

1 AN ACT concerning regulation.

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

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

8 (20 ILCS 3855/1-10)

9 Sec. 1-10. Definitions.

10 "Agency" means the Illinois Power Agency.

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

19 "Authority" means the Illinois Finance Authority.

20 "Clean coal facility" means an electric generating
21 facility that uses primarily coal as a feedstock and that
22 captures and sequesters carbon dioxide emissions at the
23 following levels: at least 50% of the total carbon dioxide

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

22 "Clean coal SNG brownfield facility" means a facility that
23 (1) has commenced construction by July 1, 2014 on an urban
24 brownfield site in a municipality with at least 1,000,000
25 residents; (2) uses a gasification process to produce
26 substitute natural gas; (3) uses coal as at least 50% of the

1 total feedstock over the term of any sourcing agreement with a
2 utility and the remainder of the feedstock may be either
3 petroleum coke or coal, with all such coal having a high
4 bituminous rank and greater than 1.7 pounds of sulfur per
5 million Btu content; and (4) captures and sequesters at least
6 85% of the total carbon dioxide emissions that the facility
7 would otherwise emit.

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

16 "Commission" means the Illinois Commerce Commission.

17 "Costs incurred in connection with the development and
18 construction of a facility" means:

19 (1) the cost of acquisition of all real property,
20 fixtures, and improvements in connection therewith and
21 equipment, personal property, and other property, rights,
22 and easements acquired that are deemed necessary for the
23 operation and maintenance of the facility;

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

26 (3) all origination, commitment, utilization,

1 facility, placement, underwriting, syndication, credit
2 enhancement, and rating agency fees;

3 (4) engineering, design, procurement, consulting,
4 legal, accounting, title insurance, survey, appraisal,
5 escrow, trustee, collateral agency, interest rate hedging,
6 interest rate swap, capitalized interest, contingency, as
7 required by lenders, and other financing costs, and other
8 expenses for professional services; and

9 (5) the costs of plans, specifications, site study and
10 investigation, installation, surveys, other Agency costs
11 and estimates of costs, and other expenses necessary or
12 incidental to determining the feasibility of any project,
13 together with such other expenses as may be necessary or
14 incidental to the financing, insuring, acquisition, and
15 construction of a specific project and starting up,
16 commissioning, and placing that project in operation.

17 "Department" means the Department of Commerce and Economic
18 Opportunity.

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

20 "Demand-response" means measures that decrease peak
21 electricity demand or shift demand from peak to off-peak
22 periods.

23 "Energy efficiency" means measures that reduce the amount
24 of electricity or natural gas required to achieve a given end
25 use.

26 "Electric utility" has the same definition as found in

1 Section 16-102 of the Public Utilities Act.

2 "Facility" means an electric generating unit or a
3 co-generating unit that produces electricity along with
4 related equipment necessary to connect the facility to an
5 electric transmission or distribution system.

6 "Governmental aggregator" means one or more units of local
7 government that individually or collectively procure
8 electricity to serve residential retail electrical loads
9 located within its or their jurisdiction.

10 "Local government" means a unit of local government as
11 defined in Article VII of Section 1 of the Illinois
12 Constitution.

13 "Municipality" means a city, village, or incorporated
14 town.

15 "Person" means any natural person, firm, partnership,
16 corporation, either domestic or foreign, company, association,
17 limited liability company, joint stock company, or association
18 and includes any trustee, receiver, assignee, or personal
19 representative thereof.

20 "Project" means the planning, bidding, and construction of
21 a facility.

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

24 "Real property" means any interest in land together with
25 all structures, fixtures, and improvements thereon, including
26 lands under water and riparian rights, any easements,

1 covenants, licenses, leases, rights-of-way, uses, and other
2 interests, together with any liens, judgments, mortgages, or
3 other claims or security interests related to real property.

4 "Renewable energy credit" means a tradable credit that
5 represents the environmental attributes of a certain amount of
6 energy produced from a renewable energy resource.

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

22 "Revenue bond" means any bond, note, or other evidence of
23 indebtedness issued by the Authority, the principal and
24 interest of which is payable solely from revenues or income
25 derived from any project or activity of the Agency.

