

1 AN ACT concerning public utilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (e) 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 promulgated by the Commission  
25 pursuant to subsection (g) of this Section, a public utility  
26 providing electric service to more than 1,000,000 customers in

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

1 (f) Notwithstanding any contrary or inconsistent  
2 provisions in Section 9-201 of this Act, in subsection (a) of  
3 this Section, or in any rules or regulations promulgated by the  
4 Commission pursuant to subsection (g) of this Section, a public  
5 utility providing electric service to more than 500,000  
6 customers but fewer than 1,000,000 customers in this State may,  
7 within the first 6 months after the effective date of this  
8 amendatory Act of 1997, file with the Commission proposed  
9 tariff sheets that eliminate, effective January 1, 1997, the  
10 public utility's fuel adjustment clause and adjust its base  
11 rates by the amount necessary for the base fuel component of  
12 the base rates to recover 91% of the public utility's average  
13 fuel and power supply costs for the 2 most recent years for  
14 which the Commission, as of January 1, 1997, has issued final  
15 orders in annual proceedings pursuant to subsection (a), where  
16 the average fuel and power supply costs per kilowatt-hour shall  
17 be calculated as the sum of the public utility's prudent and  
18 allowable fuel and power supply costs as found by the  
19 Commission in the 2 proceedings divided by the public utility's  
20 actual jurisdictional kilowatt-hour sales for those 2 years,  
21 provided, that such tariff sheets shall be effective upon  
22 filing. To the extent the application of the fuel adjustment  
23 clause had resulted in net charges to customers after January  
24 1, 1997, the utility shall also file a tariff sheet that  
25 provides for a refund stated on a per kilowatt-hour basis of  
26 such charges over a period not to exceed 6 months. Provided

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

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

19 (h) Any Illinois gas utility may enter into a contract on  
20 or before September 30, 2011 for up to 10 years of supply with  
21 any company for the purchase of substitute natural gas (SNG)  
22 produced from coal through the gasification process if the  
23 company has commenced construction of a clean coal SNG facility  
24 by July 1, 2012 and commencement of construction shall mean  
25 that material physical site work has occurred, such as site  
26 clearing and excavation, water runoff prevention, water

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

22 Any gas utility that is providing service to more than  
23 150,000 customers on August 2, 2011 (the effective date of  
24 Public Act 97-239) shall either elect to enter into a contract  
25 on or before September 30, 2011 for 10 years of SNG supply with  
26 the owner of a clean coal SNG facility or to file biennial rate

1 proceedings before the Commission in the years 2012, 2014, and  
2 2016, with such filings made after August 2, 2011 and no later  
3 than September 30 of the years 2012, 2014, and 2016 consistent  
4 with all requirements of 83 Ill. Adm. Code 255 and 285 as  
5 though the gas utility were filing for an increase in its  
6 rates, without regard to whether such filing would produce an  
7 increase, a decrease, or no change in the gas utility's rates,  
8 and the Commission shall review the gas utility's filing and  
9 shall issue its order in accordance with the provisions of  
10 Section 9-201 of this Act.

11 Within 7 days after August 2, 2011, the owner of the clean  
12 coal SNG facility shall submit to the Illinois Power Agency and  
13 each gas utility that is providing service to more than 150,000  
14 customers on August 2, 2011 a copy of a draft contract. Within  
15 30 days after the receipt of the draft contract, each such gas  
16 utility shall provide the Illinois Power Agency and the owner  
17 of the clean coal SNG facility with its comments and  
18 recommended revisions to the draft contract. Within 7 days  
19 after the receipt of the gas utility's comments and recommended  
20 revisions, the owner of the facility shall submit its  
21 responsive comments and a further revised draft of the contract  
22 to the Illinois Power Agency. The Illinois Power Agency shall  
23 review the draft contract and comments.

