SNG does not
23 exceed 15% of the annual system supply requirements of the
24 utility as of 2008; and (iv) the contract costs pursuant to
25 subsection (h-10) of this Section shall not include any
26 lobbying expenses, charitable contributions, advertising,

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

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

18 Within 7 days after August 2, 2011, the owner of the clean
19 coal SNG facility shall submit to the Illinois Power Agency and
20 each gas utility that is providing service to more than 150,000
21 customers on August 2, 2011 a copy of a draft contract. Within
22 30 days after the receipt of the draft contract, each such gas
23 utility shall provide the Illinois Power Agency and the owner
24 of the clean coal SNG facility with its comments and
25 recommended revisions to the draft contract. Within 7 days
26 after the receipt of the gas utility's comments and recommended

1 revisions, the owner of the facility shall submit its
2 responsive comments and a further revised draft of the contract
3 to the Illinois Power Agency. The Illinois Power Agency shall
4 review the draft contract and comments.

5 During its review of the draft contract, the Illinois Power
6 Agency shall:

7 (1) review and confirm in writing that the terms stated
8 in this subsection (h) are incorporated in the SNG
9 contract;

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

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

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

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

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

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

26 Within 30 days after commercial production of SNG has

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

17 Within 30 days after completion of its review, the
18 Commission shall initiate a formal proceeding on the final
19 capitalized plant cost of the clean coal SNG facility at which
20 comments and testimony may be submitted by any interested
21 parties and the public. If the Commission finds that the final
22 capitalized plant cost includes costs that were not actually
23 incurred or costs that were unreasonably incurred, then the
24 Commission shall disallow the amount of non-incurred or
25 unreasonable costs from the SNG price under contracts entered
26 into under this subsection (h). If the Commission disallows any

1 costs, then the Commission shall adjust the SNG price using the
2 price formula in the contract approved by the Illinois Power
3 Agency under this subsection (h) to reflect the disallowed
4 costs and shall enter an order specifying the revised price. In
5 addition, the Commission's order shall direct the clean coal
6 SNG facility to issue refunds of such sums as shall represent
7 the difference between actual gross revenues and the gross
8 revenue that would have been obtained based upon the same
9 volume, from the price revised by the Commission. Any refund
10 shall include interest calculated at a rate determined by the
11 Commission and shall be returned according to procedures
12 prescribed by the Commission.

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

16 (h-1) Any Illinois gas utility may enter into a sourcing
17 agreement for up to 30 years of supply with the clean coal SNG
18 brownfield facility if the clean coal SNG brownfield facility
19 has commenced construction. Any gas utility that is providing
20 service to more than 150,000 customers on July 13, 2011 (the
21 effective date of Public Act 97-096) shall either elect to file
22 biennial rate proceedings before the Commission in the years
23 2012, 2014, and 2016 or enter into a sourcing agreement or
24 sourcing agreements with a clean coal SNG brownfield facility
25 with an initial term of 30 years for either (i) a percentage of
26 43,500,000,000 cubic feet per year, such that the utilities

1 entering into sourcing agreements with the clean coal SNG
2 brownfield facility purchase 100%, allocated by total therms
3 sold to ultimate customers by each gas utility in 2008 or (ii)
4 such lesser amount as may be available from the clean coal SNG
5 brownfield facility; provided that no utility shall be required
6 to purchase more than 42% of the projected annual output of the
7 clean coal SNG brownfield facility (the projected annual output
8 of which is 47,799,714 MMBtu), with the remainder of such
9 utility's obligation to be divided proportionately between the
10 other utilities, and provided that the Illinois Power Agency
11 shall further adjust the allocation only as required to take
12 into account adverse consolidation, derivative, or lease
13 impacts to the balance sheet or income statement of any gas
14 utility.

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

1 filing and shall issue its order in accordance with the
2 provisions of Section 9-201 of this Act, regardless of whether
3 the Commission has approved a formula rate for the gas utility.
4 If more than 2 gas utilities elect to file biennial rate
5 proceedings before the Commission by July 13, 2011, then the
6 requirement that the other utilities enter into a sourcing
7 agreement with the clean coal SNG brownfield facility shall be
8 waived.

