



Executive Committee

Adopted in House Comm. on Jan 05, 2011

09600SB1927ham001

LRB096 11262 ASK 44724 a

1 AMENDMENT TO SENATE BILL 1927

2 AMENDMENT NO. _____. Amend Senate Bill 1927 by replacing
3 everything after the enacting clause with the following:

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

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

10 "Agency" means the Illinois Power Agency.

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

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

3 "Authority" means the Illinois Finance Authority.

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

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

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

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

23 "Commission" means the Illinois Commerce Commission.

24 "Costs incurred in connection with the development and
25 construction of a facility" means:

26 (1) the cost of acquisition of all real property,

1 fixtures, and improvements in connection therewith and
2 equipment, personal property, and other property, rights,
3 and easements acquired that are deemed necessary for the
4 operation and maintenance of the facility;

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

7 (3) all origination, commitment, utilization,
8 facility, placement, underwriting, syndication, credit
9 enhancement, and rating agency fees;

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

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

24 "Department" means the Department of Commerce and Economic
25 Opportunity.

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

1 "Demand-response" means measures that decrease peak
2 electricity demand or shift demand from peak to off-peak
3 periods.

4 "Energy efficiency" means measures that reduce the amount
5 of electricity or natural gas required to achieve a given end
6 use.

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

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

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

17 "Local government" means a unit of local government as
18 defined in Article VII of Section 1 of the Illinois
19 Constitution.

20 "Municipality" means a city, village, or incorporated
21 town.

22 "Person" means any natural person, firm, partnership,
23 corporation, either domestic or foreign, company, association,
24 limited liability company, joint stock company, or association
25 and includes any trustee, receiver, assignee, or personal
26 representative thereof.

1 "Project" means the planning, bidding, and construction of
2 a facility.

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

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

11 "Renewable energy credit" means a tradable credit that
12 represents the environmental attributes of a certain amount of
13 energy produced from a renewable energy resource.

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

1 utility poles, or construction or demolition debris, other than
2 untreated and unadulterated waste wood.

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

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

18 "Sourcing agreement" means (i) in the case of an electric
19 utility, an agreement between the owner of a clean coal
20 facility and such electric utility, which agreement shall have
21 terms and conditions meeting the requirements of paragraph (3)
22 of subsection (d) of Section 1-75, (ii) in the case of an
23 alternative retail electric supplier, an agreement between the
24 owner of a clean coal facility and such alternative retail
25 electric supplier, which agreement shall have terms and
26 conditions meeting the requirements of Section 16-115(d) (5) of

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

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

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

1 avoided costs of power and energy that an electric utility
2 would otherwise have had to acquire, reasonable estimates shall
3 be included of financial costs likely to be imposed by future
4 regulations and legislation on emissions of greenhouse gases.

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

9 Section 7. If and only if Senate Bill 3388 of the 96th
10 General Assembly (as amended by House Amendment Nos. 1, 2, and
11 3) becomes law, then the Illinois Procurement Code is amended
12 by changing Section 1-10 as follows:

13 (30 ILCS 500/1-10)

14 Sec. 1-10. Application.

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

1 Code and its intent.

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

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

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

11 (3) Purchase of care.

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

16 (5) Collective bargaining contracts.

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

24 (7) Contracts necessary to prepare for anticipated
25 litigation, enforcement actions, or investigations,
26 provided that the chief legal counsel to the Governor shall

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

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

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

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

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

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

1 procurement process provided for under Section 9.1 of the
2 Illinois Lottery Law.

3 (e) This Code does not apply to the process used by the
4 Capital Development Board to retain a person or entity to
5 assist the Capital Development Board with its duties related to
6 the determination of costs of a clean coal SNG brownfield
7 facility, as defined by Section 1-10 of the Illinois Power
8 Agency Act, as required in subsection (h-3) of Section 9-220 of
9 the Public Utilities Act, including calculating the range of
10 capital costs, the range of operating and maintenance costs, or
11 the sequestration costs or monitoring the construction of clean
12 coal SNG brownfield facility for the full duration of
13 construction.

14 (f) This Code does not apply to the process used by the
15 Illinois Power Agency to retain a mediator to mediate sourcing
16 agreement disputes between gas utilities and the clean coal SNG
17 brownfield facility, as defined in Section 1-10 of the Illinois
18 Power Agency Act, as required under subsection (h-1) of Section
19 9-220 of the Public Utilities Act.

20 (g) This Code does not apply to the process used by the
21 Illinois Power Agency to retain a mediator to mediate contract
22 disputes between gas utilities and the clean coal SNG facility
23 located in Jefferson County as required under subsection (h) of
24 Section 9-220 of the Public Utilities Act and does not apply to
25 the process used by the Illinois Commerce Commission to retain
26 an expert to assist in determining the actual incurred costs of

1 the clean coal SNG facility and the reasonableness of those
2 costs as required under subsection (h) of Section 9-220 of the
3 Public Utilities Act.

4 (Source: P.A. 95-481, eff. 8-28-07; 95-615, eff. 9-11-07;
5 95-876, eff. 8-21-08; 96-840, eff. 12-23-09; 96-1331, eff.
6 7-27-10; 09600SB3388ham001 and ham003.)