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

26 (1) review and confirm in writing that the terms stated

1 in this subsection (h) are incorporated in the SNG  
2 contract;

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

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

1 included in the pricing formula if it determines the  
2 budgeted amount to be reasonable and accurate;

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

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

20 If the parties to the contract do not agree on the terms  
21 therein, then the Illinois Power Agency shall retain an  
22 independent mediator to mediate the dispute between the  
23 parties. If the parties are in agreement on the terms of the  
24 contract, then the Illinois Power Agency shall approve the  
25 contract. If after mediation the parties have failed to come to  
26 agreement, then the Illinois Power Agency shall revise the

1 draft contract as necessary to confirm that the contract  
2 contains only terms that are reasonable and equitable. The  
3 Illinois Power Agency may, in its discretion, retain an  
4 independent, qualified, and experienced expert to assist in its  
5 obligations under this subsection (h). The Illinois Power  
6 Agency shall adopt and make public policies detailing the  
7 processes for retaining a mediator and an expert under this  
8 subsection (h). Any mediator or expert retained under this  
9 subsection (h) shall be retained no later than 60 days after  
10 August 2, 2011.

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

19 Within 30 days after commercial production of SNG has  
20 begun, the Commission shall initiate a review to determine  
21 whether the final capitalized plant cost of the clean coal SNG  
22 facility reflects actual incurred costs and whether the  
23 incurred costs were reasonable. In determining the actual  
24 incurred costs included in the final capitalized plant cost and  
25 the reasonableness of those costs, the Commission may in its  
26 discretion retain independent, qualified, and experienced

1 experts to assist in its determination. The expert shall not  
2 own or control any direct or indirect interest in the clean  
3 coal SNG facility and shall have no contractual relationship  
4 with the clean coal SNG facility. If an expert is retained by  
5 the Commission, then the clean coal SNG facility shall pay the  
6 expert's reasonable fees. The fees shall not be passed on to a  
7 utility or its customers. The Commission shall adopt and make  
8 public a policy detailing the process for retaining experts  
9 under this 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 at which  
13 comments and testimony may be submitted by any interested  
14 parties and the public. If the Commission finds that the final  
15 capitalized plant cost includes costs that were not actually  
16 incurred or costs that were unreasonably incurred, then the  
17 Commission shall disallow the amount of non-incurred or  
18 unreasonable costs from the SNG price under contracts entered  
19 into under this subsection (h). If the Commission disallows any  
20 costs, then the Commission shall adjust the SNG price using the  
21 price formula in the contract approved by the Illinois Power  
22 Agency under this subsection (h) to reflect the disallowed  
23 costs and shall enter an order specifying the revised price. In  
24 addition, the Commission's order shall direct the clean coal  
25 SNG facility to issue refunds of such sums as shall represent  
26 the difference between actual gross revenues and the gross

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

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

9 (h-1) Any Illinois gas utility may enter into a sourcing  
10 agreement for up to 30 years of supply with the clean coal SNG  
11 brownfield facility if the clean coal SNG brownfield facility  
12 has commenced construction. Any gas utility that is providing  
13 service to more than 150,000 customers on July 13, 2011 (the  
14 effective date of Public Act 97-096) shall either elect to file  
15 biennial rate proceedings before the Commission in the years  
16 2012, 2014, and 2016 or enter into a sourcing agreement or  
17 sourcing agreements with a clean coal SNG brownfield facility  
18 with an initial term of 30 years for either (i) a percentage of  
19 43,500,000,000 cubic feet per year, such that the utilities  
20 entering into sourcing agreements with the clean coal SNG  
21 brownfield facility purchase 100%, allocated by total therms  
22 sold to ultimate customers by each gas utility in 2008 or (ii)  
23 such lesser amount as may be available from the clean coal SNG  
24 brownfield facility; provided that no utility shall be required  
25 to purchase more than 42% of the projected annual output of the  
26 clean coal SNG brownfield facility (the projected annual output

1 of which is 47,799,714 MMBtu), with the remainder of such  
2 utility's obligation to be divided proportionately between the  
3 other utilities, and provided that the Illinois Power Agency  
4 shall further adjust the allocation only as required to take  
5 into account adverse consolidation, derivative, or lease  
6 impacts to the balance sheet or income statement of any gas  
7 utility.