26 "Sequester" means permanent storage of carbon dioxide by

1 injecting it into a saline aquifer, a depleted gas reservoir,
2 or an oil reservoir, directly or through an enhanced oil
3 recovery process that may involve intermediate storage,
4 regardless of whether these activities are conducted by a clean
5 coal facility, clean coal SNG facility, clean coal SNG
6 brownfield facility, the clean coal SNG facility located in
7 Jefferson County, or a party with which a clean coal facility,
8 clean coal SNG facility, ~~or~~ clean coal SNG brownfield facility,
9 or the clean coal SNG facility located in Jefferson County, has
10 contracted for such purposes.

11 "Sourcing agreement" means (i) in the case of an electric
12 utility, an agreement between the owner of a clean coal
13 facility and such electric utility, which agreement shall have
14 terms and conditions meeting the requirements of paragraph (3)
15 of subsection (d) of Section 1-75, (ii) in the case of an
16 alternative retail electric supplier, an agreement between the
17 owner of a clean coal facility and such alternative retail
18 electric supplier, which agreement shall have terms and
19 conditions meeting the requirements of Section 16-115(d) (5) of
20 the Public Utilities Act, and (iii) in case of a gas utility,
21 an agreement between the owner of a clean coal SNG brownfield
22 facility and the gas utility, which agreement shall have the
23 terms and conditions meeting the requirements of subsection
24 (h-1) of Section 9-220 of the Public Utilities Act.

25 "Substitute natural gas" or "SNG" means a gas manufactured
26 by gasification of hydrocarbon feedstock, which is

1 substantially interchangeable in use and distribution with
2 conventional natural gas.

3 "Total resource cost test" or "TRC test" means a standard
4 that is met if, for an investment in energy efficiency or
5 demand-response measures, the benefit-cost ratio is greater
6 than one. The benefit-cost ratio is the ratio of the net
7 present value of the total benefits of the program to the net
8 present value of the total costs as calculated over the
9 lifetime of the measures. A total resource cost test compares
10 the sum of avoided electric utility costs, representing the
11 benefits that accrue to the system and the participant in the
12 delivery of those efficiency measures, as well as other
13 quantifiable societal benefits, including avoided natural gas
14 utility costs, to the sum of all incremental costs of end-use
15 measures that are implemented due to the program (including
16 both utility and participant contributions), plus costs to
17 administer, deliver, and evaluate each demand-side program, to
18 quantify the net savings obtained by substituting the
19 demand-side program for supply resources. In calculating
20 avoided costs of power and energy that an electric utility
21 would otherwise have had to acquire, reasonable estimates shall
22 be included of financial costs likely to be imposed by future
23 regulations and legislation on emissions of greenhouse gases.

24 (Source: P.A. 95-481, eff. 8-28-07; 95-913, eff. 1-1-09;
25 95-1027, eff. 6-1-09; 96-33, eff. 7-10-09; 96-159, eff.
26 8-10-09; 96-784, eff. 8-28-09; 96-1000, eff. 7-2-10;

1 09600SB3388ham001 and ham003.)

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

6 (30 ILCS 500/1-10)

7 Sec. 1-10. Application.

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

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

22 (1) Contracts between the State and its political
23 subdivisions or other governments, or between State
24 governmental bodies except as specifically provided in

1 this Code.

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

4 (3) Purchase of care.

5 (4) Hiring of an individual as employee and not as an
6 independent contractor, whether pursuant to an employment
7 code or policy or by contract directly with that
8 individual.

9 (5) Collective bargaining contracts.

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

17 (7) Contracts necessary to prepare for anticipated
18 litigation, enforcement actions, or investigations,
19 provided that the chief legal counsel to the Governor shall
20 give his or her prior approval when the procuring agency is
21 one subject to the jurisdiction of the Governor, and
22 provided that the chief legal counsel of any other
23 procuring entity subject to this Code shall give his or her
24 prior approval when the procuring entity is not one subject
25 to the jurisdiction of the Governor.

26 (8) Contracts for services to Northern Illinois

1 University by a person, acting as an independent
2 contractor, who is qualified by education, experience, and
3 technical ability and is selected by negotiation for the
4 purpose of providing non-credit educational service
5 activities or products by means of specialized programs
6 offered by the university.

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

9 (10) Procurement expenditures by the Illinois Health
10 Information Exchange Authority involving private funds
11 from the Health Information Exchange Fund. "Private funds"
12 means gifts, donations, and private grants.