7 Section 10. If and only if Senate Bill 3388 of the 96th
8 General Assembly (as amended by House Amendment Nos. 1, 2, and
9 3) becomes law, then the Public Utilities Act is amended by
10 changing Sections 3-123 and 9-220 and by adding Sections 3-124,
11 3-125, and 3-126 as follows:

12 (220 ILCS 5/3-123)

13 Sec. 3-123. Clean coal SNG brownfield facility; sequester;
14 SNG facility; sourcing agreement; substitute natural gas or
15 SNG. As used in this Act:

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

18 "Clean coal SNG brownfield facility" shall have the same
19 meaning as provided in Section 1-10 of the Illinois Power
20 Agency Act.

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

23 "SNG facility" means a facility that produces substitute
24 natural gas from feedstock that includes coal through a

1 gasification process, including a clean coal facility, the
2 clean coal SNG brownfield facility, and the clean coal SNG
3 facility located in Jefferson County ~~described in subsection~~
4 ~~(h) of Section 9-220 of this Act.~~

5 "Sourcing agreement" means an agreement between the owner
6 of a clean coal SNG brownfield facility and the gas utility
7 that has the terms and conditions meeting the requirements of
8 subsection (h-1) of Section 9-220 of this Act.

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

12 (Source: 09600SB3388ham001.)

13 (220 ILCS 5/3-124 new)

14 Sec. 3-124. Adjusted final capitalized plant cost.
15 "Adjusted final capitalized plant cost" means the final
16 capitalized plant cost reduced by the following, without
17 duplication and to the extent not already accounted for or
18 reflected on the books of the facility: (i) any State of
19 Illinois Financial Assistance, (ii) any U.S. Financial
20 Assistance, and (iii) any quantifiable benefit from a U.S.
21 Clean Coal Gasification Program received by the facility during
22 a period equal to the shorter of (x) the life of such program
23 or (y) the term of the agreement, such quantifiable benefit to
24 be discounted at a rate of 14% per annum over such period.

1 (220 ILCS 5/3-125 new)

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

1 commissioning of the plant in preparation for commercial
2 production date.

3 (220 ILCS 5/3-126 new)

4 Sec. 3-126. Total capitalized asset cost. "Total
5 capitalized asset cost" means the gross book value of the
6 plant, as determined in accordance with generally accepted
7 accounting principles at the commercial production date.

8 (220 ILCS 5/9-220) (from Ch. 111 2/3, par. 9-220)

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

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

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

1 rate proceeding. Cost shall be based upon uniformly applied
2 accounting principles. Annually, the Commission shall initiate
3 public hearings to determine whether the clauses reflect actual
4 costs of fuel, gas, power, or coal transportation purchased to
5 determine whether such purchases were prudent, and to reconcile
6 any amounts collected with the actual costs of fuel, power,
7 gas, or coal transportation prudently purchased. In each such
8 proceeding, the burden of proof shall be upon the utility to
9 establish the prudence of its cost of fuel, power, gas, or coal
10 transportation purchases and costs. The Commission shall issue
11 its final order in each such annual proceeding for an electric
12 utility by December 31 of the year immediately following the
13 year to which the proceeding pertains, provided, that the
14 Commission shall issue its final order with respect to such
15 annual proceeding for the years 1996 and earlier by December
16 31, 1998.

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

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

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

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

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

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

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

23 (e) Notwithstanding any contrary or inconsistent
24 provisions in Section 9-201 of this Act, in subsection (a) of
25 this Section, or in any rules promulgated by the Commission
26 pursuant to subsection (g) of this Section, a public utility

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

1 prior to January 1, 2007.

2 (f) 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 to more than 500,000
7 customers but fewer than 1,000,000 customers in this State may,
8 within the first 6 months after the effective date of this
9 amendatory Act of 1997, file with the Commission proposed
10 tariff sheets that eliminate, effective January 1, 1997, the
11 public utility's fuel adjustment clause and adjust its base
12 rates by the amount necessary for the base fuel component of
13 the base rates to recover 91% of the public utility's average
14 fuel and power supply costs for the 2 most recent years for
15 which the Commission, as of January 1, 1997, has issued final
16 orders in annual proceedings pursuant to subsection (a), where
17 the average fuel and power supply costs per kilowatt-hour shall
18 be calculated as the sum of the public utility's prudent and
19 allowable fuel and power supply costs as found by the
20 Commission in the 2 proceedings divided by the public utility's
21 actual jurisdictional kilowatt-hour sales for those 2 years,
22 provided, that such tariff sheets shall be effective upon
23 filing. To the extent the application of the fuel adjustment
24 clause had resulted in net charges to customers after January
25 1, 1997, the utility shall also file a tariff sheet that
26 provides for a refund stated on a per kilowatt-hour basis of

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

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

20 (h) Any Illinois gas utility may enter into a contract on
21 or before March 31, 2011 for up to 10 years of supply with any
22 company for the purchase of substitute natural gas (SNG)
23 produced from coal through the gasification process if the
24 company has commenced construction of a coal gasification
25 facility by July 1, 2012 in Jefferson County and commencement
26 of construction shall mean that material physical site work has

