



Rep. Marlow H. Colvin

Filed: 5/27/2011

09700SB1533ham001

LRB097 09938 ASK 56357 a

1 AMENDMENT TO SENATE BILL 1533

2 AMENDMENT NO. _____. Amend Senate Bill 1533 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Power Agency Act is amended by
5 changing Sections 1-10 and 1-20 and by adding Sections 1-77 and
6 1-78 as follows:

7 (20 ILCS 3855/1-10)

8 Sec. 1-10. Definitions.

9 "Agency" means the Illinois Power Agency.

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

1 project.

2 "Authority" means the Illinois Finance Authority.

3 "Clean coal facility" means an electric generating
4 facility that uses primarily coal as a feedstock and that
5 captures and sequesters carbon dioxide emissions at the
6 following levels: at least 50% of the total carbon dioxide
7 emissions that the facility would otherwise emit if, at the
8 time construction commences, the facility is scheduled to
9 commence operation before 2016, at least 70% of the total
10 carbon dioxide emissions that the facility would otherwise emit
11 if, at the time construction commences, the facility is
12 scheduled to commence operation during 2016 or 2017, and at
13 least 90% of the total carbon dioxide emissions that the
14 facility would otherwise emit if, at the time construction
15 commences, the facility is scheduled to commence operation
16 after 2017. The power block of the clean coal facility shall
17 not exceed allowable emission rates for sulfur dioxide,
18 nitrogen oxides, carbon monoxide, particulates and mercury for
19 a natural gas-fired combined-cycle facility the same size as
20 and in the same location as the clean coal facility at the time
21 the clean coal facility obtains an approved air permit. All
22 coal used by a clean coal facility shall have high volatile
23 bituminous rank and greater than 1.7 pounds of sulfur per
24 million btu content, unless the clean coal facility does not
25 use gasification technology and was operating as a conventional
26 coal-fired electric generating facility on June 1, 2009 (the

1 effective date of Public Act 95-1027).

2 "Clean coal SNG brownfield facility" means a facility that
3 (1) has commenced construction by July 1, 2015 on an urban
4 brownfield site in a municipality with at least 1,000,000
5 residents; (2) uses a gasification process to produce
6 substitute natural gas; (3) uses coal as at least 50% of the
7 total feedstock over the term of any sourcing agreement with a
8 utility and the remainder of the feedstock may be either
9 petroleum coke or coal, with all such coal having a high
10 bituminous rank and greater than 1.7 pounds of sulfur per
11 million Btu content unless the facility reasonably determines
12 that it is necessary to use additional petroleum coke to
13 deliver additional consumer savings, in which case the facility
14 shall use coal for at least 35% of the total feedstock over the
15 term of any sourcing agreement; and (4) captures and sequesters
16 at least 85% of the total carbon dioxide emissions that the
17 facility would otherwise emit.

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

26 "Commission" means the Illinois Commerce Commission.

1 "Costs incurred in connection with the development and
2 construction of a facility" means:

3 (1) the cost of acquisition of all real property,
4 fixtures, and improvements in connection therewith and
5 equipment, personal property, and other property, rights,
6 and easements acquired that are deemed necessary for the
7 operation and maintenance of the facility;

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

10 (3) all origination, commitment, utilization,
11 facility, placement, underwriting, syndication, credit
12 enhancement, and rating agency fees;

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

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

1 "Department" means the Department of Commerce and Economic
2 Opportunity.

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

4 "Demand-response" means measures that decrease peak
5 electricity demand or shift demand from peak to off-peak
6 periods.

7 "Energy efficiency" means measures that reduce the amount
8 of electricity or natural gas required to achieve a given end
9 use.

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

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

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

20 "Local government" means a unit of local government as
21 defined in Article VII of Section 1 of the Illinois
22 Constitution.

23 "Municipality" means a city, village, or incorporated
24 town.

25 "Person" means any natural person, firm, partnership,
26 corporation, either domestic or foreign, company, association,

1 limited liability company, joint stock company, or association
2 and includes any trustee, receiver, assignee, or personal
3 representative thereof.

4 "Project" means the planning, bidding, and construction of
5 a facility.

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

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

14 "Renewable energy credit" means a tradable credit that
15 represents the environmental attributes of a certain amount of
16 energy produced from a renewable energy resource.

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

1 of tires, garbage, general household, institutional, and
2 commercial waste, industrial lunchroom or office waste,
3 landscape waste other than tree waste, railroad crossties,
4 utility poles, or construction or demolition debris, other than
5 untreated and unadulterated waste wood.

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

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

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

1 conditions meeting the requirements of Section 16-115(d) (5) of
2 the Public Utilities Act, and (iii) in case of a gas utility,
3 an agreement between the owner of a clean coal SNG brownfield
4 facility and the gas utility, which agreement shall have the
5 terms and conditions meeting the requirements of subsection
6 (h-1) of Section 9-220 of the Public Utilities Act.

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

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

1 demand-side program for supply resources. In calculating
2 avoided costs of power and energy that an electric utility
3 would otherwise have had to acquire, reasonable estimates shall
4 be included of financial costs likely to be imposed by future
5 regulations and legislation on emissions of greenhouse gases.

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

9 (20 ILCS 3855/1-20)

10 Sec. 1-20. General powers of the Agency.

11 (a) The Agency is authorized to do each of the following:

12 (1) Develop electricity procurement plans to ensure
13 adequate, reliable, affordable, efficient, and
14 environmentally sustainable electric service at the lowest
15 total cost over time, taking into account any benefits of
16 price stability, for electric utilities that on December
17 31, 2005 provided electric service to at least 100,000
18 customers in Illinois. The procurement plans shall be
19 updated on an annual basis and shall include electricity
20 generated from renewable resources sufficient to achieve
21 the standards specified in this Act.

22 (2) Conduct competitive procurement processes to
23 procure the supply resources identified in the procurement
24 plan, pursuant to Section 16-111.5 of the Public Utilities
25 Act.

1 (3) Develop electric generation and co-generation
2 facilities that use indigenous coal or renewable
3 resources, or both, financed with bonds issued by the
4 Illinois Finance Authority.

5 (4) Supply electricity from the Agency's facilities at
6 cost to one or more of the following: municipal electric
7 systems, governmental aggregators, or rural electric
8 cooperatives in Illinois.

9 (b) Except as otherwise limited by this Act, the Agency has
10 all of the powers necessary or convenient to carry out the
11 purposes and provisions of this Act, including without
12 limitation, each of the following:

13 (1) To have a corporate seal, and to alter that seal at
14 pleasure, and to use it by causing it or a facsimile to be
15 affixed or impressed or reproduced in any other manner.

16 (2) To use the services of the Illinois Finance
17 Authority necessary to carry out the Agency's purposes.

18 (3) To negotiate and enter into loan agreements and
19 other agreements with the Illinois Finance Authority.

20 (4) To obtain and employ personnel and hire consultants
21 that are necessary to fulfill the Agency's purposes, and to
22 make expenditures for that purpose within the
23 appropriations for that purpose.

24 (5) To purchase, receive, take by grant, gift, devise,
25 bequest, or otherwise, lease, or otherwise acquire, own,
26 hold, improve, employ, use, and otherwise deal in and with,

1 real or personal property whether tangible or intangible,
2 or any interest therein, within the State.

3 (6) To acquire real or personal property, whether
4 tangible or intangible, including without limitation
5 property rights, interests in property, franchises,
6 obligations, contracts, and debt and equity securities,
7 and to do so by the exercise of the power of eminent domain
8 in accordance with Section 1-21; except that any real
9 property acquired by the exercise of the power of eminent
10 domain must be located within the State.

11 (7) To sell, convey, lease, exchange, transfer,
12 abandon, or otherwise dispose of, or mortgage, pledge, or
13 create a security interest in, any of its assets,
14 properties, or any interest therein, wherever situated.

15 (8) To purchase, take, receive, subscribe for, or
16 otherwise acquire, hold, make a tender offer for, vote,
17 employ, sell, lend, lease, exchange, transfer, or
18 otherwise dispose of, mortgage, pledge, or grant a security
19 interest in, use, and otherwise deal in and with, bonds and
20 other obligations, shares, or other securities (or
21 interests therein) issued by others, whether engaged in a
22 similar or different business or activity.

23 (9) To make and execute agreements, contracts, and
24 other instruments necessary or convenient in the exercise
25 of the powers and functions of the Agency under this Act,
26 including contracts with any person, local government,

1 State agency, or other entity; and all State agencies and
2 all local governments are authorized to enter into and do
3 all things necessary to perform any such agreement,
4 contract, or other instrument with the Agency. No such
5 agreement, contract, or other instrument shall exceed 40
6 years.

7 (10) To lend money, invest and reinvest its funds in
8 accordance with the Public Funds Investment Act, and take
9 and hold real and personal property as security for the
10 payment of funds loaned or invested.

11 (11) To borrow money at such rate or rates of interest
12 as the Agency may determine, issue its notes, bonds, or
13 other obligations to evidence that indebtedness, and
14 secure any of its obligations by mortgage or pledge of its
15 real or personal property, machinery, equipment,
16 structures, fixtures, inventories, revenues, grants, and
17 other funds as provided or any interest therein, wherever
18 situated.

19 (12) To enter into agreements with the Illinois Finance
20 Authority to issue bonds whether or not the income
21 therefrom is exempt from federal taxation.

22 (13) To procure insurance against any loss in
23 connection with its properties or operations in such amount
24 or amounts and from such insurers, including the federal
25 government, as it may deem necessary or desirable, and to
26 pay any premiums therefor.