8 A gas utility electing to file biennial rate proceedings  
9 before the Commission must file a notice of its election with  
10 the Commission within 60 days after July 13, 2011 or its right  
11 to make the election is irrevocably waived. A gas utility  
12 electing to file biennial rate proceedings shall make such  
13 filings no later than August 1 of the years 2012, 2014, and  
14 2016, consistent with all requirements of 83 Ill. Adm. Code 255  
15 and 285 as though the gas utility were filing for an increase  
16 in its rates, without regard to whether such filing would  
17 produce an increase, a decrease, or no change in the gas  
18 utility's rates, and notwithstanding any other provisions of  
19 this Act, the Commission shall fully review the gas utility's  
20 filing and shall issue its order in accordance with the  
21 provisions of Section 9-201 of this Act, regardless of whether  
22 the Commission has approved a formula rate for the gas utility.  
23 If more than 2 gas utilities elect to file biennial rate  
24 proceedings before the Commission by July 13, 2011, then the  
25 requirement that the other utilities enter into a sourcing  
26 agreement with the clean coal SNG brownfield facility shall be

1 waived.

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

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

1 Power Agency shall adopt and make public a policy detailing the  
2 process for retaining a mediator under this subsection (h-1).  
3 Any mediator retained to assist with mediating disputes between  
4 the parties regarding the sourcing agreement shall be retained  
5 no later than 60 days after July 13, 2011.

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

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

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

22 (2) Coal and petroleum coke are feedstocks for the  
23 gasification process, with coal comprising at least 50% of  
24 the total feedstock over the term of the sourcing agreement  
25 unless the facility reasonably determines that it is  
26 necessary to use additional petroleum coke to deliver net

1 consumer savings, in which case the facility shall use coal  
2 for at least 35% of the total feedstock over the term of  
3 any sourcing agreement and with the feedstocks to be  
4 procured in accordance with requirements of Section 1-78 of  
5 the Illinois Power Agency Act.

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

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

20 (5) Prior to the clean coal SNG brownfield facility  
21 issuing a notice to proceed to construction, the clean coal  
22 SNG brownfield facility shall establish a consumer  
23 protection reserve account for the benefit of the customers  
24 of the utilities that have entered into sourcing agreements  
25 with the clean coal SNG brownfield facility pursuant to  
26 this subsection (h-1), with cash principal in the amount of

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

11           "Consumer protection reserve account principal maximum  
12 amount" shall mean the maximum amount of principal to be  
13 maintained in the consumer protection reserve account.  
14 During the first 2 years of operation of the facility,  
15 there shall be no consumer protection reserve account  
16 maximum amount. After the first 2 years of operation of the  
17 facility, the consumer protection reserve account maximum  
18 amount shall be \$150,000,000. After 5 years of operation,  
19 and every 5 years thereafter, the trustee shall calculate  
20 the 5-year average balance of the consumer protection  
21 reserve account. If the trustee determines that during the  
22 prior 5 years the consumer protection reserve account has  
23 had an average account balance of less than \$75,000,000,  
24 then the consumer protection reserve account principal  
25 maximum amount shall be increased by \$5,000,000. If the  
26 trustee determines that during the prior 5 years the

1 consumer protection reserve account has had an average  
2 account balance of more than \$75,000,000, then the consumer  
3 protection reserve account principal maximum amount shall  
4 be decreased by \$5,000,000.

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

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

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

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

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

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

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

25 (12) A utility is responsible to pay only the  
26 Commission determined unit price cost of SNG that is

1       purchased by the utility, which unit price shall be set on  
2       a per-MMBtu basis so as to fully recover the costs  
3       enumerated in subsection (h-3) when multiplied by the  
4       allocations determined in this subsection (h-1). Nothing  
5       in the sourcing agreement will obligate a utility to invest  
6       capital in a clean coal SNG brownfield facility.

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

11          (14) Nothing in the sourcing agreement will require a  
12      utility to construct any facilities to accept delivery of  
13      SNG, but the sourcing agreement may require that the  
14      utility mutually agree with the clean coal SNG brownfield  
15      facility upon a receiving pipeline. Provided, however, if a  
16      utility is required by law or otherwise elects to connect  
17      the clean coal SNG brownfield facility to an interstate  
18      pipeline, then the utility shall be entitled to recover  
19      pursuant to its tariffs all just and reasonable costs that  
20      are prudently incurred. Any costs incurred by the utility  
21      to receive, deliver, manage, or otherwise accommodate  
22      purchases under the SNG sourcing agreement will be fully  
23      recoverable through a utility's purchased gas adjustment  
24      clause rider mechanism in conjunction with a SNG brownfield  
25      facility rider mechanism. The SNG brownfield facility  
26      rider mechanism (A) shall be applicable to all customers

1 who receive transportation service from the utility, (B)  
2 shall be designed to have an equal percent impact on the  
3 transportation services rates of each class of the  
4 utility's customers, and (C) shall accurately reflect the  
5 net consumer savings, if any, and above-market costs, if  
6 any, associated with the utility receiving, delivering,  
7 managing, or otherwise accommodating purchases under the  
8 SNG sourcing agreement.