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

26 Any gas utility that is providing service to more than

1 150,000 customers on the effective date of this amendatory Act
2 of the 96th General Assembly shall either elect to enter into a
3 contract on or before March 31, 2011 for 10 years of SNG supply
4 with the owner of a clean coal SNG gasification facility
5 located in Jefferson County or to file biennial rate
6 proceedings before the Commission in the years 2011, 2013, and
7 2015, with such filings made no later than August 1 of the
8 years 2011, 2013 and 2015 consistent with all requirements of
9 83 Ill. Adm. Code 255 and 285 as though the gas utility were
10 filing for an increase in its rates, without regard to whether
11 such filing would produce an increase, a decrease, or no change
12 in the gas utility's rates, and the Commission shall review the
13 gas utility's filing and shall issue its order in accordance
14 with the provisions of Section 9-201 of this Act.

15 Within 7 days after the effective date of this amendatory
16 Act of the 96th General Assembly, the owner of the clean coal
17 SNG facility in Jefferson County shall submit to the Illinois
18 Power Agency and each gas utility that is providing service to
19 more than 150,000 customers on the effective date of this
20 amendatory Act of the 96th General Assembly a copy of a draft
21 contract. Within 30 days after the receipt of the draft
22 contract, each such gas utility shall provide the Illinois
23 Power Agency and the owner of the clean coal SNG facility
24 located in Jefferson County with its comments and recommended
25 revisions to the draft contract. Within 7 days after the
26 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 and approve the SNG pricing formula included
11 in the contracts, ensuring that the formula, at the time
12 the contract term commences: (A) starts with a price of
13 \$6.50 per MMBtu adjusted by the adjusted final capitalized
14 plant cost; (B) takes into account budgeted miscellaneous
15 net revenue after cost allowance, including sale of SNG
16 produced by the clean coal SNG facility located in
17 Jefferson County above the nameplate capacity of the
18 facility and other by-products produced by the facility, as
19 approved by the Illinois Power Agency; (C) does not include
20 carbon dioxide transportation or sequestration expenses;
21 and (D) includes all provisions required under this
22 subsection (h);

23 (3) review and approve the amount of budgeted
24 miscellaneous net revenue after cost allowance, including
25 sale of SNG produced by the clean coal SNG facility located
26 in Jefferson County above the nameplate capacity of the

1 facility and other by-products produced by the facility, to
2 be included in the pricing formula. The Illinois Power
3 Agency shall approve the amount of budgeted miscellaneous
4 net revenue to be included in the pricing formula if it
5 determines the budgeted amount to be reasonable and
6 accurate; and

7 (4) allocate the nameplate capacity of the clean coal
8 SNG facility located in Jefferson County by total therms
9 sold to ultimate customers by each gas utility in 2008 and
10 adjusted only as required to take into account adverse
11 consolidation, derivative, or lease impacts to the balance
12 sheet or income statement of any purchasing utility, while
13 requiring that no utility shall be required to purchase
14 more than 42% of the projected annual output of the
15 facility.

16 If the parties to the contract do not agree on the terms
17 therein, then the Illinois Power Agency shall retain an
18 independent mediator to mediate the dispute between the
19 parties. If the parties are in agreement on the terms of the
20 contract, then the Illinois Power Agency shall approve the
21 contract. If after mediation the parties have failed to come to
22 agreement, then the Illinois Power Agency shall revise the
23 draft contract as necessary to confirm that the contract
24 contains only terms that are reasonable and equitable. The
25 Illinois Power Agency shall adopt and make public a policy
26 detailing the process for retaining a mediator under this

1 subsection (h). Any mediator retained to mediate disputes
2 between the clean coal SNG facility located in Jefferson County
3 and a gas utility shall be retained no later than 60 days after
4 the effective date of this amendatory Act of the 96th General
5 Assembly.

6 The Illinois Power Agency shall complete all of its
7 responsibilities under this subsection (h) by March 15, 2011.
8 The clean coal SNG facility located in Jefferson County shall
9 pay a reasonable fee as required by the Illinois Power Agency
10 for its services under this subsection (h) and shall pay the
11 mediator's reasonable fees, if any. A gas utility and its
12 customers shall have no obligation to reimburse the clean coal
13 SNG facility located in Jefferson County or the Illinois Power
14 Agency of any such costs.

15 Within 30 days after commercial production of SNG has
16 begun, the Commission shall initiate a review to determine: (1)
17 whether the final capitalized plant cost of the clean coal SNG
18 facility located in Jefferson County reflects actual incurred
19 costs and (2) whether such incurred costs were reasonable. In
20 determining the actual incurred costs included in the final
21 capitalized plant cost and the reasonableness of those costs,
22 the Commission may in its discretion retain independent,
23 qualified, and experienced experts to assist in its
24 determination. The expert shall not own or control any direct
25 or indirect interest in the clean coal SNG facility located in
26 Jefferson County and shall have no contractual relationship

1 with the clean coal SNG facility located in Jefferson County.
2 If an expert is retained by the Commission, then the clean coal
3 SNG facility located in Jefferson County shall pay the expert's
4 reasonable fees. The fees shall not be passed on to a utility
5 or its customers. The Commission shall adopt and make public a
6 policy detailing the process for retaining experts under this
7 subsection (h).