1 (14) To negotiate and enter into agreements with
2 trustees or receivers appointed by United States
3 bankruptcy courts or federal district courts or in other
4 proceedings involving adjustment of debts and authorize
5 proceedings involving adjustment of debts and authorize
6 legal counsel for the Agency to appear in any such
7 proceedings.

8 (15) To file a petition under Chapter 9 of Title 11 of
9 the United States Bankruptcy Code or take other similar
10 action for the adjustment of its debts.

11 (16) To enter into management agreements for the
12 operation of any of the property or facilities owned by the
13 Agency.

14 (17) To enter into an agreement to transfer and to
15 transfer any land, facilities, fixtures, or equipment of
16 the Agency to one or more municipal electric systems,
17 governmental aggregators, or rural electric agencies or
18 cooperatives, for such consideration and upon such terms as
19 the Agency may determine to be in the best interest of the
20 citizens of Illinois.

21 (18) To enter upon any lands and within any building
22 whenever in its judgment it may be necessary for the
23 purpose of making surveys and examinations to accomplish
24 any purpose authorized by this Act.

25 (19) To maintain an office or offices at such place or
26 places in the State as it may determine.

1 (20) To request information, and to make any inquiry,
2 investigation, survey, or study that the Agency may deem
3 necessary to enable it effectively to carry out the
4 provisions of this Act.

5 (21) To accept and expend appropriations.

6 (22) To engage in any activity or operation that is
7 incidental to and in furtherance of efficient operation to
8 accomplish the Agency's purposes.

9 (23) To adopt, revise, amend, and repeal rules with
10 respect to its operations, properties, and facilities as
11 may be necessary or convenient to carry out the purposes of
12 this Act, subject to the provisions of the Illinois
13 Administrative Procedure Act and Sections 1-22 and 1-35 of
14 this Act.

15 (24) To establish and collect charges and fees as
16 described in this Act.

17 (25) To conduct competitive gasification feedstock
18 procurement processes to procure the feedstocks for the
19 clean coal SNG brownfield facility in accordance with the
20 requirements of Section 1-78 of this Act ~~To manage~~
21 ~~procurement of substitute natural gas from a facility that~~
22 ~~meets the criteria specified in subsection (a) of Section~~
23 ~~1-58 of this Act, on terms and conditions that may be~~
24 ~~approved by the Agency pursuant to subsection (d) of~~
25 ~~Section 1-58 of this Act, to support the operations of~~
26 ~~State agencies and local governments that agree to such~~

1 ~~terms and conditions. This procurement process is not~~
2 ~~subject to the Procurement Code.~~

3 (26) To review, revise, and approve sourcing
4 agreements and mediate and resolve disputes between gas
5 utilities and the clean coal SNG brownfield facility
6 pursuant to subsection (h-1) of Section 9-220 of the Public
7 Utilities Act.

8 (Source: P.A. 95-481, eff. 8-28-07; 96-784, eff. 8-28-09;
9 96-1000, eff. 7-2-10.)

10 (20 ILCS 3855/1-77 new)

11 Sec. 1-77. The Planning and Procurement Bureau; feedstock
12 procurement administrator; qualified expert or expert
13 consulting firm.

14 (a) The Planning and Procurement Bureau shall at least
15 every 5 years beginning in 2015 develop feedstock procurement
16 plans and conduct competitive feedstock procurement processes
17 in accordance with the requirements of Section 1-78 of this
18 Act.

19 (1) The Agency shall at least every 5 years beginning
20 in 2015 issue a request for qualifications for experts or
21 expert consulting firms to develop the feedstock
22 procurement plans in accordance with Section 1-78 of this
23 Act. In order to qualify, an expert or expert consulting
24 firm must have:

25 (A) direct previous experience assembling large

1 scale feedstock supply plans or portfolios for
2 industrial customers;

3 (B) an advanced degree in economics, mathematics,
4 engineering, risk management, or a related area of
5 study;

6 (C) ten years of experience in the energy sector,
7 including managing supply risk;

8 (D) expertise in wholesale feedstock markets,
9 which may be particularized to the specific type of
10 feedstock to be purchased in that procurement event;

11 (E) expertise in credit protocols and familiarity
12 with contract protocols;

13 (F) adequate resources to perform and fulfill the
14 required functions and responsibilities; and

15 (G) the absence of a conflict of interest and
16 inappropriate bias for or against potential bidders or
17 the affected clean coal SNG brownfield facility.

18 (2) The Agency shall at least every 5 years beginning
19 in 2015 issue a request for qualifications for a feedstock
20 procurement administrator to conduct the competitive
21 feedstock procurement processes in accordance with Section
22 1-78 of this Act. In order to qualify, an expert or expert
23 consulting firm must have:

24 (A) direct previous experience administering a
25 large scale competitive feedstock procurement process;

26 (B) an advanced degree in economics, mathematics,

1 engineering, or a related area of study;

2 (C) ten years of experience in the energy sector,
3 including risk management experience;

4 (D) expertise in wholesale feedstock market rules,
5 which may be particularized to the specific type of
6 feedstock to be purchased in that procurement event;

7 (E) expertise in credit and contract protocols;

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

10 (G) the absence of a conflict of interest and
11 inappropriate bias for or against potential bidders or
12 the affected clean coal SNG brownfield facility.

13 (3) The Agency shall provide the clean coal SNG
14 brownfield facility and other interested parties with the
15 lists of qualified experts or expert consulting firms
16 identified through the request for qualifications
17 processes that are under consideration to develop the
18 feedstock procurement plans and to serve as the feedstock
19 procurement administrator. The Agency shall also provide
20 the clean coal SNG brownfield facility and other interested
21 parties with each qualified expert's or expert consulting
22 firm's response to the request for qualifications. All
23 information provided under this subparagraph (3) shall
24 also be provided to the Commission. The Agency may provide
25 by rule for fees associated with supplying the information
26 to the clean coal SNG brownfield facility and other

1 interested parties. The clean coal SNG brownfield facility
2 and other interested parties must, within 5 business days
3 after receiving the lists and information, notify the
4 Agency in writing if they object to any experts or expert
5 consulting firms on the lists. Objections shall be based
6 on:

7 (A) failure to satisfy qualification criteria;

8 (B) identification of a conflict of interest; or

9 (C) evidence of inappropriate bias for or against
10 potential bidders or the clean coal SNG brownfield
11 facility.

12 The Agency shall remove an expert or expert consulting
13 firm from the list within 10 days if there is a reasonable
14 basis for an objection and provide the updated list to the
15 clean coal SNG brownfield facility and other interested
16 parties. If the Agency fails to remove an expert or expert
17 consulting firm from a list, then an objecting party may
18 seek review by the Commission within 5 days thereafter by
19 filing a petition, and the Commission shall render a ruling
20 on the petition within 10 days after the filing. There is
21 no right of appeal of the Commission's ruling.

22 (4) The Agency shall, as needed, issue requests for
23 proposals to the qualified experts or expert consulting
24 firms to develop a feedstock procurement plan for the clean
25 coal SNG brownfield facility and to serve as feedstock
26 procurement administrator.

1 (5) The Agency shall select an expert or expert
2 consulting firm to develop feedstock procurement plans
3 based on the proposals submitted and shall award one-year
4 contracts to those selected with an option for the Agency
5 for a one-year renewal.

6 (6) The Agency shall select, with the approval of the
7 Commission, an expert or expert consulting firm to serve as
8 feedstock procurement administrator based on the proposals
9 submitted. If the Commission rejects the Agency's
10 selection within 5 days after being notified of the
11 Agency's selection, then the Agency shall submit another
12 recommendation within 3 days after the Commission's
13 rejection based on the proposals submitted. The Agency
14 shall award at least a one-year contract to the expert or
15 expert consulting firm selected with the Commission's
16 approval with an option for the Agency for renewal for a
17 term equal to the term of the contract.

18 (b) The experts or expert consulting firms retained by the
19 Agency shall, as appropriate, prepare feedstock procurement
20 plans and conduct a competitive feedstock procurement process
21 as prescribed in Section 1-78 of this Act to ensure adequate,
22 reliable, affordable feedstocks, taking into account any
23 benefits of price stability, for the clean coal SNG brownfield
24 facility.

25 (c) The draft procurement plans are subject to public
26 comment pursuant to Section 1-78 of this Act.

1 (d) The Agency shall assess fees to each bidder to recover
2 the costs incurred in connection with the competitive
3 procurement process.

4 (20 ILCS 3855/1-78 new)

5 Sec. 1-78. Feedstock procurement plan; feedstock
6 procurement process.

7 (a) A feedstock procurement plan shall at least every 5
8 years beginning in 2015 be prepared for the clean coal SNG
9 brownfield facility based on the clean coal SNG brownfield
10 facility's projection of feedstock usage and ratios, and
11 consistent with the applicable requirements of the Public
12 Utilities Act and this Act. The plan shall specifically
13 identify the wholesale feedstock products to be procured
14 following plan approval and shall follow all the requirements
15 set forth in this Act, the Public Utilities Act, and all
16 applicable State and federal laws, statutes, rules, or
17 regulations, as well as Commission orders. Nothing in this
18 Section precludes consideration of contracts longer than 5
19 years and related forecast data. Any feedstock procurement
20 occurring in accordance with this plan shall be competitively
21 bid through a request for proposals process. Approval and
22 implementation of the feedstock procurement plan shall be
23 subject to review and approval by the Commission according to
24 the provisions set forth in this Section. A feedstock
25 procurement plan shall include each of the following

1 components:

2 (1) Daily load analysis. This analysis shall include:

3 (A) multi-year historical analysis of hourly
4 loads; and

5 (B) known or projected changes to future loads.