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

17 (d) Except for Section 20-160 and Article 50 of this Code,
18 and as expressly required by Section 9.1 of the Illinois
19 Lottery Law, the provisions of this Code do not apply to the
20 procurement process provided for under Section 9.1 of the
21 Illinois Lottery Law.

22 (e) This Code does not apply to the process used by the
23 Capital Development Board to retain a person or entity to
24 assist the Capital Development Board with its duties related to
25 the determination of costs of a clean coal SNG brownfield
26 facility, as defined by Section 1-10 of the Illinois Power

1 Agency Act, as required in subsection (h-3) of Section 9-220 of
2 the Public Utilities Act, including calculating the range of
3 capital costs, the range of operating and maintenance costs, or
4 the sequestration costs or monitoring the construction of clean
5 coal SNG brownfield facility for the full duration of
6 construction.

7 (f) This Code does not apply to the process used by the
8 Illinois Power Agency to retain a mediator to mediate sourcing
9 agreement disputes between gas utilities and the clean coal SNG
10 brownfield facility, as defined in Section 1-10 of the Illinois
11 Power Agency Act, as required under subsection (h-1) of Section
12 9-220 of the Public Utilities Act.

13 (g) This Code does not apply to the processes used by the
14 Illinois Power Agency to retain a mediator to mediate contract
15 disputes between gas utilities and the clean coal SNG facility
16 located in Jefferson County and to retain an expert to assist
17 in the review of contracts under subsection (h) of Section
18 9-220 of the Public Utilities Act. This Code does not apply to
19 the process used by the Illinois Commerce Commission to retain
20 an expert to assist in determining the actual incurred costs of
21 the clean coal SNG facility and the reasonableness of those
22 costs as required under subsection (h) of Section 9-220 of the
23 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; 09600SB3388ham001 and ham003.)

1 Section 10. If and only if Senate Bill 3388 of the 96th
2 General Assembly (as amended by House Amendment Nos. 1, 2, and
3 3) becomes law, then the Public Utilities Act is amended by
4 changing Sections 3-123 and 9-220 and by adding Sections 3-124,
5 3-125, and 3-126 as follows:

6 (220 ILCS 5/3-123)

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

10 "Clean coal SNG facility" shall have the same meaning as
11 provided in Section 1-10 of the Illinois Power Agency 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 clean coal SNG
21 facility located in Jefferson County ~~described in subsection~~
22 ~~(h) of Section 9-220 of this Act.~~

23 "Sourcing agreement" means an agreement between the owner
24 of a clean coal SNG brownfield facility and the gas utility

1 that has the terms and conditions meeting the requirements of
2 subsection (h-1) of Section 9-220 of this Act.

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

6 (Source: 09600SB3388ham001.)

7 (220 ILCS 5/3-124 new)

8 Sec. 3-124. Adjusted final capitalized plant cost.

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

19 (220 ILCS 5/3-125 new)

20 Sec. 3-125. Final capitalized plant cost. "Final
21 capitalized plant cost" means the total capitalized asset cost
22 of the plant of the clean coal SNG facility located in
23 Jefferson County as reflected on the balance sheet of the
24 facility at the time of the commercial production date, with

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

23 (220 ILCS 5/3-126 new)

24 Sec. 3-126. Total capitalized asset cost. "Total
25 capitalized asset cost" means the gross book value of the

1 plant, as determined in accordance with generally accepted
2 accounting principles at the commercial production date.

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

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

5 (a) Notwithstanding the provisions of Section 9-201, the
6 Commission may authorize the increase or decrease of rates and
7 charges based upon changes in the cost of fuel used in the
8 generation or production of electric power, changes in the cost
9 of purchased power, or changes in the cost of purchased gas
10 through the application of fuel adjustment clauses or purchased
11 gas adjustment clauses. The Commission may also authorize the
12 increase or decrease of rates and charges based upon
13 expenditures or revenues resulting from the purchase or sale of
14 emission allowances created under the federal Clean Air Act
15 Amendments of 1990, through such fuel adjustment clauses, as a
16 cost of fuel. For the purposes of this paragraph, cost of fuel
17 used in the generation or production of electric power shall
18 include the amount of any fees paid by the utility for the
19 implementation and operation of a process for the
20 desulfurization of the flue gas when burning high sulfur coal
21 at any location within the State of Illinois irrespective of
22 the attainment status designation of such location; but shall
23 not include transportation costs of coal (i) except to the
24 extent that for contracts entered into on and after the
25 effective date of this amendatory Act of 1997, the cost of the