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

1 volume, from the price revised by the Commission. Any refund
2 shall include interest calculated at a rate determined by the
3 Commission and shall be returned according to procedures
4 prescribed by the Commission.

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

8 (h-1) Any Illinois gas utility may enter into a sourcing
9 agreement for up to 30 years of supply with the clean coal SNG
10 brownfield facility if the clean coal SNG brownfield facility
11 has commenced construction. Any gas utility that is providing
12 service to more than 150,000 customers on the effective date of
13 this amendatory Act of the 96th General Assembly shall either
14 elect to file biennial rate proceedings before the Commission
15 in the years 2011, 2013, and 2015 or enter into a sourcing
16 agreement or sourcing agreements with a clean coal SNG
17 brownfield facility for 30 years for either (i) 43,500,000,000
18 cubic feet per year times a percentage calculated by dividing
19 100 by the number of utilities entering into sourcing
20 agreements with the clean coal SNG brownfield facility or (ii)
21 such lesser amount as may be available from the clean coal SNG
22 brownfield facility.

23 Provided, however, that the Illinois Power Agency may
24 allocate the purchase obligations more proportionately based
25 upon total therms sold to ultimate customers, if it is
26 demonstrated with certainty that such alternative allocation

1 will not result in adverse consolidation, derivative, or lease
2 impacts to the balance sheet or income statement of any
3 purchasing utility. In any event, no utility shall be required
4 to purchase more than 42% of the projected annual output of the
5 clean coal SNG brownfield facility, with the remainder of such
6 utility's obligation to be divided proportionately between the
7 other utilities.

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

22 Within 15 days after the effective date of this amendatory
23 Act of the 96th General Assembly, the owner of the clean coal
24 SNG brownfield facility shall submit to the Illinois Power
25 Agency and each gas utility that is providing service to more
26 than 150,000 customers on the effective date of this amendatory

1 Act of the 96th General Assembly a copy of a draft sourcing
2 agreement. Within 45 days after receipt of the draft sourcing
3 agreement, each such gas utility shall provide the Illinois
4 Power Agency and the owner of a clean coal SNG brownfield
5 facility with its comments and recommended revisions to the
6 draft sourcing agreement. Within 15 days after the receipt of
7 the gas utility's comments and recommended revisions, the owner
8 of the clean coal SNG brownfield facility shall submit its
9 responsive comments and a further revised draft of the sourcing
10 agreement to the Illinois Power Agency. The Illinois Power
11 Agency shall review the draft sourcing agreement and comments.

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

1 amendatory Act of the 96th General Assembly.

2 Upon approval of a final draft agreement, the Illinois
3 Power Agency shall submit the final draft agreement to the
4 Capital Development Board and the Commission no later than 90
5 days after the effective date of this amendatory Act of the
6 96th General Assembly. The gas utility and the clean coal SNG
7 brownfield facility shall pay a reasonable fee as required by
8 the Illinois Power Agency for its services under this
9 subsection (h-1) and shall pay the mediator's reasonable fees,
10 if any. The Illinois Power Agency shall adopt and make public a
11 policy detailing the process for retaining a mediator under
12 this Section.

13 The sourcing agreement between a gas utility and the clean
14 coal SNG brownfield facility shall contain the following
15 provisions:

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

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

25 (3) The sourcing agreement once entered into
26 terminates no more than 30 years after the commencement of

1 the commercial production of SNG at the clean coal SNG
2 brownfield facility.

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

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

1 Section.

2 (6) The clean coal SNG brownfield facility shall
3 identify and sell economically viable by-products produced
4 by the facility.

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

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

1 unit of local government as provided in paragraph (6) of
2 subsection (h-3) of this Section; and (E) the credit, if
3 any, from the consumer protection reserve account pursuant
4 to subsection (h-2) of this Section. The delivered SNG
5 price per million Btu shall proportionately reflect these
6 elements over the term of the sourcing agreement.

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

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

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

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

26 (13) The quality of SNG must, at a minimum, be

1 equivalent to the equality required for an interstate
2 pipeline gas before a utility is required to accept and pay
3 for SNG gas.

4 (14) Nothing in the sourcing agreement will require a
5 utility to construct any facilities to accept delivery of
6 SNG. Provided, however, if a utility is required by law or
7 otherwise elects to connect the clean coal SNG brownfield
8 facility to an interstate pipeline, then the utility shall
9 be entitled to recover pursuant to its tariffs all just and
10 reasonable costs that are prudently incurred. Any costs
11 incurred by the utility to receive, deliver, manage, or
12 otherwise accommodate purchases under the SNG sourcing
13 agreement will be fully recoverable through a utility's
14 purchased gas adjustment clause rider mechanism.