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

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

26 (17) Prior to the clean coal SNG brownfield facility

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

12 (h-2) Consumer protection reserve account. The clean coal  
13 SNG brownfield facility shall guarantee a minimum of  
14 \$100,000,000 in consumer savings to customers of the utilities  
15 that have entered into sourcing agreements with the clean coal  
16 SNG brownfield facility, calculated in real 2010 dollars at the  
17 conclusion of the term of the sourcing agreement by comparing  
18 the delivered SNG price to the Chicago City-gate price on a  
19 weighted daily basis for each day over the entire term of the  
20 sourcing agreement. Prior to the clean coal SNG brownfield  
21 facility issuing a notice to proceed to construction, the clean  
22 coal SNG brownfield facility shall establish a consumer  
23 protection reserve account for the benefit of the retail  
24 customers of the utilities that have entered into sourcing  
25 agreements with the clean coal SNG brownfield facility pursuant  
26 to subsection (h-1), with cash principal in the amount of

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

10 (1) The clean coal SNG brownfield facility monthly  
11 shall calculate (A) the difference between the monthly  
12 delivered SNG price and the Chicago City-gate price, by  
13 comparing the delivered SNG price, which shall include the  
14 cost of transportation to the delivery point, if any, to  
15 the Chicago City-gate price on a weighted daily basis for  
16 each day of the prior month based upon a mutually agreed  
17 upon published index and (B) the overage amount, if any, by  
18 calculating the annualized incremental additional cost, if  
19 any, of the delivered SNG in excess of 2.015% of the  
20 average annual inflation-adjusted amounts paid by all gas  
21 distribution customers in connection with natural gas  
22 service during the 5 years ending May 31, 2010, as  
23 determined by the Illinois Power Agency in the October 11,  
24 2011 final draft sourcing agreement.

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

1 (A) to the extent there is an overage amount, 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 overage amount; and

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

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

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

24 (B) any amounts in the consumer protection reserve  
25 account in excess of the consumer protection reserve  
26 account principal maximum amount shall be distributed

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

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

26 (D) if retail customers have realized net consumer

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

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

1 produced by the facility, shall be credited to the consumer  
2 protection reserve account.

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

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

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

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

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

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

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

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

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

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

25                   (G) any other additional information the  
26 Commission shall require.

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

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

22          Any facility that fails to file a report required under  
23          this paragraph (8) to the Commission within the time  
24          specified or to make specific answer to any question  
25          propounded by the Commission within 30 days from the time  
26          it is lawfully required to do so, or within such further

1 time not to exceed 90 days as may in its discretion be  
2 allowed by the Commission, shall pay a penalty of \$500 to  
3 the Commission for each day it is in default.

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

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

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

25 (A) Capital costs. The Capital Development Board  
26 shall calculate a range of capital costs that it

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

16 The Capital Development Board shall retain an  
17 engineering expert to assist in determining both the  
18 range of capital costs and the range of operations and  
19 maintenance costs that it believes would be reasonable  
20 for the clean coal SNG brownfield facility to recover  
21 under the sourcing agreement. Provided, however, that  
22 such expert shall: (i) not have been involved in the  
23 clean coal SNG brownfield facility's facility cost  
24 report, if any, (ii) not own or control any direct or  
25 indirect interest in the initial clean coal facility,  
26 and (iii) have no contractual relationship with the

1 clean coal SNG brownfield facility. In order to qualify  
2 as an independent expert, a person or company must  
3 have:

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

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

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

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

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

26 (vi) expertise in credit and contract

1 protocols;