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

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

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

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

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

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

15 (d) A public utility providing electric service, or a
16 public utility providing gas service may file with the
17 Commission proposed tariff sheets that eliminate the public
18 utility's fuel or purchased gas adjustment clause and adjust
19 the public utility's base rate tariffs to provide for recovery
20 of power supply costs or gas supply costs that would have been
21 recovered through such clause; provided, that the provisions of
22 this subsection (d) shall not be available to a public utility
23 described in subsections (e) or (f) of this Section to
24 eliminate its fuel adjustment clause. Notwithstanding any
25 contrary or inconsistent provisions in Section 9-201 of this
26 Act, in subsection (a) of this Section, or in any rules or

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

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

17 (e) Notwithstanding any contrary or inconsistent
18 provisions in Section 9-201 of this Act, in subsection (a) of
19 this Section, or in any rules promulgated by the Commission
20 pursuant to subsection (g) of this Section, a public utility
21 providing electric service to more than 1,000,000 customers in
22 this State may, within the first 6 months after the effective
23 date of this amendatory Act of 1997, file with the Commission
24 proposed tariff sheets that eliminate, effective January 1,
25 1997, the public utility's fuel adjustment clause without
26 adjusting its base rates, and such tariff sheets shall be

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

22 (f) Notwithstanding any contrary or inconsistent
23 provisions in Section 9-201 of this Act, in subsection (a) of
24 this Section, or in any rules or regulations promulgated by the
25 Commission pursuant to subsection (g) of this Section, a public
26 utility providing electric service to more than 500,000

1 customers but fewer than 1,000,000 customers in this State may,
2 within the first 6 months after the effective date of this
3 amendatory Act of 1997, file with the Commission proposed
4 tariff sheets that eliminate, effective January 1, 1997, the
5 public utility's fuel adjustment clause and adjust its base
6 rates by the amount necessary for the base fuel component of
7 the base rates to recover 91% of the public utility's average
8 fuel and power supply costs for the 2 most recent years for
9 which the Commission, as of January 1, 1997, has issued final
10 orders in annual proceedings pursuant to subsection (a), where
11 the average fuel and power supply costs per kilowatt-hour shall
12 be calculated as the sum of the public utility's prudent and
13 allowable fuel and power supply costs as found by the
14 Commission in the 2 proceedings divided by the public utility's
15 actual jurisdictional kilowatt-hour sales for those 2 years,
16 provided, that such tariff sheets shall be effective upon
17 filing. To the extent the application of the fuel adjustment
18 clause had resulted in net charges to customers after January
19 1, 1997, the utility shall also file a tariff sheet that
20 provides for a refund stated on a per kilowatt-hour basis of
21 such charges over a period not to exceed 6 months. Provided
22 however, that such refund shall not include the proportional
23 amounts of taxes paid under the Use Tax Act, Service Use Tax
24 Act, Service Occupation Tax Act, and Retailers' Occupation Tax
25 Act on fuel used in generation. The Commission shall issue an
26 order within 45 days after the date of the public utility's

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

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

14 (h) Any Illinois gas utility may enter into a contract on
15 or before March 31, 2011 for up to 10 years of supply with any
16 company for the purchase of substitute natural gas (SNG)
17 produced from coal through the gasification process if the
18 company has commenced construction of a coal gasification
19 facility by July 1, 2012 in Jefferson County and commencement
20 of construction shall mean that material physical site work has
21 occurred, such as site clearing and excavation, water runoff
22 prevention, water retention reservoir preparation, or
23 foundation development. The contract shall contain the
24 following provisions: (i) at least 90% of feedstock ~~the only~~
25 ~~coal~~ to be used in the gasification process shall be coal with
26 a ~~has~~ high volatile bituminous rank and greater than 1.7 pounds

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

20 Any gas utility that is providing service to more than
21 150,000 customers on the effective date of this amendatory Act
22 of the 96th General Assembly shall either elect to enter into a
23 contract on or before March 31, 2011 for 10 years of SNG supply
24 with the owner of a clean coal SNG facility located in
25 Jefferson County or to file biennial rate proceedings before
26 the Commission in the years 2011, 2013, and 2015, with such

1 filings made no later than August 1 of the years 2011, 2013 and
2 2015 consistent with all requirements of 83 Ill. Adm. Code 255
3 and 285 as though the gas utility were filing for an increase
4 in its rates, without regard to whether such filing would
5 produce an increase, a decrease, or no change in the gas
6 utility's rates, and the Commission shall review the gas
7 utility's filing and shall issue its order in accordance with
8 the provisions of Section 9-201 of this Act.