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

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

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

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

22 (2) During the first 2 years of operation of the
23 facility:

24 (A) to the extent the monthly delivered SNG price,
25 is greater than the Chicago City-gate price, the
26 consumer protection reserve account shall be used to

1 provide a credit to reduce the SNG price by an amount
2 equal to the difference between the monthly delivered
3 SNG price and the Chicago City-gate price; and

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

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

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

23 (B) any amounts in the consumer protection reserve
24 account in excess of \$100,000,000 shall be distributed
25 to the clean coal SNG brownfield facility; provided,
26 however, that under no circumstances shall the total

1 cumulative amount distributed to the clean coal SNG
2 brownfield facility under this subparagraph (B) exceed
3 \$150,000,000;

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

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

1 amounts shall be credited to the retail customers to
2 the extent the consumer protection reserve account
3 exceeds \$100,000,000.

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

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

23 (6) If, at the conclusion of the term of the sourcing
24 agreement, the customers have not saved the minimum
25 \$100,000,000 in savings as guaranteed in this subsection
26 (h-2) and the consumer protection reserve account has been

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

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

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

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

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

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

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

6 (E) the total amount of consumer savings to date;
7 and

8 (F) any other additional information the
9 Commission shall require.

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

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

1 prior to February 1 of the following year. The annual
2 summary shall be made available to the public on the
3 Commission's website and shall be submitted to the General
4 Assembly.

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

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

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

24 (1) A capital recovery charge approved by the
25 Commission shall be recoverable by the clean coal SNG
26 brownfield facility under a sourcing agreement. The

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

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

21 The Capital Development Board shall retain an
22 engineering expert to assist in determining both the
23 range of capital costs and the range of operations and
24 maintenance costs that it believes would be reasonable
25 for the clean coal SNG brownfield facility to recover
26 under the sourcing agreement. Provided, however, that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 In determining the return on equity, the

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

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

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

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

1 Development Board shall make its final determination of the
2 range of operations and maintenance costs confidentially
3 and shall submit that range to the Commission in a
4 confidential filing within 120 days after the effective
5 date of this amendatory Act of the 96th General Assembly.

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

1 its range and the clean coal SNG brownfield facility has
2 submitted its estimate, the Commission shall approve the
3 operations and maintenance costs for the clean coal SNG
4 brownfield facility.

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

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

20 (A) capture carbon dioxide;

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

23 (C) build, operate, and maintain a carbon dioxide
24 pipeline; and

25 (D) transport the carbon dioxide to the
26 sequestration site or a pipeline.

1 The Commission shall assess the prudence of the
2 sequestration costs for the clean coal SNG brownfield
3 facility before construction commences at the
4 sequestration site or pipeline. Any revenues the clean coal
5 SNG brownfield facility receives as a result of the
6 capture, transportation, or sequestration of carbon
7 dioxide shall be first credited against all sequestration
8 costs, with the positive balance, if any, treated as
9 additional net revenue.

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

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

24 (5) Taxes and fees imposed by the federal government,
25 the State, or any unit of local government applicable to
26 the clean coal SNG brownfield facility, excluding income

1 tax, shall be recoverable by the clean coal SNG brownfield
2 facility under the sourcing agreement to the extent such
3 taxes and fees were not applicable to the facility on the
4 date of this amendatory Act of the 96th General Assembly.

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

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

26 Any person affected by a decision of the Commission

1 under this subsection (h-3) may have the decision reviewed
2 only under and in accordance with the Administrative Review
3 Law. Unless otherwise provided, the provisions of the
4 Administrative Review Law, all amendments and
5 modifications to that Law, and the rules adopted pursuant
6 to that Law shall apply to and govern all proceedings for
7 the judicial review of final administrative decisions of
8 the Commission under this subsection (h-3). The term
9 "administrative decision" is defined as in Section 3-101 of
10 the Code of Civil Procedure.

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

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

26 (h-5) The Attorney General, on behalf of the people of the

1 State of Illinois, may specifically enforce the requirements of
2 this subsection (h-5). Sourcing ~~All contracts under subsection~~
3 ~~(h) of this Act and all sourcing~~ agreements under subsection
4 (h-1) of this Act, regardless of duration, shall require the
5 owner of any facility supplying SNG under the ~~contract or~~
6 sourcing agreement to provide documentation to the Commission
7 each year, starting in the facility's first year of commercial
8 operation, accurately reporting the quantity of carbon dioxide
9 emissions from the facility that have been captured and
10 sequestered and reporting any quantities of carbon dioxide
11 released from the site or sites at which carbon dioxide
12 emissions were sequestered in prior years, based on continuous
13 monitoring of those sites. ~~If, in any year, the owner of the~~
14 ~~facility described in subsection (h) of this Act fails to~~
15 ~~demonstrate that the facility captured and sequestered at least~~
16 ~~90% of the total carbon dioxide emissions that the facility~~
17 ~~would otherwise emit or that sequestration of emissions from~~
18 ~~prior years has failed, resulting in the release of carbon~~
19 ~~dioxide into the atmosphere, then the owner of the facility~~
20 ~~must offset excess emissions. Any such carbon dioxide offsets~~
21 ~~must be permanent, additional, verifiable, real, located~~
22 ~~within the State of Illinois, and legally and practicably~~
23 ~~enforceable; provided that the owner of the facility described~~
24 ~~in subsection (h) of this Act shall not be obligated to acquire~~
25 ~~carbon dioxide emission offsets to the extent that the cost of~~
26 ~~acquiring such offsets would exceed \$40 million in any given~~

1 ~~year. No costs of any purchases of carbon offsets may be~~
2 ~~recovered from a utility or its customers. All carbon offsets~~
3 ~~purchased for this purpose must be permanently retired.~~

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

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

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

1 court with regard to the Attorney General's action for specific
2 performance under this subsection (h-5).