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

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

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

24 In the event that the estimate submitted by the  
25 clean coal SNG brownfield facility is within or below  
26 the range submitted by the Capital Development Board,

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

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

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

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

21 In determining the return on equity, the  
22 Commission shall select a commercially reasonable  
23 return on equity taking into account the return on  
24 equity being received by developers of similar  
25 facilities in or outside of Illinois, the need to  
26 balance an incentive for clean-coal technology with

1 the need to protect ratepayers from high gas prices,  
2 the risks being borne by the clean coal SNG brownfield  
3 facility in the final draft sourcing agreement, and any  
4 other information that the Commission may deem  
5 relevant. The Commission may establish a return on  
6 equity that varies with the amount of savings, if any,  
7 to customers during the term of the sourcing agreement,  
8 comparing the delivered SNG price to a daily weighted  
9 average price of natural gas, based upon an index. The  
10 Illinois Power Agency shall recommend a return on  
11 equity to the Commission using the same criteria.  
12 Within 60 days after receiving the final draft sourcing  
13 agreement from the Illinois Power Agency, the  
14 Commission shall approve the rate of return for the  
15 clean coal brownfield facility. Within 30 days after  
16 obtaining debt financing for the clean coal SNG  
17 brownfield facility, the clean coal SNG brownfield  
18 facility shall file a notice with the Commission  
19 identifying the actual cost of debt. The filing of such  
20 notice shall not provide the Commission with  
21 authorization to make modifications to the sourcing  
22 agreement at the time of debt financing.

23 (2) Operations and maintenance costs approved by the  
24 Commission shall be recoverable by the clean coal SNG  
25 brownfield facility under the sourcing agreement. The  
26 operations and maintenance costs mean costs that have been

1 incurred for the administration, supervision, operation,  
2 maintenance, preservation, and protection of the clean  
3 coal SNG brownfield facility's physical plant.

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

1 be reasonable for the clean coal SNG brownfield facility to  
2 recover under the sourcing agreement. The clean coal SNG  
3 brownfield facility and the Illinois Power Agency shall  
4 cooperate with the Capital Development Board in any  
5 investigation it deems necessary. The Capital Development  
6 Board shall make its final determination of the range of  
7 operations and maintenance costs confidentially and shall  
8 submit that range to the Commission in a confidential  
9 filing within 120 days after July 13, 2011.

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

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

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

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

24 (A) capture carbon dioxide;

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

1 (C) build, operate, and maintain a carbon dioxide  
2 pipeline; and

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

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

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

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

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

1 be recoverable under the sourcing agreement.

2 (5) Taxes and fees imposed by the federal government,  
3 the State, or any unit of local government applicable to  
4 the clean coal SNG brownfield facility, excluding income  
5 tax, shall be recoverable by the clean coal SNG brownfield  
6 facility under the sourcing agreement to the extent such  
7 taxes and fees were not applicable to the facility on July  
8 13, 2011.

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

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

1 the Commission shall hold a rehearing within 30 days after  
2 granting the application. The decision of the Commission  
3 upon rehearing shall be final.

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

15 (8) The Capital Development Board shall adopt and make  
16 public a policy detailing the process for retaining experts  
17 under this Section. Any experts retained to assist with  
18 calculating the range of capital costs or operations and  
19 maintenance costs shall be retained no later than 45 days  
20 after July 13, 2011.

21 (h-4) No later than 90 days after the Illinois Power Agency  
22 submits the final draft sourcing agreement pursuant to  
23 subsection (h-1), the Commission shall approve a sourcing  
24 agreement containing (i) the capital costs, rate of return, and  
25 operations and maintenance costs established pursuant to  
26 subsection (h-3) and (ii) all other terms and conditions,

1 rights, provisions, exceptions, and limitations contained in  
2 the final draft sourcing agreement; provided, however, the  
3 Commission shall correct typographical and scrivener's errors  
4 and modify the contract only as necessary to provide that the  
5 gas utility does not have the right to terminate the sourcing  
6 agreement due to any future events that may occur other than  
7 the clean coal SNG brownfield facility's failure to timely meet  
8 milestones, uncured default, extended force majeure, or  
9 abandonment. Once the sourcing agreement is approved, then the  
10 gas utility subject to that sourcing agreement shall have 45  
11 days after the date of the Commission's approval to enter into  
12 the sourcing agreement.