6 (2) Determination of the fuel specifications required
7 for the clean coal SNG brownfield facility, including:

8 (A) coal and petroleum coke mix, as set by the
9 clean coal SNG brownfield facility with coal
10 comprising at least 50% of the total feedstock over the
11 term of any sourcing agreement unless the facility
12 reasonably determines that it is necessary to use
13 additional petroleum coke to deliver additional
14 consumer savings, in which case the facility shall use
15 coal for at least 35% of the total feedstock over the
16 term of any sourcing agreement;

17 (B) volume of each feedstock required;

18 (C) quality standards of each feedstock;

19 (D) delivery requirements, including cost
20 implications; and

21 (E) technical specifications of the clean coal SNG
22 brownfield facility for its feedstocks.

23 (b) The feedstock procurement process shall be
24 administered by a feedstock procurement administrator and
25 monitored by a feedstock procurement monitor.

26 (1) The feedstock procurement administrator shall:

1 (A) design the final feedstock procurement process
2 in accordance with subsection (d) of this Section
3 following Commission approval of the feedstock
4 procurement plan;

5 (B) develop feedstock benchmarks in accordance
6 with subsection (d)(3) to be used to evaluate bids;
7 these benchmarks shall be submitted to the Commission
8 for review and approval on a confidential basis prior
9 to the feedstock procurement event;

10 (C) serve as the interface between the clean coal
11 SNG brownfield facility and coal and petroleum coke
12 suppliers;

13 (D) manage the bidder prequalification and
14 registration process;

15 (E) obtain the facility's agreement to the final
16 form of all supply contracts and credit collateral
17 agreements;

18 (F) administer the request for feedstock proposals
19 process;

20 (G) have the discretion to negotiate to determine
21 whether bidders are willing to lower the price of bids
22 that meet the benchmarks approved by the Commission;
23 any post-bid negotiations with bidders shall be
24 limited to price only and shall be completed within 24
25 hours after opening the sealed bids and shall be
26 conducted in a fair and unbiased manner; in conducting

1 the negotiations, there shall be no disclosure of any
2 information derived from proposals submitted by
3 competing bidders; if information is disclosed to any
4 bidder, it shall be provided to all competing bidders;

5 (H) maintain confidentiality of supplier and
6 bidding information in a manner consistent with all
7 applicable laws, rules, regulations, and tariffs;

8 (I) submit a confidential report to the Commission
9 recommending acceptance or rejection of bids;

10 (J) notify the facility of contract counterparties
11 and contract specifics; and

12 (K) administer related contingency feedstock
13 procurement events.

14 (2) The feedstock procurement monitor, who shall be
15 retained by the Commission, shall:

16 (A) monitor interactions among the feedstock
17 procurement administrator, suppliers, and the
18 facility;

19 (B) monitor and report to the Commission on the
20 progress of the feedstock procurement process;

21 (C) provide an independent, confidential report to
22 the Commission regarding the results of the feedstock
23 procurement event;

24 (D) preserve the confidentiality of supplier and
25 bidding information in a manner consistent with all
26 applicable laws, rules, regulations, and tariffs;

1 (E) provide expert advice to the Commission and
2 consult with the feedstock procurement administrator
3 regarding issues related to feedstock procurement
4 process design, rules, protocols, and policy-related
5 matters;

6 (F) consult with the feedstock procurement
7 administrator regarding the development and use of
8 benchmark criteria, standard form contracts, credit
9 policies, and bid documents; and

10 (G) assess compliance with the procurement plans
11 approved by the Commission.

12 (c) The feedstock planning process shall be conducted as
13 follows:

14 (1) Beginning in 2015, the clean coal SNG brownfield
15 facility shall annually provide a range of feedstock
16 requirement forecasts to the Agency by May 15 of each year,
17 or such other date as may be required by the Commission or
18 Agency. The feedstock requirement forecasts shall cover
19 the 5-year feedstock procurement planning period for the
20 next feedstock procurement plan, or such other longer
21 period that the Agency or the Commission may require and
22 shall include daily data representing a high-load,
23 low-load, and expected-load scenario for the load of the
24 utilities required to enter into sourcing agreements with
25 the clean coal SNG brownfield facility. The utility shall
26 provide supporting data and assumptions for each of the

1 scenarios.

2 (2) Beginning in 2015, the Agency shall at least every
3 5 years prepare a feedstock procurement plan by June 15, or
4 such other date as may be required by the Commission. The
5 clean coal SNG brownfield facility also may submit a
6 feedstock procurement plan. Each feedstock procurement
7 plan shall identify the portfolio of feedstocks to be
8 procured. Copies of each feedstock procurement plan shall
9 be posted and made publicly available on the Agency's and
10 Commission's websites, and copies of the Agency's
11 feedstock procurement plan shall also be provided to the
12 clean coal SNG brownfield facility. The clean coal SNG
13 brownfield facility shall have 30 days following the date
14 of posting to provide comment to the Agency on the
15 feedstock procurement plan. Other interested entities also
16 may comment on each feedstock procurement plan. All
17 comments submitted to the Agency shall be specific,
18 supported by data or other detailed analyses, and, if
19 objecting to all or a portion of the feedstock procurement
20 plan, accompanied by specific alternative wording or
21 proposals. All comments shall be posted on the Agency's and
22 Commission's websites. During this 30-day comment period,
23 the Agency shall hold at least one public hearing for the
24 purpose of receiving public comment on the procurement
25 plan. Within 14 days following the end of the 30-day
26 comment period, the clean coal SNG brownfield facility may

1 revise its feedstock procurement plan, if any, and the
2 Agency shall revise the feedstock procurement plan as
3 necessary based on the comments received, and each shall
4 file its feedstock procurement plan with the Commission,
5 and post the feedstock procurement plan on the websites.

6 (3) Within 5 days after the filing of a feedstock
7 procurement plan, any person objecting to the feedstock
8 procurement plan shall file an objection with the
9 Commission. Within 10 days after the filing, the Commission
10 shall determine whether a hearing is necessary. The
11 Commission shall enter its order confirming or modifying a
12 feedstock procurement plan within 90 days after the filing
13 of the feedstock procurement plan by the Agency.

14 (4) The Commission shall approve a feedstock
15 procurement plan, including expressly the forecast used in
16 the feedstock procurement plan, if the Commission
17 determines that it will ensure adequate, reliable, and
18 affordable feedstocks to the clean coal SNG brownfield
19 facility at the lowest total cost over time, taking into
20 account any benefits of price stability.

21 (d) The feedstock procurement process shall include each of
22 the following components:

23 (1) Solicitation, prequalification, and registration
24 of bidders. The feedstock procurement administrator shall
25 disseminate information to potential bidders to promote a
26 feedstock procurement event, notify potential bidders that

1 the feedstock procurement administrator may enter into a
2 post-bid price negotiation with bidders that meet the
3 applicable benchmarks, provide supply requirements, and
4 otherwise explain the competitive feedstock procurement
5 process. In addition to such other publication as the
6 feedstock procurement administrator determines is
7 appropriate, this information shall be posted on the
8 Agency's and the Commission's websites. The feedstock
9 procurement administrator shall also administer the
10 prequalification process, including evaluation of credit
11 worthiness, compliance with feedstock procurement rules,
12 and agreement to the standard form contract developed
13 pursuant to paragraph (2) of this subsection (d). The
14 feedstock procurement administrator shall then identify
15 and register bidders to participate in the feedstock
16 procurement event.

17 (2) Standard contract forms and credit terms and
18 instruments. The feedstock procurement administrator, in
19 consultation with the clean coal SNG brownfield facility,
20 gas utilities, the Commission, and other interested
21 parties and subject to Commission oversight, shall develop
22 and provide standard contract forms for the supplier
23 contracts that meet generally accepted industry practices.
24 Standard credit terms and instruments that meet generally
25 accepted industry practices shall be similarly developed.
26 The feedstock procurement administrator shall make

1 available to the Commission all written comments it
2 receives on the contract forms, credit terms, or
3 instruments. If the feedstock procurement administrator
4 cannot reach agreement with the applicable clean coal SNG
5 brownfield facility as to the contract terms and
6 conditions, then the feedstock procurement administrator
7 must notify the Commission of any disputed terms and the
8 Commission shall resolve the dispute. The terms of the
9 contracts shall not be subject to negotiation by winning
10 bidders and the bidders must agree to the terms of the
11 contract in advance so that winning bids are selected
12 solely on the basis of price.

13 (3) Establishment of a market-based price benchmark.
14 As part of the development of the feedstock procurement
15 process, the feedstock procurement administrator, in
16 consultation with the Commission staff, Agency staff, and
17 the feedstock procurement monitor, shall establish
18 benchmarks for evaluating the final prices in the contracts
19 for each of the feedstocks that will be procured through
20 the feedstock procurement process. The benchmarks shall be
21 based on price data for similar feedstocks for the same
22 delivery period and same delivery hub or other delivery
23 hubs after adjusting for that difference. The price
24 benchmarks may also be adjusted to take into account
25 differences between the information reflected in the
26 underlying data sources and the specific feedstocks and

1 gasification feedstock procurement process being used to
2 procure for the clean coal SNG brownfield facility. The
3 benchmarks shall be confidential but shall be provided to,
4 and shall be subject to, the Commission's review and
5 approval prior to a feedstock procurement event.

6 (4) Request for proposals. The feedstock procurement
7 administrator shall design and issue a request for
8 proposals to supply coal or petroleum coke in accordance
9 with the clean coal SNG brownfield facility's usage plan,
10 as approved by the Commission. The request for proposals
11 shall set forth a procedure for sealed, binding commitment
12 bidding with pay-as-bid settlement, and provision for
13 selection of bids on the basis of price.

14 (5) A plan for implementing contingencies in the event
15 of supplier default or failure of the feedstock procurement
16 process to fully meet the expected feedstock requirement
17 due to insufficient supplier participation, Commission
18 rejection of results, or any other cause. The plan must be
19 specific to the clean coal SNG brownfield facility's
20 feedstock specifications and requirements.