3 ~~In addition, carbon dioxide emission credits equivalent to~~
4 ~~50% of the amount of credits associated with the required~~
5 ~~sequestration of carbon dioxide from the facility must be~~
6 ~~permanently retired. Compliance with the sequestration~~
7 ~~requirements and the offset purchase requirements specified in~~
8 ~~this subsection (h-5) for the facility described in subsection~~
9 ~~(h) of this Act shall be assessed annually by an independent~~
10 ~~expert retained by the owner of the facility described in~~
11 ~~subsection (h) of this Act, with the advance written approval~~
12 ~~of the Attorney General.~~ Compliance with the sequestration
13 requirements and penalty requirements specified in this
14 subsection (h-5) for the clean coal SNG brownfield facility
15 shall be assessed annually by the Commission, which may in its
16 discretion retain an expert to facilitate its assessment. If an
17 expert is retained by the Commission, then the clean coal SNG
18 brownfield facility shall pay for the expert's reasonable fees,
19 and such costs shall not be passed through to a utility or its
20 customers. A SNG facility operating pursuant to this subsection
21 (h-5) shall not forfeit its designation as ~~a clean coal SNG~~
22 ~~facility or~~ a clean coal SNG brownfield facility if the
23 facility fails to fully comply with the applicable carbon
24 sequestration requirements in any given year, provided the
25 requisite ~~offsets are purchased or requisite~~ penalties are
26 paid.

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

7 (h-6) The Attorney General, on behalf of the people of the
8 State of Illinois, may specifically enforce the requirements of
9 this subsection (h-6). All contracts, regardless of duration,
10 shall require the owner of any facility supplying SNG under the
11 contract to provide documentation to the Commission each year,
12 starting in the facility's first year of commercial operation,
13 accurately reporting the quantity of carbon dioxide emissions
14 from the facility that have been captured and sequestered and
15 reporting any quantities of carbon dioxide released from the
16 site or sites at which carbon dioxide emissions were
17 sequestered in prior years, based on continuous monitoring of
18 those sites.

19 If, in any year, the owner of the clean coal SNG facility
20 located in Jefferson County fails to demonstrate that the SNG
21 facility captured and sequestered at least 90% of the total
22 carbon dioxide emissions that the facility would otherwise emit
23 or that sequestration of emissions from prior years has failed,
24 resulting in the release of carbon dioxide into the atmosphere,
25 then the owner of the clean coal SNG facility located in
26 Jefferson County must pay a penalty of \$20 per ton of excess

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

24 If the Commission finds that the facility has not satisfied
25 each of these requirements, then the facility shall be subject
26 to the penalty. If the owner of the clean coal SNG facility

1 located in Jefferson County captured and sequestered more than
2 90% of the total carbon emissions that the facility would
3 otherwise emit, then the owner of the facility may credit such
4 additional amounts to reduce the amount of any future penalty
5 to be paid. The penalty resulting from the failure to capture
6 and sequester at least the minimum amount of carbon dioxide
7 shall not be passed on to a utility or its customers.

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

20 Compliance with the sequestration requirements and any
21 penalty requirements specified in this subsection (h-6) for the
22 clean coal SNG facility located in Jefferson County shall be
23 assessed annually by the Commission, which may in its
24 discretion retain an expert to facilitate its assessment. If
25 any expert is retained by the Commission, then the clean coal
26 SNG facility located in Jefferson County shall pay for the

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

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

12 The clean coal SNG facility located in Jefferson County is
13 prohibited from transporting or sequestering carbon dioxide
14 unless the owner of the carbon dioxide pipeline that transfers
15 the carbon dioxide from the facility and the owner of the
16 sequestration site where the carbon dioxide captured by the
17 facility is stored has acquired all applicable permits under
18 applicable State and federal laws, statutes, rules, or
19 regulations prior to the transfer or sequestration of carbon
20 dioxide. The responsibility for compliance with the
21 sequestration requirements specified in this subsection (h-6)
22 for the clean coal SNG facility located in Jefferson County
23 shall reside solely with the clean coal SNG facility located in
24 Jefferson County regardless of the whether the facility has
25 contracted with another party to capture, transport or
26 sequester carbon dioxide.