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

24 If the parties to the sourcing agreement do not agree on
25 the terms therein, then the Illinois Power Agency shall retain
26 an independent mediator to mediate the dispute between the

1 parties. If the parties are in agreement on the terms of the
2 sourcing agreement, the Illinois Power Agency shall approve the
3 final draft sourcing agreement. If after mediation the parties
4 have failed to come to agreement, then the Illinois Power
5 Agency shall revise the draft sourcing agreement as necessary
6 to confirm that the final draft sourcing agreement contains
7 only terms that are reasonable and equitable. The Illinois
8 Power Agency shall adopt and make public a policy detailing the
9 process for retaining a mediator under this subsection (h-1).
10 Any mediator retained to assist with mediating disputes between
11 the parties regarding the sourcing agreement shall be retained
12 no later than 60 days after July 13, 2011.

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

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

26 (1) Any and all coal used in the gasification process

1 must be coal that has high volatile bituminous rank and
2 greater than 1.7 pounds of sulfur per million Btu content.

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

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

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

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

18 "Consumer protection reserve account principal maximum
19 amount" shall mean the maximum amount of principal to be
20 maintained in the consumer protection reserve account.
21 During the first 2 years of operation of the facility,
22 there shall be no consumer protection reserve account
23 maximum amount. After the first 2 years of operation of the
24 facility, the consumer protection reserve account maximum
25 amount shall be \$150,000,000. After 5 years of operation,
26 and every 5 years thereafter, the trustee shall calculate

1 the 5-year average balance of the consumer protection
2 reserve account. If the trustee determines that during the
3 prior 5 years the consumer protection reserve account has
4 had an average account balance of less than \$75,000,000,
5 then the consumer protection reserve account principal
6 maximum amount shall be increased by \$5,000,000. If the
7 trustee determines that during the prior 5 years the
8 consumer protection reserve account has had an average
9 account balance of more than \$75,000,000, then the consumer
10 protection reserve account principal maximum amount shall
11 be decreased by \$5,000,000.

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

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

26 (8) The delivered SNG price per million btu to be paid

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

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

21 (10) Title to the SNG shall pass at a mutually
22 agreeable point in Illinois, and may provide that, rather
23 than the utility taking title to the SNG, a mutually agreed
24 upon third-party gas marketer pursuant to a contract
25 approved by the Illinois Power Agency or its designee may
26 take title to the SNG pursuant to an agreement between the

1 utility, the owner of the clean coal SNG brownfield
2 facility, and the third-party gas marketer.

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

6 (12) A utility is responsible to pay only the
7 Commission determined unit price cost of SNG that is
8 purchased by the utility, which unit price shall be set on
9 a per-mmbtu basis so as to fully recover the costs
10 enumerated in subsection (h-3) when multiplied by the
11 allocations determined in this subsection (h-1). Nothing
12 in the sourcing agreement will obligate a utility to invest
13 capital in a clean coal SNG brownfield facility.

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

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

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

16 (15) Remedies for the clean coal SNG brownfield
17 facility's failure to deliver a designated amount for a
18 designated period; provided, however, that the designated
19 amount on any given day may be zero.

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

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

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

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

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

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

1 average annual inflation-adjusted amounts paid by all gas
2 distribution customers in connection with natural gas
3 service during the 5 years ending May 31, 2010, as
4 determined by the Illinois Power Agency in the October 11,
5 2011 final draft sourcing agreement.

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

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

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

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

22 (A) to the extent that the monthly delivered SNG
23 price is less than or equal to the Chicago City-gate
24 price, calculated using the weighted average of the
25 daily Chicago City-gate price on a daily basis over the
26 entire month, the utility shall credit the difference,

1 if any, to the consumer protection reserve account.
2 Such credit issued pursuant to this subparagraph (A)
3 shall be deemed prudent and reasonable and not subject
4 to a Commission prudence review;

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

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

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

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

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

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

1 with the \$100,000,000 in savings as guaranteed in this
2 subsection (h-2). The retail customers shall have first
3 priority in recovering that debt above any creditors,
4 except the original senior secured lender to the extent
5 that the original senior secured lender has any senior
6 secured debt outstanding, including any clean coal SNG
7 brownfield facility parent companies or affiliates.