21 The feedstock procurement process described in this
22 subsection (d) is exempt from the requirements of the Illinois
23 Procurement Code, pursuant to Section 20-10 of that Code.

24 (e) Within 2 business days after opening the sealed bids,
25 the feedstock procurement administrator shall submit a
26 confidential report to the Commission. The report shall contain

1 the results of the bidding for each of the feedstock types
2 along with the feedstock procurement administrator's
3 recommendation for the acceptance and rejection of bids based
4 on the price benchmark criteria and other factors observed in
5 the process. The feedstock procurement monitor also shall
6 submit a confidential report to the Commission within 2
7 business days after opening the sealed bids. The report shall
8 contain the feedstock procurement monitor's assessment of
9 bidder behavior in the process, as well as an assessment of the
10 feedstock procurement administrator's compliance with the
11 feedstock procurement process and rules. The Commission shall
12 review the confidential reports submitted by the feedstock
13 procurement administrator and feedstock procurement monitor
14 and shall accept or reject the recommendations of the feedstock
15 procurement administrator within 2 business days after receipt
16 of the reports.

17 (f) Within 3 business days after the Commission decision
18 approving the results of a feedstock procurement event, the
19 clean coal SNG brownfield facility shall enter into binding
20 contractual arrangements with the winning suppliers using
21 standard form contracts.

22 (g) The names of the successful bidders and the amount of
23 feedstock to be delivered for each contract type and for each
24 contract term shall be made available to the public at the time
25 of Commission approval of a feedstock procurement event. The
26 Commission, the procurement monitor, the feedstock procurement

1 administrator, the Agency, and all participants in the
2 feedstock procurement process shall maintain the
3 confidentiality of all other supplier and bidding information
4 in a manner consistent with all applicable laws, rules,
5 regulations, and tariffs. Confidential information, including
6 the confidential reports submitted by the feedstock
7 procurement administrator and feedstock procurement monitor
8 pursuant to subsection (e) of this Section, shall not be
9 publicly available or discoverable by any party in any
10 proceeding absent a compelling demonstration of need. The
11 reports shall not be admissible in any proceeding other than
12 one for law enforcement purposes.

13 (h) Within 2 business days after a Commission decision
14 approving the results of a feedstock procurement event or such
15 other date as may be required by the Commission from time to
16 time, the clean coal SNG brownfield facility shall file for
17 informational purposes with the Commission its actual or
18 estimated feedstock costs by utility customer reflecting the
19 costs associated with the feedstock procurement.

20 (i) The clean coal SNG brownfield facility shall pay for
21 reasonable costs incurred by the Agency in administering the
22 feedstock procurement events, which costs shall be included in
23 the actual delivered fuel costs of the clean coal SNG
24 brownfield facility. The Agency shall determine the amount owed
25 for each feedstock procurement event, and the clean coal SNG
26 brownfield facility shall pay that amount to the Agency within

1 30 days after being informed by the Agency of the amount owed.
2 Those funds shall be deposited into the Illinois Power Agency
3 Operations Fund, pursuant to Section 1-55 of this Act, to be
4 used to reimburse expenses related to the feedstock
5 procurement.

6 (j) The Commission has the authority to adopt rules to
7 carry out the provisions of this Section. For the public
8 interest, safety, and welfare, the Commission also has the
9 authority to adopt rules to carry out the provisions of this
10 Section on an emergency basis.

11 (k) On or before April 1 of each year, the Commission may
12 hold an informal hearing for the purpose of receiving comments
13 on the prior year's feedstock procurement process and any
14 recommendations for change.

15 Section 7. The Illinois Procurement Code is amended by
16 changing Sections 1-10 and 20-10 as follows:

17 (30 ILCS 500/1-10)

18 Sec. 1-10. Application.

19 (a) This Code applies only to procurements for which
20 contractors were first solicited on or after July 1, 1998. This
21 Code shall not be construed to affect or impair any contract,
22 or any provision of a contract, entered into based on a
23 solicitation prior to the implementation date of this Code as
24 described in Article 99, including but not limited to any

1 covenant entered into with respect to any revenue bonds or
2 similar instruments. All procurements for which contracts are
3 solicited between the effective date of Articles 50 and 99 and
4 July 1, 1998 shall be substantially in accordance with this
5 Code and its intent.

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

9 (1) Contracts between the State and its political
10 subdivisions or other governments, or between State
11 governmental bodies except as specifically provided in
12 this Code.

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

15 (3) Purchase of care.

16 (4) Hiring of an individual as employee and not as an
17 independent contractor, whether pursuant to an employment
18 code or policy or by contract directly with that
19 individual.

20 (5) Collective bargaining contracts.

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

1 and the effective date of the contract.

2 (7) Contracts necessary to prepare for anticipated
3 litigation, enforcement actions, or investigations,
4 provided that the chief legal counsel to the Governor shall
5 give his or her prior approval when the procuring agency is
6 one subject to the jurisdiction of the Governor, and
7 provided that the chief legal counsel of any other
8 procuring entity subject to this Code shall give his or her
9 prior approval when the procuring entity is not one subject
10 to the jurisdiction of the Governor.

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

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

20 (10) Procurement expenditures by the Illinois Health
21 Information Exchange Authority involving private funds
22 from the Health Information Exchange Fund. "Private funds"
23 means gifts, donations, and private grants.

24 (c) This Code does not apply to the electric power
25 procurement process provided for under Section 1-75 of the
26 Illinois Power Agency Act and Section 16-111.5 of the Public

1 Utilities Act.

2 (d) Except for Section 20-160 and Article 50 of this Code,
3 and as expressly required by Section 9.1 of the Illinois
4 Lottery Law, the provisions of this Code do not apply to the
5 procurement process provided for under Section 9.1 of the
6 Illinois Lottery Law.

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

18 (f) This Code does not apply to the process used by the
19 Illinois Power Agency to retain a mediator to mediate sourcing
20 agreement disputes between gas utilities and the clean coal SNG
21 brownfield facility, as defined in Section 1-10 of the Illinois
22 Power Agency Act, as required under subsection (h-1) of Section
23 9-220 of the Public Utilities Act.

24 (Source: P.A. 95-481, eff. 8-28-07; 95-615, eff. 9-11-07;
25 95-876, eff. 8-21-08; 96-840, eff. 12-23-09; 96-1331, eff.
26 7-27-10.)

1 (30 ILCS 500/20-10)

2 (Text of Section from P.A. 96-159 and 96-588)

3 Sec. 20-10. Competitive sealed bidding; reverse auction.

4 (a) Conditions for use. All contracts shall be awarded by
5 competitive sealed bidding except as otherwise provided in
6 Section 20-5.

7 (b) Invitation for bids. An invitation for bids shall be
8 issued and shall include a purchase description and the
9 material contractual terms and conditions applicable to the
10 procurement.

11 (c) Public notice. Public notice of the invitation for bids
12 shall be published in the Illinois Procurement Bulletin at
13 least 14 days before the date set in the invitation for the
14 opening of bids.

15 (d) Bid opening. Bids shall be opened publicly in the
16 presence of one or more witnesses at the time and place
17 designated in the invitation for bids. The name of each bidder,
18 the amount of each bid, and other relevant information as may
19 be specified by rule shall be recorded. After the award of the
20 contract, the winning bid and the record of each unsuccessful
21 bid shall be open to public inspection.

22 (e) Bid acceptance and bid evaluation. Bids shall be
23 unconditionally accepted without alteration or correction,
24 except as authorized in this Code. Bids shall be evaluated
25 based on the requirements set forth in the invitation for bids,

1 which may include criteria to determine acceptability such as
2 inspection, testing, quality, workmanship, delivery, and
3 suitability for a particular purpose. Those criteria that will
4 affect the bid price and be considered in evaluation for award,
5 such as discounts, transportation costs, and total or life
6 cycle costs, shall be objectively measurable. The invitation
7 for bids shall set forth the evaluation criteria to be used.

8 (f) Correction or withdrawal of bids. Correction or
9 withdrawal of inadvertently erroneous bids before or after
10 award, or cancellation of awards of contracts based on bid
11 mistakes, shall be permitted in accordance with rules. After
12 bid opening, no changes in bid prices or other provisions of
13 bids prejudicial to the interest of the State or fair
14 competition shall be permitted. All decisions to permit the
15 correction or withdrawal of bids based on bid mistakes shall be
16 supported by written determination made by a State purchasing
17 officer.

18 (g) Award. The contract shall be awarded with reasonable
19 promptness by written notice to the lowest responsible and
20 responsive bidder whose bid meets the requirements and criteria
21 set forth in the invitation for bids, except when a State
22 purchasing officer determines it is not in the best interest of
23 the State and by written explanation determines another bidder
24 shall receive the award. The explanation shall appear in the
25 appropriate volume of the Illinois Procurement Bulletin.

26 (h) Multi-step sealed bidding. When it is considered

1 impracticable to initially prepare a purchase description to
2 support an award based on price, an invitation for bids may be
3 issued requesting the submission of unpriced offers to be
4 followed by an invitation for bids limited to those bidders
5 whose offers have been qualified under the criteria set forth
6 in the first solicitation.

7 (i) Alternative procedures. Notwithstanding any other
8 provision of this Act to the contrary, the Director of the
9 Illinois Power Agency may create alternative bidding
10 procedures to be used in procuring professional services under
11 subsection (a) of Section 1-75 and subsection (d) of Section
12 1-78 ~~1-75(a)~~ of the Illinois Power Agency Act and Section
13 16-111.5(c) of the Public Utilities Act and to procure
14 renewable energy resources under Section 1-56 of the Illinois
15 Power Agency Act. These alternative procedures shall be set
16 forth together with the other criteria contained in the
17 invitation for bids, and shall appear in the appropriate volume
18 of the Illinois Procurement Bulletin.