13 (h-4.5) Notwithstanding any other provisions of this Act,  
14 any sourcing agreement approved by the Commission prior to the  
15 effective date of this amendatory Act of the 97th General  
16 Assembly is void and shall not be further considered by the  
17 Commission, except in accordance with this subsection (h-4.5).  
18 The Commission shall issue an Order within 30 days after the  
19 effective date of this amendatory Act of the 97th General  
20 Assembly to approve a revised version of any such sourcing  
21 agreement, incorporating only the following modifications to  
22 the sourcing agreement endorsed in the Proposed Order on  
23 Rehearing, as reflected in the form of sourcing agreement  
24 attached to the brief on exceptions of the clean coal SNG  
25 brownfield facility:

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

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

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

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

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

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

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

20           (3) Correct the following scrivener's and  
21           typographical errors:

22           (A) In Sections 2.1(b), 2.2(b), 2.2(c), 2.2(e),  
23           and 5.1 and in the definition of "Monthly Delivered  
24           Quantity", the term "MCQ" shall be replaced with  
25           "Applicable MCQ".

26           (B) In the last sentence of Section 2.2(c),

1 "Maximum DCQ" shall be replaced with "Buyer's  
2 Allocated Percentage of the Maximum DCQ".

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

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

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

9 (F) In the definitions of "Title Transfer Point"  
10 and "Transportation and Marketing Component", the  
11 phrase "is defined" shall be replaced with "has the  
12 meaning specified".

13 The Commission shall make no other modifications to the  
14 sourcing agreement endorsed in the Proposed Order on Rehearing,  
15 as reflected in the form of sourcing agreement attached to the  
16 brief on exceptions of the clean coal SNG brownfield facility,  
17 other than those listed in this subsection (h-4.5), and shall  
18 impose no additional terms and conditions on the clean coal SNG  
19 brownfield facility. A gas utility subject to the obligation  
20 set forth in subsection (h-1) to enter into a sourcing  
21 agreement shall satisfy this obligation only by entering into  
22 the sourcing agreement approved under the provisions of this  
23 subsection (h-4.5) within 45 days after the date of the  
24 Commission's approval of such sourcing agreement.

25 (h-5) Sequestration enforcement.

26 (A) All contracts entered into under subsection (h) of

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

13           (B) If, in any year, the owner of the clean coal SNG  
14      facility fails to demonstrate that the SNG facility  
15      captured and sequestered at least 90% of the total carbon  
16      dioxide emissions that the facility would otherwise emit or  
17      that sequestration of emissions from prior years has  
18      failed, resulting in the release of carbon dioxide into the  
19      atmosphere, then the owner of the clean coal SNG facility  
20      must pay a penalty of \$20 per ton of excess carbon dioxide  
21      emissions not to exceed \$40,000,000, in any given year  
22      which shall be deposited into the Energy Efficiency Trust  
23      Fund and distributed pursuant to subsection (b) of Section  
24      6-6 of the Renewable Energy, Energy Efficiency, and Coal  
25      Resources Development Law of 1997. On or before the 5-year  
26      anniversary of the execution of the contract and every 5

1 years thereafter, an expert hired by the owner of the  
2 facility with the approval of the Attorney General shall  
3 conduct an analysis to determine the cost of sequestration  
4 of at least 90% of the total carbon dioxide emissions the  
5 plant would otherwise emit. If the analysis shows that the  
6 actual annual cost is greater than the penalty, then the  
7 penalty shall be increased to equal the actual cost.  
8 Provided, however, to the extent that the owner of the  
9 facility described in subsection (h) of this Section can  
10 demonstrate that the failure was as a result of acts of God  
11 (including fire, flood, earthquake, tornado, lightning,  
12 hurricane, or other natural disaster); any amendment,  
13 modification, or abrogation of any applicable law or  
14 regulation that would prevent performance; war; invasion;  
15 act of foreign enemies; hostilities (regardless of whether  
16 war is declared); civil war; rebellion; revolution;  
17 insurrection; military or usurped power or confiscation;  
18 terrorist activities; civil disturbance; riots;  
19 nationalization; sabotage; blockage; or embargo, the owner  
20 of the facility described in subsection (h) of this Section  
21 shall not be subject to a penalty if and only if (i) it  
22 promptly provides notice of its failure to the Commission;  
23 (ii) as soon as practicable and consistent with any order  
24 or direction from the Commission, it submits to the  
25 Commission proposed modifications to its carbon capture  
26 and sequestration plan; and (iii) it carries out its

1 proposed modifications in the manner and time directed by  
2 the Commission.