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

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

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

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

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

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

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

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

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

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

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

1 Commission's website and shall be submitted to the General
2 Assembly.

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

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

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

22 (1) A capital recovery charge approved by the
23 Commission shall be recoverable by the clean coal SNG
24 brownfield facility under a sourcing agreement. The
25 capital recovery charge shall be comprised of capital costs
26 and a reasonable rate of return. "Capital costs" means

1 costs to be incurred in connection with the construction
2 and development of a facility, as defined in Section 1-10
3 of the Illinois Power Agency Act, and such other costs as
4 the Capital Development Board deems appropriate to be
5 recovered in the capital recovery charge.

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

23 The Capital Development Board shall retain an
24 engineering expert to assist in determining both the
25 range of capital costs and the range of operations and
26 maintenance costs that it believes would be reasonable

1 for the clean coal SNG brownfield facility to recover
2 under the sourcing agreement. Provided, however, that
3 such expert shall: (i) not have been involved in the
4 clean coal SNG brownfield facility's facility cost
5 report, if any, (ii) not own or control any direct or
6 indirect interest in the initial clean coal facility,
7 and (iii) have no contractual relationship with the
8 clean coal SNG brownfield facility. In order to qualify
9 as an independent expert, a person or company must
10 have:

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

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

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

24 (iv) expertise in assisting companies with
25 obtaining financing for large-scale energy
26 projects, which may be particularized to the

1 specific type of financing associated with the
2 clean coal SNG brownfield facility;

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

7 (vi) expertise in credit and contract
8 protocols;

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

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

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

1 Only after the clean coal SNG brownfield facility has
2 submitted this estimate shall the Commission publicly
3 announce the range of capital costs submitted by the
4 Capital Development Board.

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

23 The Capital Development Board shall monitor the
24 construction of the clean coal SNG brownfield facility
25 for the full duration of construction to assess
26 potential cost overruns. The Capital Development

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

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

1 Power Agency, an opportunity to be heard.

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

1 notice shall not provide the Commission with
2 authorization to make modifications to the sourcing
3 agreement at the time of debt financing.

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

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

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

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

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

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

25 (3) Sequestration costs approved by the Commission
26 shall be recoverable by the clean coal SNG brownfield

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

5 (A) capture carbon dioxide;

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

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

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

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

21 The Commission may, in its discretion, retain an expert
22 to assist in its review of sequestration costs. The clean
23 coal SNG brownfield facility shall pay for the expert's
24 reasonable fees if an expert is retained by the Commission,
25 and such costs shall not be passed through to a utility or
26 its customers. Once made, the Commission's determination

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

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

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

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

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

23 (7) Unless otherwise provided, within 30 days after a
24 decision of the Commission on recoverable costs under this
25 Section, any interested party to the Commission's decision
26 may apply for a rehearing with respect to the decision. The

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

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

22 (8) The Capital Development Board shall adopt and make
23 public a policy detailing the process for retaining experts
24 under this Section. Any experts retained to assist with
25 calculating the range of capital costs or operations and
26 maintenance costs shall be retained no later than 45 days

1 after July 13, 2011.

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

20 (h-4.5) Notwithstanding any other provisions of this Act,
21 any sourcing agreement approved by the Commission prior to the
22 effective date of this amendatory Act of the 97th General
23 Assembly is void and shall not be further considered by the
24 Commission, except in accordance with this subsection (h-4.5).
25 The Commission shall issue an Order within 30 days after the
26 effective date of this amendatory Act of the 97th General

1 Assembly to approve a revised version of any such sourcing
2 agreement, incorporating only the following modifications to
3 the sourcing agreement endorsed in the Proposed Order on
4 Rehearing, as reflected in the form of sourcing agreement
5 attached to the brief on exceptions of the clean coal SNG
6 brownfield facility:

7 (1) Fill in the following blanks in Schedule 5.2A:

8 (A) Row (C), the word "Actual" shall be replaced
9 with "Fixed" in each instance, and the value shall be
10 set to 70%.