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

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

14 (2) The Commission shall review carbon dioxide
15 transportation and sequestration methods proposed by a
16 clean coal facility or a clean coal SNG brownfield facility
17 and shall approve those methods it deems reasonable and
18 cost-effective. For purposes of this review,
19 "cost-effective" means a commercially reasonable price for
20 similar carbon dioxide transportation or sequestration
21 techniques. In determining whether sequestration is
22 reasonable and cost-effective, the Commission may consult
23 with the Illinois State Geological Survey and retain third
24 parties to assist in its determination, provided that such
25 third parties shall not own or control any direct or
26 indirect interest in the facility that is proposing the

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

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

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

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

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

17 If the Illinois Environmental Protection Agency
18 determines at any time a site creates conditions that
19 warrant the issuance of a seal order under Section 34 of
20 the Environmental Protection Act, then the Illinois
21 Environmental Protection Agency shall seal the site
22 pursuant to the Environmental Protection Act. If the
23 Illinois Environmental Protection Agency determines at any
24 time a carbon dioxide sequestration site creates
25 conditions that warrant the institution of a civil action
26 for an injunction under Section 43 of the Environmental

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

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

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

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

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

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

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

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

24 These pledges are for the benefit of the parties to those
25 sourcing agreements and the issuers and holders of bonds or
26 other obligations issued or incurred to finance or refinance

1 the clean coal SNG brownfield facility. The clean coal SNG
2 brownfield facility is authorized to include and refer to these
3 pledges in any financing agreement into which it may enter in
4 regard to those sourcing agreements.

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

24 (h-10) Contract costs for SNG incurred by an Illinois gas
25 utility are reasonable and prudent and recoverable through the
26 purchased gas adjustment clause and are not subject to review

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

19 The contracts entered into by Illinois gas utilities
20 pursuant to subsection (h) of this Section shall provide that
21 the utility retains the right to terminate the contract without
22 further obligation or liability to any party if the contract
23 has been impaired as a result of any legislative,
24 administrative, judicial, or other governmental action that is
25 taken that eliminates all or part of the prudence protection of
26 this subsection (h-10) or denies the recoverability of all or

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

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

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

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

20 (1) The clean coal SNG facility located in Jefferson
21 County shall conduct an analysis annually within 60 days
22 after receiving the necessary cost information, which
23 shall be provided by the gas utility within 6 months after
24 the end of the preceding calendar year, to determine (i)
25 the average annual contract SNG cost, which shall be
26 calculated as the total amount paid for SNG purchased from

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

21 (A) To the extent the annual average contract SNG
22 cost is less than the annual average natural gas
23 purchase cost the utility shall credit an amount equal
24 to the revenue share target to the reconciliation
25 account. Such credit payment shall be made within 30
26 days after the completed analysis in this subsection

1 (h-15) and pursuant to this subparagraph (A) shall be
2 deemed prudent and reasonable and not subject to
3 Commission prudence review.

4 (B) To the extent the annual average contract SNG
5 cost is greater than the annual average natural gas
6 purchase cost the reconciliation account shall be used
7 to provide a credit equal to the revenue share target
8 to the utilities to be used to reduce the utility's
9 natural gas costs through the purchased gas adjustment
10 clause. Such payment shall be made within 30 days after
11 the completed analysis pursuant to this subsection
12 (h-15).

13 (2) At the conclusion of the term of the SNG contracts
14 pursuant to subsection (h) and the completion of the final
15 annual analysis pursuant to this subsection (h-15), to the
16 extent the facility owes any amount to retail customers,
17 amounts in the account shall be credited to retail
18 customers to the extent the owed amount is repaid; 50% of
19 any additional amount in the reconciliation account shall
20 be distributed to the utilities to be used to reduce the
21 utilities' natural gas costs through the purchase gas
22 adjustment clause with the remaining amount distributed to
23 the clean coal SNG facility located in Jefferson County.
24 Such payment shall be made within 30 days after the last
25 completed analysis pursuant to this subsection (h-15). If
26 the facility has repaid all owed amounts, if any, to retail

1 customers and has distributed 50% of any additional amount
2 in the account to the utilities, then the owners of the
3 clean coal SNG facility located in Jefferson County shall
4 have no further obligation to the utility or the retail
5 customers.

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

1 facility, and all proceeds from that sale must be used to
2 repay any amount owed to the retail customers under this
3 subsection (h-15).

4 The retail customers shall have first priority in
5 recovering that debt above any creditors, except the
6 secured lenders to the extent that the secured lenders have
7 any secured debt outstanding, including any parent
8 companies or affiliates of the clean coal SNG facility
9 located in Jefferson County.

10 (3) 50% of all additional net revenue, defined as
11 miscellaneous net revenue after cost allowance and above
12 the budgeted estimate established for revenue pursuant to
13 subsection (h), including sale of substitute natural gas
14 derived from the clean coal SNG facility located in
15 Jefferson County above the nameplate capacity of the
16 facility and other by-products produced by the facility,
17 shall be credited to the reconciliation account on an
18 annual basis with such payment made within 30 days after
19 the end of each calendar year during the term of the
20 contract.