9 Within 7 days after the effective date of this amendatory
10 Act of the 96th General Assembly, the owner of the clean coal
11 SNG facility in Jefferson County shall submit to the Illinois
12 Power Agency and each gas utility that is providing service to
13 more than 150,000 customers on the effective date of this
14 amendatory Act of the 96th General Assembly a copy of a draft
15 contract. Within 30 days after the receipt of the draft
16 contract, each such gas utility shall provide the Illinois
17 Power Agency and the owner of the clean coal SNG facility
18 located in Jefferson County with its comments and recommended
19 revisions to the draft contract. Within 7 days after the
20 receipt of the gas utility's comments and recommended
21 revisions, the owner of the facility shall submit its
22 responsive comments and a further revised draft of the contract
23 to the Illinois Power Agency. The Illinois Power Agency shall
24 review the draft contract and comments.

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

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

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

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

1 Agency shall approve the amount of budgeted miscellaneous
2 net revenue to be included in the pricing formula if it
3 determines the budgeted amount to be reasonable and
4 accurate; and

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

16 If the parties to the contract do not agree on the terms
17 therein, then the Illinois Power Agency shall retain an
18 independent mediator to mediate the dispute between the
19 parties. If the parties are in agreement on the terms of the
20 contract, then the Illinois Power Agency shall approve the
21 contract. If after mediation the parties have failed to come to
22 agreement, then the Illinois Power Agency shall revise the
23 draft contract as necessary to confirm that the contract
24 contains only terms that are reasonable and equitable. The
25 Illinois Power Agency may, in its discretion, retain an
26 independent, qualified, and experienced expert to assist in its

1 obligations under this subsection (h). The Illinois Power
2 Agency shall adopt and make public policies detailing the
3 processes for retaining a mediator and an expert under this
4 subsection (h). Any mediator or expert retained under this
5 subsection (h) shall be retained no later than 60 days after
6 the effective date of this amendatory Act of the 96th General
7 Assembly.

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

17 Within 30 days after commercial production of SNG has
18 begun, the Commission shall initiate a review to determine: (1)
19 whether the final capitalized plant cost of the clean coal SNG
20 facility located in Jefferson County reflects actual incurred
21 costs and (2) whether such incurred costs were reasonable. In
22 determining the actual incurred costs included in the final
23 capitalized plant cost and the reasonableness of those costs,
24 the Commission may in its discretion retain independent,
25 qualified, and experienced experts to assist in its
26 determination. The expert shall not own or control any direct

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

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

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

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

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

25 Provided, however, that the Illinois Power Agency may
26 allocate the purchase obligations more proportionately based

1 upon total therms sold to ultimate customers, if it is
2 demonstrated with certainty that such alternative allocation
3 will not result in adverse consolidation, derivative, or lease
4 impacts to the balance sheet or income statement of any
5 purchasing utility. In any event, no utility shall be required
6 to purchase more than 42% of the projected annual output of the
7 clean coal SNG brownfield facility, with the remainder of such
8 utility's obligation to be divided proportionately between the
9 other utilities.

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

24 Within 15 days after the effective date of this amendatory
25 Act of the 96th General Assembly, the owner of the clean coal
26 SNG brownfield facility shall submit to the Illinois Power

1 Agency and each gas utility that is providing service to more
2 than 150,000 customers on the effective date of this amendatory
3 Act of the 96th General Assembly a copy of a draft sourcing
4 agreement. Within 45 days after receipt of the draft sourcing
5 agreement, each such gas utility shall provide the Illinois
6 Power Agency and the owner of a clean coal SNG brownfield
7 facility with its comments and recommended revisions to the
8 draft sourcing agreement. Within 15 days after the receipt of
9 the gas utility's comments and recommended revisions, the owner
10 of the clean coal SNG brownfield facility shall submit its
11 responsive comments and a further revised draft of the sourcing
12 agreement to the Illinois Power Agency. The Illinois Power
13 Agency shall review the draft sourcing agreement and comments.