19 (j) Reverse auction. Notwithstanding any other provision
20 of this Section and in accordance with rules adopted by the
21 Director of Central Management Services as chief procurement
22 officer, a State purchasing officer under that chief
23 procurement officer's jurisdiction may procure supplies or
24 services through a competitive electronic auction bidding
25 process after the purchasing officer explains in writing to the
26 chief procurement officer his or her determination that the use

1 of such a process will be in the best interest of the State.
2 The chief procurement officer shall publish that determination
3 in his or her next volume of the Illinois Procurement Bulletin.

4 An invitation for bids shall be issued and shall include
5 (i) a procurement description, (ii) all contractual terms,
6 whenever practical, and (iii) conditions applicable to the
7 procurement, including a notice that bids will be received in
8 an electronic auction manner.

9 Public notice of the invitation for bids shall be given in
10 the same manner as provided in subsection (c).

11 Bids shall be accepted electronically at the time and in
12 the manner designated in the invitation for bids. During the
13 auction, a bidder's price shall be disclosed to other bidders.
14 Bidders shall have the opportunity to reduce their bid prices
15 during the auction. At the conclusion of the auction, the
16 record of the bid prices received and the name of each bidder
17 shall be open to public inspection.

18 After the auction period has terminated, withdrawal of bids
19 shall be permitted as provided in subsection (f).

20 The contract shall be awarded within 60 days after the
21 auction by written notice to the lowest responsible bidder, or
22 all bids shall be rejected except as otherwise provided in this
23 Code. Extensions of the date for the award may be made by
24 mutual written consent of the State purchasing officer and the
25 lowest responsible bidder.

26 This subsection does not apply to (i) procurements of

1 professional and artistic services, including but not limited
2 to telecommunications services, communications services,
3 Internet services, and information services, and (ii)
4 contracts for construction projects.

5 (Source: P.A. 95-481, eff. 8-28-07; 96-159, eff. 8-10-09;
6 96-588, eff. 8-18-09; revised 10-5-10.)

7 (Text of Section from P.A. 96-159 and 96-795)

8 Sec. 20-10. Competitive sealed bidding; reverse auction.

9 (a) Conditions for use. All contracts shall be awarded by
10 competitive sealed bidding except as otherwise provided in
11 Section 20-5.

12 (b) Invitation for bids. An invitation for bids shall be
13 issued and shall include a purchase description and the
14 material contractual terms and conditions applicable to the
15 procurement.

16 (c) Public notice. Public notice of the invitation for bids
17 shall be published in the Illinois Procurement Bulletin at
18 least 14 days before the date set in the invitation for the
19 opening of bids.

20 (d) Bid opening. Bids shall be opened publicly in the
21 presence of one or more witnesses at the time and place
22 designated in the invitation for bids. The name of each bidder,
23 the amount of each bid, and other relevant information as may
24 be specified by rule shall be recorded. After the award of the
25 contract, the winning bid and the record of each unsuccessful

1 bid shall be open to public inspection.

2 (e) Bid acceptance and bid evaluation. Bids shall be
3 unconditionally accepted without alteration or correction,
4 except as authorized in this Code. Bids shall be evaluated
5 based on the requirements set forth in the invitation for bids,
6 which may include criteria to determine acceptability such as
7 inspection, testing, quality, workmanship, delivery, and
8 suitability for a particular purpose. Those criteria that will
9 affect the bid price and be considered in evaluation for award,
10 such as discounts, transportation costs, and total or life
11 cycle costs, shall be objectively measurable. The invitation
12 for bids shall set forth the evaluation criteria to be used.

13 (f) Correction or withdrawal of bids. Correction or
14 withdrawal of inadvertently erroneous bids before or after
15 award, or cancellation of awards of contracts based on bid
16 mistakes, shall be permitted in accordance with rules. After
17 bid opening, no changes in bid prices or other provisions of
18 bids prejudicial to the interest of the State or fair
19 competition shall be permitted. All decisions to permit the
20 correction or withdrawal of bids based on bid mistakes shall be
21 supported by written determination made by a State purchasing
22 officer.

23 (g) Award. The contract shall be awarded with reasonable
24 promptness by written notice to the lowest responsible and
25 responsive bidder whose bid meets the requirements and criteria
26 set forth in the invitation for bids, except when a State

1 purchasing officer determines it is not in the best interest of
2 the State and by written explanation determines another bidder
3 shall receive the award. The explanation shall appear in the
4 appropriate volume of the Illinois Procurement Bulletin. The
5 written explanation must include:

6 (1) a description of the agency's needs;

7 (2) a determination that the anticipated cost will be
8 fair and reasonable;

9 (3) a listing of all responsible and responsive
10 bidders; and

11 (4) the name of the bidder selected, pricing, and the
12 reasons for selecting that bidder.

13 Each chief procurement officer may adopt guidelines to
14 implement the requirements of this subsection (g).

15 The written explanation shall be filed with the Legislative
16 Audit Commission and the Procurement Policy Board and be made
17 available for inspection by the public within 30 days after the
18 agency's decision to award the contract.

19 (h) Multi-step sealed bidding. When it is considered
20 impracticable to initially prepare a purchase description to
21 support an award based on price, an invitation for bids may be
22 issued requesting the submission of unpriced offers to be
23 followed by an invitation for bids limited to those bidders
24 whose offers have been qualified under the criteria set forth
25 in the first solicitation.

26 (i) Alternative procedures. Notwithstanding any other

1 provision of this Act to the contrary, the Director of the
2 Illinois Power Agency may create alternative bidding
3 procedures to be used in procuring professional services under
4 subsection (a) of Section 1-75 and subsection (d) of Section
5 1-78 ~~1-75(a)~~ of the Illinois Power Agency Act and Section
6 16-111.5(c) of the Public Utilities Act and to procure
7 renewable energy resources under Section 1-56 of the Illinois
8 Power Agency Act. These alternative procedures shall be set
9 forth together with the other criteria contained in the
10 invitation for bids, and shall appear in the appropriate volume
11 of the Illinois Procurement Bulletin.

12 (j) Reverse auction. Notwithstanding any other provision
13 of this Section and in accordance with rules adopted by the
14 chief procurement officer, that chief procurement officer may
15 procure supplies or services through a competitive electronic
16 auction bidding process after the chief procurement officer
17 determines that the use of such a process will be in the best
18 interest of the State. The chief procurement officer shall
19 publish that determination in his or her next volume of the
20 Illinois Procurement Bulletin.

21 An invitation for bids shall be issued and shall include
22 (i) a procurement description, (ii) all contractual terms,
23 whenever practical, and (iii) conditions applicable to the
24 procurement, including a notice that bids will be received in
25 an electronic auction manner.

26 Public notice of the invitation for bids shall be given in

1 the same manner as provided in subsection (c).

2 Bids shall be accepted electronically at the time and in
3 the manner designated in the invitation for bids. During the
4 auction, a bidder's price shall be disclosed to other bidders.
5 Bidders shall have the opportunity to reduce their bid prices
6 during the auction. At the conclusion of the auction, the
7 record of the bid prices received and the name of each bidder
8 shall be open to public inspection.

9 After the auction period has terminated, withdrawal of bids
10 shall be permitted as provided in subsection (f).

11 The contract shall be awarded within 60 days after the
12 auction by written notice to the lowest responsible bidder, or
13 all bids shall be rejected except as otherwise provided in this
14 Code. Extensions of the date for the award may be made by
15 mutual written consent of the State purchasing officer and the
16 lowest responsible bidder.

17 This subsection does not apply to (i) procurements of
18 professional and artistic services, (ii) telecommunications
19 services, communication services, and information services,
20 and (iii) contracts for construction projects.

21 (Source: P.A. 95-481, eff. 8-28-07; 96-159, eff. 8-10-09;
22 96-795, eff. 7-1-10 (see Section 5 of P.A. 96-793 for the
23 effective date of changes made by P.A. 96-795); revised
24 10-5-10.)

25 Section 10. The Public Utilities Act is amended by changing

1 Sections 3-101 and 9-220 and by adding Section 3-123 as
2 follows:

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

4 Sec. 3-101. Definitions. Unless otherwise specified, the
5 terms set forth in Sections 3-102 through 3-123 ~~3-121~~ are used
6 in this Act as therein defined.

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

8 (220 ILCS 5/3-123 new)

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

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

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

17 "SNG facility" means a facility that produces substitute
18 natural gas from feedstock that includes coal through a
19 gasification process, including a clean coal facility, the
20 clean coal SNG brownfield facility, and the facility described
21 in subsection (h) of Section 9-220 of this Act.

22 "Sourcing agreement" means an agreement between the owner
23 of a clean coal SNG brownfield facility and the gas utility
24 that has the terms and conditions meeting the requirements of

1 subsection (h-1) of Section 9-220 of this Act.