21 (4) The clean coal SNG facility located in Jefferson
22 County shall each year, starting in the facility's first
23 year of commercial operation, file with the Commission, in
24 such form as the Commission shall require, a report as to
25 the reconciliation account. The annual report must contain
26 the following information:

1 (A) the revenue share target amount;

2 (B) the amount credited or debited to the
3 reconciliation account during the year;

4 (C) the amount credited to the utilities to be used
5 to reduce the utilities natural gas costs though the
6 purchase gas adjustment clause;

7 (D) the total amount of reconciliation account at
8 the beginning and end of the year;

9 (E) the total amount of consumer saving to date;
10 and

11 (F) any additional information the Commission may
12 require.

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

23 All reports made to the Commission by the clean coal SNG
24 faculty located in Jefferson County and the contents of the
25 reports shall be open to public inspection and shall be deemed
26 a public record under the Freedom of Information Act. Such

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

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

14 Any person who willfully makes any false report to the
15 Commission or to any member, officer, or employee thereof, any
16 person who willfully in a report withholds or fails to provide
17 material information to which the Commission is entitled under
18 this paragraph (4) and which information is either required to
19 be filed by statute, rule, regulation, order, or decision of
20 the Commission or has been requested by the Commission, and any
21 person who willfully aids or abets such person shall be guilty
22 of a Class A misdemeanor. ~~With respect to each contract entered~~
23 ~~into by the company with an Illinois utility in accordance with~~
24 ~~the terms stated in subsection (h) of this Section, within 60~~
25 ~~days following the completion of purchases of SNG, the Illinois~~
26 ~~Power Agency shall conduct an analysis to determine (i) the~~

1 ~~average contract SNG cost, which shall be calculated as the~~
2 ~~total amount paid to a company for SNG over the contract term,~~
3 ~~plus the cost to the utility of the required transportation and~~
4 ~~storage services of SNG, divided by the total number of MMBtus~~
5 ~~of SNG actually purchased under the utility contract; (ii) the~~
6 ~~average natural gas purchase cost, which shall be calculated as~~
7 ~~the total annual supply costs paid for natural gas (excluding~~
8 ~~SNG) purchased by such utility over the contract term, plus the~~
9 ~~costs of transportation and storage services of such natural~~
10 ~~gas (excluding such costs for SNG), divided by the total number~~
11 ~~of MMBtus of natural gas (excluding SNG) actually purchased by~~
12 ~~the utility during the contract term; (iii) the cost~~
13 ~~differential, which shall be the difference between the average~~
14 ~~contract SNG cost and the average natural gas purchase cost;~~
15 ~~and (iv) the revenue share target, which shall be the cost~~
16 ~~differential multiplied by the total amount of SNG purchased~~
17 ~~under such utility contract. If the average contract SNG cost~~
18 ~~is equal to or less than the average natural gas purchase cost,~~
19 ~~then the company shall have no further obligation to the~~
20 ~~utility. If the average contract SNG cost for such SNG contract~~
21 ~~is greater than the average natural gas purchase cost for such~~
22 ~~utility, then the company shall market the daily production of~~
23 ~~SNG and distribute on a monthly basis 5% of amounts collected~~
24 ~~with respect to such future sales to the utilities in~~
25 ~~proportion to each utility's SNG purchases from the company~~
26 ~~during the term of the SNG contract to be used to reduce the~~

1 ~~utility's natural gas costs through the purchased gas~~
2 ~~adjustment clause; such payments to the utility shall continue~~
3 ~~until such time as the sum of such payments equals the revenue~~
4 ~~share target of that utility. The company or utilities shall~~
5 ~~have no obligation to repay the revenue share target except as~~
6 ~~provided for in this subsection (h 15).~~

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

14 Administrative costs incurred by the Illinois Finance
15 Authority in performance of this subsection (h-20) shall be
16 subject to reimbursement by the clean coal SNG facility located
17 in Jefferson County on terms as the Illinois Finance Authority
18 and the clean coal SNG facility located in Jefferson County may
19 agree. The utility and its customers shall have no obligation
20 to reimburse the clean coal SNG facility located in Jefferson
21 County or the Illinois Finance Authority of any such costs. The
22 ~~General Assembly authorizes the Illinois Finance Authority to~~
23 ~~issue bonds to the maximum extent permitted to finance coal~~
24 ~~gasification facilities described in this Section, which~~
25 ~~constitute both "industrial projects" under Article 801 of the~~
26 ~~Illinois Finance Authority Act and "clean coal and energy~~

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

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

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

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

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

18 (Source: P.A. 95-1027, eff. 6-1-09; 96-1364, eff. 7-28-10;
19 09600SB3388ham001, ham002, and ham003.)

20 Section 95.Rulemaking. The Illinois Power Agency and the
21 Commission shall have rulemaking authority to implement the
22 provisions of this amendatory Act of the 96th General Assembly.

23 Section 97. Inseverability. The provisions of this Act are
24 mutually dependent and inseverable. If any provision is held

1 invalid, then this entire Act, including all new and amendatory
2 provisions, is invalid.

3 Section 99. Effective date. This Act takes effect upon
4 becoming law or on the effective date of Senate Bill 3388 of
5 the 96th General Assembly, whichever is later.".