14 If the parties to the sourcing agreement do not agree on
15 the terms therein, then the Illinois Power Agency shall retain
16 an independent mediator to mediate the dispute between the
17 parties. If the parties are in agreement on the terms of the
18 sourcing agreement, the Illinois Power Agency shall approve the
19 final draft sourcing agreement. If after mediation the parties
20 have failed to come to agreement, then the Illinois Power
21 Agency shall revise the draft sourcing agreement as necessary
22 to confirm that the final draft sourcing agreement contains
23 only terms that are reasonable and equitable. The Illinois
24 Power Agency shall adopt and make public a policy detailing the
25 process for retaining a mediator under this subsection (h-1).
26 Any mediator retained to assist with mediating disputes between

1 the parties regarding the sourcing agreement shall be retained
2 no later than 60 days after the effective date of this
3 amendatory Act of the 96th General Assembly.

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

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

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

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

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

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

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

1 utilities, and the Commission in an interest-bearing
2 account in accordance with subsection (h-2) of this
3 Section.

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

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

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

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

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

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

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

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

1 SNG brownfield facility.

2 (13) The quality of SNG must, at a minimum, be
3 equivalent to the equality required for an interstate
4 pipeline gas before a utility is required to accept and pay
5 for SNG gas.

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

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

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

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

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

24 (2) During the first 2 years of operation of the
25 facility:

26 (A) to the extent the monthly delivered SNG price,

1 is greater than the Chicago City-gate price, the
2 consumer protection reserve account shall be used to
3 provide a credit to reduce the SNG price by an amount
4 equal to the difference between the monthly delivered
5 SNG price and the Chicago City-gate price; 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 \$100,000,000 shall be distributed

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

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

14 (D) if retail customers have realized net consumer
15 savings, calculated by comparing the delivered SNG
16 price to the weighted average of the daily Chicago
17 City-gate price on a daily basis over the entire term
18 of the sourcing agreement to date, then after
19 distributing the amounts pursuant to subparagraphs (B)
20 and (C) of this paragraph (3), 50% of any additional
21 amounts in the consumer protection reserve account in
22 excess of \$100,000,000 shall be distributed to the
23 clean coal SNG brownfield facility, with the remaining
24 50% of any such additional amounts being credited to
25 retail customers; provided, however, that if retail
26 customers have not realized such net consumer savings,

1 no such distribution shall be made to the clean coal
2 SNG brownfield facility, and 100% of such additional
3 amounts shall be credited to the retail customers to
4 the extent the consumer protection reserve account
5 exceeds \$100,000,000.

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

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

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

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

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

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

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

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

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

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

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

10 (F) any other additional information the
11 Commission shall require.

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

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

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

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

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

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

26 (1) A capital recovery charge approved by the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Power Agency, an opportunity to be heard.

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

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

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

1 Agency shall cooperate with the Capital Development Board
2 in any investigation it deems necessary. The Capital
3 Development Board shall make its final determination of the
4 range of operations and maintenance costs confidentially
5 and shall submit that range to the Commission in a
6 confidential filing within 120 days after the effective
7 date of this amendatory Act of the 96th General Assembly.

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

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

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

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

22 (A) capture carbon dioxide;

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

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

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

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

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

1 public hearing for approval of the increased sequestration
2 costs.

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

26 (5) Taxes and fees imposed by the federal government,

1 the State, or any unit of local government applicable to
2 the clean coal SNG brownfield facility, excluding income
3 tax, shall be recoverable by the clean coal SNG brownfield
4 facility under the sourcing agreement to the extent such
5 taxes and fees were not applicable to the facility on the
6 date of this amendatory Act of the 96th General Assembly.

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

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

1 upon rehearing shall be final.

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

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

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

1 approval to enter into the sourcing agreement.