11 (B) Row (M), the value shall be set to 95.452838%
12 if the sourcing agreement is signed by the utility
13 within 30 days after the ICC Order to approve it,
14 otherwise the value shall be set to 100%.

15 (C) Rows (D), (G), (I), (N), and (P) shall be
16 calculated and filled in according to the formulas
17 shown in Schedule 5.2A.

18 (2) Fill in the following blanks on Schedule 5.2B:

19 (A) Row (E), the value shall be set to 95.452838%
20 if the sourcing agreement is signed by the utility
21 within 30 days after the ICC Order to approve it,
22 otherwise the value shall be set to 100%.

23 (B) Rows (F) and (G) shall be calculated and filled
24 in according to the formula in Schedule 5.2B, and the
25 same value from Row (G) shall replace the "\$[X.XX] " in
26 Section 5.2, component "B".

1 (3) Correct the following scrivener's and
2 typographical errors:

3 (A) In Sections 2.1(b), 2.2(b), 2.2(c), 2.2(e),
4 and 5.1 and in the definition of "Monthly Delivered
5 Quantity", the term "MCQ" shall be replaced with
6 "Applicable MCQ".

7 (B) In the last sentence of Section 2.2(c),
8 "Maximum DCQ" shall be replaced with "Buyer's
9 Allocated Percentage of the Maximum DCQ".

10 (C) In Section 4.2, the last "at" shall be replaced
11 with "or is not delivered to".

12 (D) In Section 4.8, the word "designated" shall be
13 inserted before the phrase "point of interconnection".

14 (E) In Section 5.1, the phrase "accepted at" shall
15 be replaced with "delivered to".

16 (F) In the definitions of "Title Transfer Point"
17 and "Transportation and Marketing Component", the
18 phrase "is defined" shall be replaced with "has the
19 meaning specified".

20 The Commission shall make no other modifications to the
21 sourcing agreement endorsed in the Proposed Order on Rehearing,
22 as reflected in the form of sourcing agreement attached to the
23 brief on exceptions of the clean coal SNG brownfield facility,
24 other than those listed in this subsection (h-4.5), and shall
25 impose no additional terms and conditions on the clean coal SNG
26 brownfield facility. A gas utility subject to the obligation

1 set forth in subsection (h-1) to enter into a sourcing
2 agreement shall satisfy this obligation only by entering into
3 the sourcing agreement approved under the provisions of this
4 subsection (h-4.5) within 45 days after the date of the
5 Commission's approval of such sourcing agreement.

6 (h-5) Sequestration enforcement.

7 (A) All contracts entered into under subsection (h) of
8 this Section and all sourcing agreements under subsection
9 (h-1) of this Section, regardless of duration, shall
10 require the owner of any facility supplying SNG under the
11 contract or sourcing agreement to provide certified
12 documentation to the Commission each year, starting in the
13 facility's first year of commercial operation, accurately
14 reporting the quantity of carbon dioxide emissions from the
15 facility that have been captured and sequestered and
16 reporting any quantities of carbon dioxide released from
17 the site or sites at which carbon dioxide emissions were
18 sequestered in prior years, based on continuous monitoring
19 of those sites.