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

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

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

7 (a) Notwithstanding the provisions of Section 9-201, the
8 Commission may authorize the increase or decrease of rates and
9 charges based upon changes in the cost of fuel used in the
10 generation or production of electric power, changes in the cost
11 of purchased power, or changes in the cost of purchased gas
12 through the application of fuel adjustment clauses or purchased
13 gas adjustment clauses. The Commission may also authorize the
14 increase or decrease of rates and charges based upon
15 expenditures or revenues resulting from the purchase or sale of
16 emission allowances created under the federal Clean Air Act
17 Amendments of 1990, through such fuel adjustment clauses, as a
18 cost of fuel. For the purposes of this paragraph, cost of fuel
19 used in the generation or production of electric power shall
20 include the amount of any fees paid by the utility for the
21 implementation and operation of a process for the
22 desulfurization of the flue gas when burning high sulfur coal
23 at any location within the State of Illinois irrespective of
24 the attainment status designation of such location; but shall
25 not include transportation costs of coal (i) except to the

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

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

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

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

18 (c) Notwithstanding any contrary or inconsistent
19 provisions in Section 9-201 of this Act, in subsection (a) of
20 this Section or in any rules or regulations promulgated by the
21 Commission pursuant to subsection (g) of this Section, a public
22 utility providing electric service, other than a public utility
23 described in subsection (e) or (f) of this Section, may at any
24 time during the mandatory transition period file with the
25 Commission proposed tariff sheets that establish the rate per
26 kilowatt-hour to be applied pursuant to the public utility's

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

17 (d) A public utility providing electric service, or a
18 public utility providing gas service may file with the
19 Commission proposed tariff sheets that eliminate the public
20 utility's fuel or purchased gas adjustment clause and adjust
21 the public utility's base rate tariffs to provide for recovery
22 of power supply costs or gas supply costs that would have been
23 recovered through such clause; provided, that the provisions of
24 this subsection (d) shall not be available to a public utility
25 described in subsections (e) or (f) of this Section to
26 eliminate its fuel adjustment clause. Notwithstanding any

1 contrary or inconsistent provisions in Section 9-201 of this
2 Act, in subsection (a) of this Section, or in any rules or
3 regulations promulgated by the Commission pursuant to
4 subsection (g) of this Section, the Commission shall review and
5 shall by order approve, or approve as modified in the
6 Commission's order, the proposed tariff sheets within 240 days
7 after the date of the public utility's filing. The Commission's
8 order shall approve rates and charges that the Commission,
9 based on information in the public utility's filing or on the
10 record if a hearing is held by the Commission, finds will
11 recover the reasonable, prudent and necessary jurisdictional
12 power supply costs or gas supply costs incurred or to be
13 incurred by the public utility during a 12 month period found
14 by the Commission to be appropriate for these purposes,
15 provided, that such period shall be either (i) a 12 month
16 historical period occurring during the 15 months ending on the
17 date of the public utility's filing, or (ii) a 12 month future
18 period ending no later than 15 months following the date of the
19 public utility's filing. The public utility shall include with
20 its tariff filing information showing both (1) its actual
21 jurisdictional power supply costs or gas supply costs for a 12
22 month historical period conforming to (i) above and (2) its
23 projected jurisdictional power supply costs or gas supply costs
24 for a future 12 month period conforming to (ii) above. If the
25 Commission's order requires modifications in the tariff sheets
26 filed by the public utility, the public utility shall have 7

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

19 (e) Notwithstanding any contrary or inconsistent
20 provisions in Section 9-201 of this Act, in subsection (a) of
21 this Section, or in any rules promulgated by the Commission
22 pursuant to subsection (g) of this Section, a public utility
23 providing electric service to more than 1,000,000 customers in
24 this State may, within the first 6 months after the effective
25 date of this amendatory Act of 1997, file with the Commission
26 proposed tariff sheets that eliminate, effective January 1,

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

24 (f) Notwithstanding any contrary or inconsistent
25 provisions in Section 9-201 of this Act, in subsection (a) of
26 this Section, or in any rules or regulations promulgated by the

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

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

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

16 (h) Any Illinois gas utility may enter into a contract on
17 or before March 31, 2011 for up to 10 years of supply with any
18 company for the purchase of substitute natural gas (SNG)
19 produced from coal through the gasification process if the
20 company has commenced construction of a coal gasification
21 facility by July 1, 2012 in Jefferson County and commencement
22 of construction shall mean that material physical site work has
23 occurred, such as site clearing and excavation, water runoff
24 prevention, water retention reservoir preparation, or
25 foundation development. The contract shall contain the
26 following provisions: (i) the only coal to be used in the

1 gasification process has high volatile bituminous rank and
2 greater than 1.7 pounds of sulfur per million Btu content; (ii)
3 at the time the contract term commences, the price per million
4 Btu may not exceed \$7.95 in 2008 dollars, adjusted annually
5 based on the change in the Annual Consumer Price Index for All
6 Urban Consumers for the Midwest Region as published in April by
7 the United States Department of Labor, Bureau of Labor
8 Statistics (or a suitable Consumer Price Index calculation if
9 this Consumer Price Index is not available) for the previous
10 calendar year; provided that the price per million Btu shall
11 not exceed \$9.95 at any time during the contract; (iii) the
12 utility's aggregate long-term supply contracts for the
13 purchase of SNG does not exceed 25% of the annual system supply
14 requirements of the utility as of 2008 and the quantity of SNG
15 supplied to a utility may not exceed 16 million MMBtus; and
16 (iv) contract costs pursuant to subsection (h-10) of this
17 Section shall not include any lobbying expenses, charitable
18 contributions, advertising, organizational memberships, or
19 marketing expenses per year.

20 (h-1) Any Illinois gas utility may enter into a sourcing
21 agreement for up to 30 years of supply with the clean coal SNG
22 brownfield facility if the clean coal SNG brownfield facility
23 has commenced construction. Any gas utility that is providing
24 service to more than 150,000 customers on the effective date of
25 this amendatory Act of the 97th General Assembly shall either
26 elect to file biennial rate proceedings before the Commission

1 in the years 2012, 2014, and 2016 or enter into a sourcing
2 agreement or sourcing agreements with a clean coal SNG
3 brownfield facility with an initial term of 30 years for either
4 (i) a percentage of 43,500,000,000 cubic feet per year, such
5 that the utilities entering into sourcing agreements with the
6 clean coal SNG brownfield facility purchase 100%, allocated by
7 total therms sold to ultimate customers by each gas utility in
8 2008 or (ii) such lesser amount as may be available from the
9 clean coal SNG brownfield facility.

10 Provided, however, that no utility shall be required to
11 purchase more than 42% of the projected annual output of the
12 clean coal SNG brownfield facility, with the remainder of such
13 utility's obligation to be divided proportionately between the
14 other utilities. Additionally, the Illinois Power Agency shall
15 further adjust the allocation only as required to take into
16 account adverse consolidation, derivative, or lease impacts to
17 the balance sheet or income statement of any gas utility.

18 A gas utility electing to file biennial rate proceedings
19 before the Commission must file a notice of its election with
20 the Commission within 60 days after the effective date of this
21 amendatory Act of the 97th General Assembly or its right to
22 make the election is irrevocably waived. A gas utility electing
23 to file biennial rate proceedings shall make such filings no
24 later than August 1 of the years 2012, 2014, and 2016,
25 consistent with all requirements of 83 Ill. Adm. Code 255 and
26 285 as though the gas utility were filing for an increase in

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

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

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

1 parties. If the parties are in agreement on the terms of the
2 sourcing agreement, the Illinois Power Agency shall approve the
3 final draft sourcing agreement. If after mediation the parties
4 have failed to come to agreement, then the Illinois Power
5 Agency shall revise the draft sourcing agreement as necessary
6 to confirm that the final draft sourcing agreement contains
7 only terms that are reasonable and equitable. The Illinois
8 Power Agency shall adopt and make public a policy detailing the
9 process for retaining a mediator under this subsection (h-1).
10 Any mediator retained to assist with mediating disputes between
11 the parties regarding the sourcing agreement shall be retained
12 no later than 60 days after the effective date of this
13 amendatory Act of the 97th General Assembly.

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

25 The sourcing agreement between a gas utility and the clean
26 coal SNG brownfield facility shall contain the following

1 provisions:

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

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

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

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

1 be provided in accordance with subsection (h-2) of this
2 Section.

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

20 "Consumer protection reserve account principal maximum
21 amount" shall mean the maximum amount of principal to be
22 maintained in the consumer protection reserve account.
23 During the first 2 years of operation of the facility,
24 there shall be no consumer protection reserve account
25 maximum amount. After the first 2 years of operation of the
26 facility, the consumer protection reserve account maximum

1 amount shall be \$150,000,000. After 5 years of operation,
2 and every 5 years thereafter, the trustee shall calculate
3 the 5-year average balance of the consumer protection
4 reserve account. If the trustee determines that during the
5 prior 5 years the consumer protection reserve account has
6 had an average account balance of less than \$75,000,000,
7 then the consumer protection reserve account principal
8 maximum amount shall be increased by \$5,000,000. If the
9 trustee determines that during the prior 5 years the
10 consumer protection reserve account has had an average
11 account balance of more than \$75,000,000, then the consumer
12 protection reserve account principal maximum amount shall
13 be decreased by \$5,000,000.

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

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

1 pursuant to subsection (h-2) of this Section.

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

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

23 (10) Title to the SNG shall pass at a mutually
24 agreeable point in Illinois, and may provide that, rather
25 than the utility taking title to the SNG, a mutually agreed
26 upon third-party gas marketer pursuant to a contract

1 approved by the Illinois Power Agency or its designee, may
2 take title to the SNG pursuant to an agreement between the
3 utility, the owner of the clean coal SNG brownfield
4 facility, and the third-party gas marketer.