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

1 ~~carbon dioxide emission offsets to the extent that the cost of~~
2 ~~acquiring such offsets would exceed \$40 million in any given~~
3 ~~year. No costs of any purchases of carbon offsets may be~~
4 ~~recovered from a utility or its customers. All carbon offsets~~
5 ~~purchased for this purpose must be permanently retired.~~

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

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

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

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

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

1 requisite ~~offsets are purchased or requisite~~ penalties are
2 paid.

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

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

22 If, in any year, the owner of the clean coal SNG facility
23 located in Jefferson County fails to demonstrate that the SNG
24 facility captured and sequestered at least 90% of the total
25 carbon dioxide emissions that the facility would otherwise emit
26 or that sequestration of emissions from prior years has failed,

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

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

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

23 Compliance with the sequestration requirements and any
24 penalty requirements specified in this subsection (h-6) for the
25 clean coal SNG facility located in Jefferson County shall be
26 assessed annually by the Commission, which may in its

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

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

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

1 Jefferson County regardless of whether the facility has
2 contracted with another party to capture, transport or
3 sequester carbon dioxide.

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

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

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

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

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

23 The Commission may not approve a carbon dioxide
24 sequestration method if the owner or operator of the
25 sequestration site has not received (i) an Underground
26 Injection Control permit from the Illinois Environmental

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

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

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

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

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

21 In circumstances whereby a carbon dioxide pipeline
22 creates a substantial danger to the environment or to the
23 public health of persons or to the welfare of persons where
24 such danger is to the livelihood of such persons, the
25 State's Attorney or Attorney General, upon the request of
26 the Commission or on his or her own motion, may institute a

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (1) The clean coal SNG facility located in Jefferson
24 County shall conduct an analysis annually within 60 days
25 after receiving the necessary cost information, which
26 shall be provided by the gas utility within 6 months after

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

24 (A) To the extent the annual average contract SNG
25 cost is less than the annual average natural gas
26 purchase cost the utility shall credit an amount equal

1 to the revenue share target to the reconciliation
2 account. Such credit payment shall be made within 30
3 days after the completed analysis in this subsection
4 (h-15) and pursuant to this subparagraph (A) shall be
5 deemed prudent and reasonable and not subject to
6 Commission prudence review.

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

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

1 Such payment shall be made within 30 days after the last
2 completed analysis pursuant to this subsection (h-15). If
3 the facility has repaid all owed amounts, if any, to retail
4 customers and has distributed 50% of any additional amount
5 in the account to the utilities, then the owners of the
6 clean coal SNG facility located in Jefferson County shall
7 have no further obligation to the utility or the retail
8 customers.

9 If, at the conclusion of the term of the contracts
10 pursuant to subsection (h) and the completion of the final
11 annual analysis pursuant to this subsection (h-15), the
12 facility owes any amount to retail customers and the
13 account has been depleted, then the clean coal SNG facility
14 located in Jefferson County shall be liable for any
15 remaining amount owed to the retail customers. The clean
16 coal SNG facility located in Jefferson County shall market
17 the daily production of SNG and distribute on a monthly
18 basis 5% of the amounts collected with respect to such
19 future sales to the utilities in proportion to each
20 utility's SNG contract to be used to reduce the utility's
21 natural gas costs through the purchase gas adjustment
22 clause; such payments to the utility shall continue until
23 either 15 years after the conclusion of the contract or
24 such time as the sum of such payments equals the remaining
25 amount owed to the retail customers at the end of the
26 contract, whichever is earlier. If the debt to the retail

1 customers is not repaid within 15 years after the
2 conclusion of the contract, then the owner of the clean
3 coal SNG facility located in Jefferson County must sell the
4 facility, and all proceeds from that sale must be used to
5 repay any amount owed to the retail customers under this
6 subsection (h-15).

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

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

24 (4) The clean coal SNG facility located in Jefferson
25 County shall each year, starting in the facility's first
26 year of commercial operation, file with the Commission, in

1 such form as the Commission shall require, a report as to
2 the reconciliation account. The annual report must contain
3 the following information:

4 (A) the revenue share target amount;

5 (B) the amount credited or debited to the
6 reconciliation account during the year;

7 (C) the amount credited to the utilities to be used
8 to reduce the utilities natural gas costs though the
9 purchase gas adjustment clause;

10 (D) the total amount of reconciliation account at
11 the beginning and end of the year;

12 (E) the total amount of consumer saving to date;
13 and

14 (F) any additional information the Commission may
15 require.