20 (B) If, in any year, the owner of the clean coal SNG
21 facility fails to demonstrate that the SNG facility
22 captured and sequestered at least 90% of the total carbon
23 dioxide emissions that the facility would otherwise emit or
24 that sequestration of emissions from prior years has
25 failed, resulting in the release of carbon dioxide into the
26 atmosphere, then the owner of the clean coal SNG facility

1 must pay a penalty of \$20 per ton of excess carbon dioxide
2 emissions not to exceed \$40,000,000, in any given year
3 which shall be deposited into the Energy Efficiency Trust
4 Fund and distributed pursuant to subsection (b) of Section
5 6-6 of the Renewable Energy, Energy Efficiency, and Coal
6 Resources Development Law of 1997. On or before the 5-year
7 anniversary of the execution of the contract and every 5
8 years thereafter, an expert hired by the owner of the
9 facility with the approval of the Attorney General shall
10 conduct an analysis to determine the cost of sequestration
11 of at least 90% of the total carbon dioxide emissions the
12 plant would otherwise emit. If the analysis shows that the
13 actual annual cost is greater than the penalty, then the
14 penalty shall be increased to equal the actual cost.
15 Provided, however, to the extent that the owner of the
16 facility described in subsection (h) of this Section can
17 demonstrate that the failure was as a result of acts of God
18 (including fire, flood, earthquake, tornado, lightning,
19 hurricane, or other natural disaster); any amendment,
20 modification, or abrogation of any applicable law or
21 regulation that would prevent performance; war; invasion;
22 act of foreign enemies; hostilities (regardless of whether
23 war is declared); civil war; rebellion; revolution;
24 insurrection; military or usurped power or confiscation;
25 terrorist activities; civil disturbance; riots;
26 nationalization; sabotage; blockage; or embargo, the owner

1 of the facility described in subsection (h) of this Section
2 shall not be subject to a penalty if and only if (i) it
3 promptly provides notice of its failure to the Commission;
4 (ii) as soon as practicable and consistent with any order
5 or direction from the Commission, it submits to the
6 Commission proposed modifications to its carbon capture
7 and sequestration plan; and (iii) it carries out its
8 proposed modifications in the manner and time directed by
9 the Commission.

10 If the Commission finds that the facility has not
11 satisfied each of these requirements, then the facility
12 shall be subject to the penalty. If the owner of the clean
13 coal SNG facility captured and sequestered more than 90% of
14 the total carbon dioxide emissions that the facility would
15 otherwise emit, then the owner of the facility may credit
16 such additional amounts to reduce the amount of any future
17 penalty to be paid. The penalty resulting from the failure
18 to capture and sequester at least the minimum amount of
19 carbon dioxide shall not be passed on to a utility or its
20 customers.

21 If the clean coal SNG facility fails to meet the
22 requirements specified in this subsection (h-5), then the
23 Attorney General, on behalf of the People of the State of
24 Illinois, shall bring an action to enforce the obligations
25 related to the facility set forth in this subsection (h-5),
26 including any penalty payments owed, but not including the

1 physical obligation to capture and sequester at least 90%
2 of the total carbon dioxide emissions that the facility
3 would otherwise emit. Such action may be filed in any
4 circuit court in Illinois. By entering into a contract
5 pursuant to subsection (h) of this Section, the clean coal
6 SNG facility agrees to waive any objections to venue or to
7 the jurisdiction of the court with regard to the Attorney
8 General's action under this subsection (h-5).

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

18 In addition, carbon dioxide emission credits received
19 by the clean coal SNG facility in connection with
20 sequestration of carbon dioxide from the facility must be
21 sold in a timely fashion with any revenue, less applicable
22 fees and expenses and any expenses required to be paid by
23 facility for carbon dioxide transportation or
24 sequestration, deposited into the reconciliation account
25 within 30 days after receipt of such funds by the owner of
26 the clean coal SNG facility.

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

15 (C) If, in any year, the owner of a clean coal SNG
16 brownfield facility fails to demonstrate that the clean
17 coal SNG brownfield facility captured and sequestered at
18 least 85% of the total carbon dioxide emissions that the
19 facility would otherwise emit, then the owner of the clean
20 coal SNG brownfield facility must pay a penalty of \$20 per
21 ton of excess carbon emissions up to \$20,000,000, which
22 shall be deposited into the Energy Efficiency Trust Fund
23 and distributed pursuant to subsection (b) of Section 6-6
24 of the Renewable Energy, Energy Efficiency, and Coal
25 Resources Development Law of 1997. Provided, however, to
26 the extent that the owner of the clean coal SNG brownfield