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

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

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

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

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

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

16 (16) The clean coal SNG brownfield facility shall make
17 a good faith effort to ensure that an amount equal to not
18 less than 15% of the value of its prime construction
19 contract for the facility shall be established as a goal to
20 be awarded to minority owned businesses, female owned
21 businesses, and businesses owned by a person with a
22 disability; provided that at least 75% of the amount of
23 such total goal shall be for minority owned businesses.
24 "Minority owned business", "female owned business", and
25 "business owned by a person with a disability" shall have
26 the meanings ascribed to them in Section 2 of the Business

1 Enterprise for Minorities, Females and Persons with
2 Disabilities Act.

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

15 (h-2) Consumer protection reserve account. The clean coal
16 SNG brownfield facility shall guarantee a minimum of
17 \$100,000,000 in consumer savings to customers of the utilities
18 that have entered into sourcing agreements with the clean coal
19 SNG brownfield facility, calculated in real 2010 dollars at the
20 conclusion of the term of the sourcing agreement by comparing
21 the delivered SNG price to the Chicago City-gate price on a
22 weighted daily basis for each day over the entire term of the
23 sourcing agreement. Prior to the clean coal SNG brownfield
24 facility issuing a notice to proceed to construction, the clean
25 coal SNG brownfield facility shall establish a consumer
26 protection reserve account for the benefit of the retail

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

13 (1) The clean coal SNG brownfield facility monthly
14 shall calculate (A) the difference between the monthly
15 delivered SNG price and the Chicago City-gate price, by
16 comparing the delivered SNG price, which shall include the
17 cost of transportation to the delivery point, if any, to
18 the Chicago City-gate price on a weighted daily basis for
19 each day of the prior month based upon a mutually agreed
20 upon published index and (B) the overage amount, if any, by
21 calculating the annualized incremental additional cost, if
22 any, of the delivered SNG in excess of 2.015% of the
23 average annual inflation-adjusted amounts paid by all gas
24 distribution customers in connection with natural gas
25 service during the 5 years ending May 31, 2010.

26 (2) During the first 2 years of operation of the

1 facility:

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

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

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

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

25 (B) any amounts in the consumer protection reserve
26 account in excess of the consumer protection reserve

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

21 (C) to the extent there is an overage amount, after
22 distributing the amounts pursuant to subparagraph (B)
23 of this paragraph (3), if any, the consumer protection
24 reserve account shall be used to provide a credit to
25 reduce the SNG price by an amount equal to the overage
26 amount;

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

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

1 nameplate capacity of the facility and other by-products
2 produced by the facility, shall be credited to the consumer
3 protection reserve account.

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

14 (6) If, at the conclusion of the term of the sourcing
15 agreement, the customers have not saved the minimum
16 \$100,000,000 in savings as guaranteed in this subsection
17 (h-2) and the consumer protection reserve account has been
18 depleted, then the clean coal SNG brownfield facility shall
19 be liable for any remaining amount owed to the retail
20 customers to the extent that the customers are provided
21 with the \$100,000,000 in savings as guaranteed in this
22 subsection (h-2). The retail customers shall have first
23 priority in recovering that debt above any creditors,
24 except the original senior secured lender to the extent
25 that the original senior secured lender has any senior
26 secured debt outstanding, including any clean coal SNG

1 brownfield facility parent companies or affiliates.

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

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

13 (A) the extent the monthly delivered SNG price is
14 greater than, less than, or equal to the Chicago
15 City-gate price;

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

18 (C) the amounts credited to consumers and
19 distributed to the clean coal SNG brownfield facility
20 during the month;

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

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

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

26 (G) any other additional information the

1 Commission shall require.

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

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

23 Any facility that fails to file a report required under
24 this paragraph (8) to the Commission within the time
25 specified or to make specific answer to any question
26 propounded by the Commission within 30 days from the time

1 it is lawfully required to do so, or within such further
2 time not to exceed 90 days as may in its discretion be
3 allowed by the Commission, shall pay a penalty of \$500 to
4 the Commission for each day it is in default.

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

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

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

26 (A) Capital costs. The Capital Development Board

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

17 The Capital Development Board shall retain an
18 engineering expert to assist in determining both the
19 range of capital costs and the range of operations and
20 maintenance costs that it believes would be reasonable
21 for the clean coal SNG brownfield facility to recover
22 under the sourcing agreement. Provided, however, that
23 such expert shall: (i) not have been involved in the
24 clean coal SNG brownfield facility's facility cost
25 report, if any, (ii) not own or control any direct or
26 indirect interest in the initial clean coal facility,

1 and (iii) have no contractual relationship with the
2 clean coal SNG brownfield facility. In order to qualify
3 as an independent expert, a person or company must
4 have:

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

12 (ii) an advanced degree in economics,
13 mathematics, engineering, or a related area of
14 study;

15 (iii) ten years of experience in the energy
16 sector, including construction and risk management
17 experience;

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

23 (v) expertise in operations and maintenance
24 which may be particularized to the specific type of
25 operations and maintenance associated with the
26 clean coal SNG brownfield facility;

1 (vi) expertise in credit and contract
2 protocols;

3 (vii) adequate resources to perform and
4 fulfill the required functions and
5 responsibilities; and

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

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

25 In the event that the estimate submitted by the
26 clean coal SNG brownfield facility is within or below

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

17 The Capital Development Board shall monitor the
18 construction of the clean coal SNG brownfield facility
19 for the full duration of construction to assess
20 potential cost overruns. The Capital Development
21 Board, in its discretion, may retain an expert to
22 facilitate such monitoring. The clean coal SNG
23 brownfield facility shall pay a reasonable fee as
24 required by the Capital Development Board for the
25 Capital Development Board's services under this
26 subsection (h-3) to be deposited into the Capital

1 Development Board Revolving Fund, and such fee shall
2 not be passed through to a utility or its customers. If
3 an expert is retained by the Capital Development Board
4 for monitoring of construction, then the clean coal SNG
5 brownfield facility must pay for the expert's
6 reasonable fees and such costs shall not be passed
7 through to a utility or its customers.

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

22 In determining the return on equity, the
23 Commission shall select a commercially reasonable
24 return on equity taking into account the return on
25 equity being received by developers of similar
26 facilities in or outside of Illinois, the need to

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

21 (2) Operations and maintenance costs approved by the
22 Commission shall be recoverable by the clean coal SNG
23 brownfield facility under the sourcing agreement. The
24 operations and maintenance costs mean costs that have been
25 incurred for the administration, supervision, operation,
26 maintenance, preservation, and protection of the clean

1 coal SNG brownfield facility's physical plant.

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

1 facility and the Illinois Power Agency shall cooperate with
2 the Capital Development Board in any investigation it deems
3 necessary. The Capital Development Board shall make its
4 final determination of the range of operations and
5 maintenance costs confidentially and shall submit that
6 range to the Commission in a confidential filing within 120
7 days after the effective date of this amendatory Act of the
8 97th General Assembly.

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

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

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

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

23 (A) capture carbon dioxide;

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

26 (C) build, operate, and maintain a carbon dioxide

1 pipeline; and

2 (D) transport the carbon dioxide to the
3 sequestration site or a pipeline.

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

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

1 be increased, the Commission shall provide for notice and a
2 public hearing for approval of the increased sequestration
3 costs.

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

1 (5) Taxes and fees imposed by the federal government,
2 the State, or any unit of local government applicable to
3 the clean coal SNG brownfield facility, excluding income
4 tax, shall be recoverable by the clean coal SNG brownfield
5 facility under the sourcing agreement to the extent such
6 taxes and fees were not applicable to the facility on the
7 date of this amendatory Act of the 97th General Assembly.

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

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

1 granting the application. The decision of the Commission
2 upon rehearing shall be final.

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

14 (8) The Capital Development Board shall adopt and make
15 public a policy detailing the process for retaining experts
16 under this Section. Any experts retained to assist with
17 calculating the range of capital costs or operations and
18 maintenance costs shall be retained no later than 45 days
19 after the effective date of this amendatory Act of the 97th
20 General Assembly.

21 (h-4) No later than 90 days after the Illinois Power Agency
22 submits the final draft sourcing agreement pursuant to
23 subsection (h-1), the Commission shall approve a sourcing
24 agreement containing the capital costs, rate of return, and
25 operations and maintenance costs. Once the sourcing agreement
26 is approved, then the gas utility subject to that sourcing

1 agreement shall have 45 days after the date of the Commission's
2 approval to enter into the sourcing agreement.

3 (h-5) The Attorney General, on behalf of the people of the
4 State of Illinois, may specifically enforce the requirements of
5 this subsection (h-5). All contracts under subsection (h) of
6 this Act and all sourcing agreements under subsection (h-1) of
7 this Act, regardless of duration, shall require the owner of
8 any facility supplying SNG under the contract or sourcing
9 agreement to provide documentation to the Commission each year,
10 starting in the facility's first year of commercial operation,
11 accurately reporting the quantity of carbon dioxide emissions
12 from the facility that have been captured and sequestered and
13 reporting any quantities of carbon dioxide released from the
14 site or sites at which carbon dioxide emissions were
15 sequestered in prior years, based on continuous monitoring of
16 those sites. If, in any year, the owner of the facility
17 described in subsection (h) of this Act fails to demonstrate
18 that the ~~SNG~~ facility captured and sequestered at least 90% of
19 the total carbon dioxide emissions that the facility would
20 otherwise emit or that sequestration of emissions from prior
21 years has failed, resulting in the release of carbon dioxide
22 into the atmosphere, then the owner of the facility must offset
23 excess emissions. Any such carbon dioxide offsets must be
24 permanent, additional, verifiable, real, located within the
25 State of Illinois, and legally and practicably enforceable;
26 provided that the owner of the facility described in subsection

1 (h) of this Act shall not be obligated to acquire carbon
2 dioxide emission offsets to the extent that the cost of
3 acquiring such offsets would exceed \$40 million in any given
4 year. No costs of any purchases of carbon offsets may be
5 recovered from a utility or its customers. All carbon offsets
6 purchased for this purpose must be permanently retired.

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

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

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

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

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

1 sequestration requirements in any given year, provided the
2 requisite offsets are purchased or requisite penalties are
3 paid.