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

26 All reports made to the Commission by the clean coal SNG

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

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

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

1 ~~the terms stated in subsection (h) of this Section, within 60~~
2 ~~days following the completion of purchases of SNG, the Illinois~~
3 ~~Power Agency shall conduct an analysis to determine (i) the~~
4 ~~average contract SNG cost, which shall be calculated as the~~
5 ~~total amount paid to a company for SNG over the contract term,~~
6 ~~plus the cost to the utility of the required transportation and~~
7 ~~storage services of SNG, divided by the total number of MMBtus~~
8 ~~of SNG actually purchased under the utility contract; (ii) the~~
9 ~~average natural gas purchase cost, which shall be calculated as~~
10 ~~the total annual supply costs paid for natural gas (excluding~~
11 ~~SNG) purchased by such utility over the contract term, plus the~~
12 ~~costs of transportation and storage services of such natural~~
13 ~~gas (excluding such costs for SNG), divided by the total number~~
14 ~~of MMBtus of natural gas (excluding SNG) actually purchased by~~
15 ~~the utility during the contract term; (iii) the cost~~
16 ~~differential, which shall be the difference between the average~~
17 ~~contract SNG cost and the average natural gas purchase cost;~~
18 ~~and (iv) the revenue share target, which shall be the cost~~
19 ~~differential multiplied by the total amount of SNG purchased~~
20 ~~under such utility contract. If the average contract SNG cost~~
21 ~~is equal to or less than the average natural gas purchase cost,~~
22 ~~then the company shall have no further obligation to the~~
23 ~~utility. If the average contract SNG cost for such SNG contract~~
24 ~~is greater than the average natural gas purchase cost for such~~
25 ~~utility, then the company shall market the daily production of~~
26 ~~SNG and distribute on a monthly basis 5% of amounts collected~~

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

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

17 Administrative costs incurred by the Illinois Finance
18 Authority in performance of this subsection (h-20) shall be
19 subject to reimbursement by the clean coal SNG facility located
20 in Jefferson County on terms as the Illinois Finance Authority
21 and the clean coal SNG facility located in Jefferson County may
22 agree. The utility and its customers shall have no obligation
23 to reimburse the clean coal SNG facility located in Jefferson
24 County or the Illinois Finance Authority of any such costs. The
25 ~~General Assembly authorizes the Illinois Finance Authority to~~
26 ~~issue bonds to the maximum extent permitted to finance coal~~

1 ~~gasification facilities described in this Section, which~~
2 ~~constitute both "industrial projects" under Article 801 of the~~
3 ~~Illinois Finance Authority Act and "clean coal and energy~~
4 ~~projects" under Sections 825-65 through 825-75 of the Illinois~~
5 ~~Finance Authority Act. The General Assembly further authorizes~~
6 ~~the Illinois Power Agency to become party to agreements and~~
7 ~~take such actions as necessary to enable the Illinois Power~~
8 ~~Agency or its designate to (i) review and confirm in writing~~
9 ~~that the terms stated in subsection (h) of this Section are~~
10 ~~incorporated in the SNG contract, and (ii) conduct an analysis~~
11 ~~pursuant to subsection (h-15) of this Section. Administrative~~
12 ~~costs incurred by the Illinois Finance Authority and Illinois~~
13 ~~Power Agency in performance of this subsection (h-20) shall be~~
14 ~~subject to reimbursement by the company on terms as the~~
15 ~~Illinois Finance Authority, the Illinois Power Agency, and the~~
16 ~~company may agree. The utility and its customers shall have no~~
17 ~~obligation to reimburse the company, the Illinois Finance~~
18 ~~Authority, or the Illinois Power Agency for any such costs.~~

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

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

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

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

21 (Source: P.A. 95-1027, eff. 6-1-09; 96-1364, eff. 7-28-10;
22 09600SB3388ham001, ham002, and ham003.)

23 Section 95. Rulemaking. The Illinois Power Agency and the
24 Illinois Commerce Commission shall have rulemaking authority
25 to implement the provisions of this amendatory Act of the 96th

1 General Assembly.

2 Section 97. Inseverability. The provisions of this Act are
3 mutually dependent and inseverable. If any provision is held
4 invalid, then this entire Act, including all new and amendatory
5 provisions, is invalid.

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