1 facility can demonstrate that the failure was as a result
2 of acts of God (including fire, flood, earthquake, tornado,
3 lightning, hurricane, or other natural disaster); any
4 amendment, modification, or abrogation of any applicable
5 law or regulation that would prevent performance; war;
6 invasion; act of foreign enemies; hostilities (regardless
7 of whether war is declared); civil war; rebellion;
8 revolution; insurrection; military or usurped power or
9 confiscation; terrorist activities; civil disturbances;
10 riots; nationalization; sabotage; blockage; or embargo,
11 the owner of the clean coal SNG brownfield facility shall
12 not be subject to a penalty if and only if (i) it promptly
13 provides notice of its failure to the Commission; (ii) as
14 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
17 sequestration plan; and (iii) it carries out its proposed
18 modifications in the manner and time directed by the
19 Commission. If the Commission finds that the facility has
20 not satisfied each of these requirements, then the facility
21 shall be subject to the penalty. If the owner of a clean
22 coal SNG brownfield facility demonstrates that the clean
23 coal SNG brownfield facility captured and sequestered more
24 than 85% of the total carbon emissions that the facility
25 would otherwise emit, the owner of the clean coal SNG
26 brownfield facility may credit such additional amounts to

1 reduce the amount of any future penalty to be paid. The
2 penalty resulting from the failure to capture and sequester
3 at least the minimum amount of carbon dioxide shall not be
4 passed on to a utility or its customers.

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

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

26 Responsibility for compliance with the sequestration

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

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

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

19 (2) The Commission shall review carbon dioxide
20 transportation and sequestration methods proposed by a
21 clean coal facility or a clean coal SNG brownfield facility
22 and shall approve those methods it deems reasonable and
23 cost-effective. For purposes of this review,
24 "cost-effective" means a commercially reasonable price for
25 similar carbon dioxide transportation or sequestration
26 techniques. In determining whether sequestration is

1 reasonable and cost-effective, the Commission may consult
2 with the Illinois State Geological Survey and retain third
3 parties to assist in its determination, provided that such
4 third parties shall not own or control any direct or
5 indirect interest in the facility that is proposing the
6 carbon dioxide transportation or the carbon dioxide
7 sequestration method and shall have no contractual
8 relationship with that facility. If a third party is
9 retained by the Commission, then the facility proposing the
10 carbon dioxide transportation or sequestration method
11 shall pay for the expert's reasonable fees, and these costs
12 shall not be passed through to a utility or its customers.

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

25 The Commission may not approve a carbon dioxide
26 sequestration method if the owner or operator of the

1 sequestration site has not received (i) an Underground
2 Injection Control permit from the Illinois Environmental
3 Protection Agency pursuant to the Environmental Protection
4 Act; (ii) an Underground Injection Control permit from the
5 Illinois Department of Natural Resources pursuant to the
6 Illinois Oil and Gas Act; or (iii) a permit similar to
7 items (i) or (ii) from the state in which the sequestration
8 site is located if the sequestration will take place
9 outside of Illinois. The Commission shall approve or deny
10 the carbon dioxide transportation or sequestration method
11 within 90 days after the receipt of all required
12 information.

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

22 If the Illinois Environmental Protection Agency
23 determines at any time a site creates conditions that
24 warrant the issuance of a seal order under Section 34 of
25 the Environmental Protection Act, then the Illinois
26 Environmental Protection Agency shall seal the site

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

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

23 In circumstances whereby a carbon dioxide pipeline
24 creates a substantial danger to the environment or to the
25 public health of persons or to the welfare of persons where
26 such danger is to the livelihood of such persons, the

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

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

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

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

25 (3) deny the clean coal SNG brownfield facility full
26 cost and revenue recovery as provided under those sourcing

1 agreements that are recoverable pursuant to subsection
2 (h-3) of this Section.

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

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

1 amendatory legislation or other action as described in this
2 subsection (h-9).