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

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

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

23 (2) The Commission shall review carbon dioxide
24 transportation and sequestration methods proposed by a
25 clean coal facility or a clean coal SNG brownfield facility
26 and shall approve those methods it deems reasonable and

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

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

1 written public comments. The Commission shall take the
2 comments into account when making its decision.

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

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

26 If the Illinois Environmental Protection Agency

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

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

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

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

23 (1) break, or repeal the authority for, sourcing
24 agreements approved by the Commission and entered into
25 between public utilities and the clean coal SNG brownfield
26 facility;

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

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

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

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

1 requirements for the clean coal SNG brownfield facility to the
2 extent technically feasible. The clean coal SNG brownfield
3 facility shall have the right to recover prudently incurred
4 increased costs or reduced revenue resulting from the new or
5 amendatory legislation or other action as described in this
6 subsection (h-9).

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

1 challenges.

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

22 (h-11) All costs incurred by an Illinois gas utility in
23 procuring SNG from a clean coal SNG brownfield facility
24 pursuant to subsection (h-1) or a third-party marketer pursuant
25 to subsection (h-1), are reasonable and prudent and recoverable
26 through the purchased gas adjustment clause in conjunction with

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

24 (h-15) With respect to each contract entered into by the
25 company with an Illinois utility in accordance with the terms
26 stated in subsection (h) of this Section, within 60 days

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

1 proportion to each utility's SNG purchases from the company
2 during the term of the SNG contract to be used to reduce the
3 utility's natural gas costs through the purchased gas
4 adjustment clause; such payments to the utility shall continue
5 until such time as the sum of such payments equals the revenue
6 share target of that utility. The company or utilities shall
7 have no obligation to repay the revenue share target except as
8 provided for in this subsection (h-15).

9 (h-20) The General Assembly authorizes the Illinois
10 Finance Authority to issue bonds to the maximum extent
11 permitted to finance coal gasification facilities described in
12 this Section, which constitute both "industrial projects"
13 under Article 801 of the Illinois Finance Authority Act and
14 "clean coal and energy projects" under Sections 825-65 through
15 825-75 of the Illinois Finance Authority Act. The General
16 Assembly further authorizes the Illinois Power Agency to become
17 party to agreements and take such actions as necessary to
18 enable the Illinois Power Agency or its designate to (i) review
19 and confirm in writing that the terms stated in subsection (h)
20 of this Section are incorporated in the SNG contract, and (ii)
21 conduct an analysis pursuant to subsection (h-15) of this
22 Section. Administrative costs incurred by the Illinois Finance
23 Authority and Illinois Power Agency in performance of this
24 subsection (h-20) shall be subject to reimbursement by the
25 company on terms as the Illinois Finance Authority, the
26 Illinois Power Agency, and the company may agree. The utility

1 and its customers shall have no obligation to reimburse the
2 company, the Illinois Finance Authority, or the Illinois Power
3 Agency for any such costs.

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

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

8 Section 15. The Illinois Gas Pipeline Safety Act is amended
9 by changing Sections 2.02, 2.03, 2.04, and 3 as follows:

10 (220 ILCS 20/2.02) (from Ch. 111 2/3, par. 552.2)

11 Sec. 2.02. "Gas" means natural gas, flammable gas or gas
12 which is toxic or corrosive. "Gas" also means carbon dioxide in
13 any physical form, whenever transported by pipeline for the
14 purpose of sequestration.

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

16 (220 ILCS 20/2.03) (from Ch. 111 2/3, par. 552.3)

17 Sec. 2.03. "Transportation of gas" means the gathering,
18 transmission, or distribution of gas by pipeline or its
19 storage, within this State and not subject to the jurisdiction
20 of the Federal Energy Regulatory Commission under the Natural
21 Gas Act, except that it includes the transmission of gas
22 through pipeline facilities within this State that transport
23 gas from an interstate gas pipeline to a direct sales customer

1 within this State purchasing gas for its own consumption.
2 "Transportation of gas" also includes the conveyance of gas
3 from a gas main through the primary fuel line to the outside
4 wall of residential premises. If the gas meter is placed within
5 3 feet of the structure, the utility's responsibility shall end
6 at the outlet side of the meter. "Transportation of gas" also
7 includes the conveyance of carbon dioxide in any physical form
8 for the purpose of sequestration.

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

10 (220 ILCS 20/2.04) (from Ch. 111 2/3, par. 552.4)

11 Sec. 2.04. "Pipeline facilities" includes new and existing
12 pipe rights-of-way and any equipment, facility, or building
13 used in the transportation of gas or the treatment of gas
14 during the course of transportation and includes facilities
15 within this State that transport gas from an interstate gas
16 pipeline to a direct sales customer within this State
17 purchasing gas for its own consumption, but "rights-of-way" as
18 used in this Act does not authorize the Commission to
19 prescribe, under this Act, the location or routing of any
20 pipeline facility. "Pipeline facilities" also includes new and
21 existing pipes and lines and any other equipment, facility, or
22 structure, except customer-owned branch lines connected to the
23 primary fuel lines, used to convey gas from a gas main to the
24 outside wall of residential premises, and any person who
25 provides gas service directly to its residential customer

1 through these facilities shall be deemed to operate such
2 pipeline facilities for purposes of this Act irrespective of
3 the ownership of the facilities or the location of the
4 facilities with respect to the meter, except that a person who
5 provides gas service to a "master meter system", as that term
6 is defined at 49 C.F.R. Section 191.3, shall not be deemed to
7 operate any facilities downstream of the master meter.
8 "Pipeline facilities" also includes new and existing pipe
9 rights-of-way and any equipment, facility, or building used in
10 the transportation of carbon dioxide in any physical form for
11 the purpose of sequestration.

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

13 (220 ILCS 20/3) (from Ch. 111 2/3, par. 553)

14 Sec. 3. (a) As soon as practicable, but not later than 3
15 months after the effective date of this Act, the Commission
16 shall adopt rules establishing minimum safety standards for the
17 transportation of gas and for pipeline facilities. Such rules
18 shall be at least as inclusive, as stringent, and compatible
19 with, the minimum safety standards adopted by the Secretary of
20 Transportation under the Federal Act. Thereafter, the
21 Commission shall maintain such rules so that the rules are at
22 least as inclusive, as stringent, and compatible with, the
23 minimum standards from time to time in effect under the Federal
24 Act. The Commission shall also adopt rules establishing minimum
25 safety standards for the transportation of carbon dioxide in

1 any physical form for the purpose of sequestration and for
2 pipeline facilities used for that function.

3 (b) Standards established under this Act may apply to the
4 design, installation, inspection, testing, construction,
5 extension, operation, replacement, and maintenance of pipeline
6 facilities. Standards affecting the design, installation,
7 construction, initial inspection and initial testing are not
8 applicable to pipeline facilities in existence on the date such
9 standards are adopted. Whenever the Commission finds a
10 particular facility to be hazardous to life or property, it may
11 require the person operating such facility to take the steps
12 necessary to remove the hazard.

13 (c) Standards established by the Commission under this Act
14 shall, subject to paragraphs (a) and (b) of this Section 3, be
15 practicable and designed to meet the need for pipeline safety.
16 In prescribing such standards, the Commission shall consider:
17 similar standards established in other states; relevant
18 available pipeline safety data; whether such standards are
19 appropriate for the particular type of pipeline
20 transportation; the reasonableness of any proposed standards;
21 and the extent to which such standards will contribute to
22 public safety.

23 Rules adopted under this Act are subject to "The Illinois
24 Administrative Procedure Act", approved September 22, 1975, as
25 amended.

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

1 Section 20. The Illinois Environmental Protection Act is
2 amended by adding Section 13.7 as follows:

3 (415 ILCS 5/13.7 new)

4 Sec. 13.7. Carbon dioxide sequestration sites.

5 (a) For purposes of this Section, the term "carbon dioxide
6 sequestration site" means a site or facility for which the
7 Agency has issued a permit for the underground injection of
8 carbon dioxide.

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

12 (c) If the Agency issues a seal order under Section 34 of
13 this Act in relation to a carbon dioxide sequestration site, or
14 if a civil action for an injunction to halt activity at a
15 carbon dioxide sequestration site is initiated under Section 43
16 of this Act at the request of the Agency, then the Agency shall
17 post notice of such action on its website.

18 (d) Persons seeking a permit or permit modification for the
19 underground injection of carbon dioxide shall be liable to the
20 Agency for all reasonable and documented costs incurred by the
21 Agency that are associated with review and issuance of the
22 permit, including, but not limited to, costs associated with
23 public hearings and the review of permit applications. Once a
24 permit is issued, the permittee shall be liable to the Agency

1 for all reasonable and documented costs incurred by the Agency
2 that are associated with inspections and other oversight of the
3 carbon dioxide sequestration site. Persons liable for costs
4 under this subsection (d) must pay the costs upon invoicing, or
5 other request or demand for payment, by the Agency. Costs for
6 which a person is liable under this subsection (d) are in
7 addition to any other fees, penalties, or other relief provided
8 under this Act or any other law.

9 Moneys collected under this subsection (d) shall be
10 deposited into the Environmental Protection Permit and
11 Inspection Fund established under Section 22.8 of this Act. The
12 Agency may adopt rules relating to the collection of costs due
13 under this subsection (d).

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

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

20 Section 85. Rulemaking. The Illinois Environmental
21 Protection Agency, the Illinois Commerce Commission, the
22 Capital Development Board, and the Illinois Department of
23 Natural Resources shall have rulemaking authority to implement
24 the provisions of this amendatory Act of the 97th General
25 Assembly.

1 Section 90. Inseverability. The provisions of this Act are
2 mutually dependent and inseverable. If any provision is held
3 invalid, then this entire Act, including all new and amendatory
4 provisions, is invalid.

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.".