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) of this Section, which confirmation
11 shall be deemed conclusive, or as a consequence of or condition
12 to its performance under the contract, including (i) amounts
13 paid for SNG under the SNG contract and (ii) costs of
14 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) of this Section and the performance of the
26 parties under such contract cannot be grounds for challenging

1 prudence or cost recovery by the utility through the purchased
2 gas adjustment clause, and in such cases, the Commission is
3 directed not to consider, and has no authority to consider, any
4 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-11) All costs incurred by an Illinois gas utility in
26 procuring SNG from a clean coal SNG brownfield facility

1 pursuant to subsection (h-1) or a third-party marketer pursuant
2 to subsection (h-1) are reasonable and prudent and recoverable
3 through the purchased gas adjustment clause in conjunction with
4 a SNG brownfield facility rider mechanism and are not subject
5 to review or disallowance by the Commission; provided that if a
6 utility is required by law or otherwise elects to connect the
7 clean coal SNG brownfield facility to an interstate pipeline,
8 then the utility shall be entitled to recover pursuant to its
9 tariffs all just and reasonable costs that are prudently
10 incurred. Sourcing agreement costs are costs incurred by the
11 utility under the terms of a sourcing agreement that
12 incorporates the terms stated in subsection (h-1) of this
13 Section as approved by the Commission as set forth in
14 subsection (h-4) of this Section, which approval shall be
15 deemed conclusive, or as a consequence of or condition to its
16 performance under the contract, including (i) amounts paid for
17 SNG under the SNG contract and (ii) costs of transportation and
18 storage services of SNG purchased from interstate pipelines
19 under federally approved tariffs. Any sourcing agreement, the
20 terms of which have been approved by the Commission as set
21 forth in subsection (h-4) of this Section, and the performance
22 of the parties under the sourcing agreement cannot be grounds
23 for challenging prudence or cost recovery by the utility, and
24 in these cases, the Commission is directed not to consider, and
25 has no authority to consider, any attempted challenges.

26 (h-15) Reconciliation account. The clean coal SNG facility

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

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

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

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

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

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

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

25 If, at the conclusion of the term of the contracts
26 pursuant to subsection (h) and the completion of the final

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

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

26 (3) 50% of all additional net revenue, defined as

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

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

16 (A) the revenue share target amount;

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

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

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

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

26 (F) any additional information the Commission may

1 require.

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

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

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

1 is in default.

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

11 (h-20) The General Assembly authorizes the Illinois
12 Finance Authority to issue bonds to the maximum extent
13 permitted to finance coal gasification facilities described in
14 this Section, which constitute both "industrial projects"
15 under Article 801 of the Illinois Finance Authority Act and
16 "clean coal and energy projects" under Sections 825-65 through
17 825-75 of the Illinois Finance Authority Act.

18 Administrative costs incurred by the Illinois Finance
19 Authority in performance of this subsection (h-20) shall be
20 subject to reimbursement by the clean coal SNG facility on
21 terms as the Illinois Finance Authority and the clean coal SNG
22 facility may agree. The utility and its customers shall have no
23 obligation to reimburse the clean coal SNG facility or the
24 Illinois Finance Authority for any such costs.

25 (h-25) The State of Illinois pledges that the State may not
26 enact any law or take any action to (1) break or repeal the

1 authority for SNG purchase contracts entered into between
2 public gas utilities and the clean coal SNG facility pursuant
3 to subsection (h) of this Section or (2) deny public gas
4 utilities their full cost recovery for contract costs, as
5 defined in subsection (h-10), that are incurred under such SNG
6 purchase contracts. These pledges are for the benefit of the
7 parties to such SNG purchase contracts and the issuers and
8 holders of bonds or other obligations issued or incurred to
9 finance or refinance the clean coal SNG facility. The
10 beneficiaries are authorized to include and refer to these
11 pledges in any finance agreement into which they may enter in
12 regard to such contracts.

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

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

26 (Source: P.A. 96-1364, eff. 7-28-10; 97-96, eff. 7-13-11;

1 97-239, eff. 8-2-11; 97-630, eff. 12-8-11.)

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