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

14 If the clean coal SNG facility fails to meet the  
15 requirements specified in this subsection (h-5), then the  
16 Attorney General, on behalf of the People of the State of  
17 Illinois, shall bring an action to enforce the obligations  
18 related to the facility set forth in this subsection (h-5),  
19 including any penalty payments owed, but not including the  
20 physical obligation to capture and sequester at least 90%  
21 of the total carbon dioxide emissions that the facility  
22 would otherwise emit. Such action may be filed in any  
23 circuit court in Illinois. By entering into a contract  
24 pursuant to subsection (h) of this Section, the clean coal  
25 SNG facility agrees to waive any objections to venue or to  
26 the jurisdiction of the court with regard to the Attorney

1 General's action under this subsection (h-5).

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

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

20 The clean coal SNG facility is prohibited from  
21 transporting or sequestering carbon dioxide unless the  
22 owner of the carbon dioxide pipeline that transfers the  
23 carbon dioxide from the facility and the owner of the  
24 sequestration site where the carbon dioxide captured by the  
25 facility is stored has acquired all applicable permits  
26 under applicable State and federal laws, statutes, rules,

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

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

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

24 In addition to any penalty for the clean coal SNG  
25 brownfield facility's failure to capture and sequester at  
26 least its minimum sequestration requirement, the Attorney

1 General, on behalf of the People of the State of Illinois,  
2 shall bring an action for specific performance of this  
3 subsection (h-5). Such action may be filed in any circuit  
4 court in Illinois. By entering into a sourcing agreement  
5 pursuant to subsection (h-1) of this Section, the clean  
6 coal SNG brownfield facility agrees to waive any objections  
7 to venue or to the jurisdiction of the court with regard to  
8 the Attorney General's action for specific performance  
9 under this subsection (h-5).

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

19 Responsibility for compliance with the sequestration  
20 requirements specified in this subsection (h-5) for the  
21 clean coal SNG brownfield facility shall reside solely with  
22 the clean coal SNG brownfield facility regardless of  
23 whether the facility has contracted with another party to  
24 capture, transport, or sequester carbon dioxide.

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

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

12          (2) The Commission shall review carbon dioxide  
13          transportation and sequestration methods proposed by a  
14          clean coal facility or a clean coal SNG brownfield facility  
15          and shall approve those methods it deems reasonable and  
16          cost-effective. For purposes of this review,  
17          "cost-effective" means a commercially reasonable price for  
18          similar carbon dioxide transportation or sequestration  
19          techniques. In determining whether sequestration is  
20          reasonable and cost-effective, the Commission may consult  
21          with the Illinois State Geological Survey and retain third  
22          parties to assist in its determination, provided that such  
23          third parties shall not own or control any direct or  
24          indirect interest in the facility that is proposing the  
25          carbon dioxide transportation or the carbon dioxide  
26          sequestration method and shall have no contractual

1 relationship with that facility. If a third party is  
2 retained by the Commission, then the facility proposing the  
3 carbon dioxide transportation or sequestration method  
4 shall pay for the expert's reasonable fees, and these costs  
5 shall not be passed through to a utility or its customers.

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

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

1 site is located if the sequestration will take place  
2 outside of Illinois. The Commission shall approve or deny  
3 the carbon dioxide transportation or sequestration method  
4 within 90 days after the receipt of all required  
5 information.

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

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

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

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

16 In circumstances whereby a carbon dioxide pipeline  
17 creates a substantial danger to the environment or to the  
18 public health of persons or to the welfare of persons where  
19 such danger is to the livelihood of such persons, the  
20 State's Attorney or Attorney General, upon the request of  
21 the Commission or on his or her own motion, may institute a  
22 civil action for an immediate injunction to halt any  
23 discharge or other activity causing or contributing to the  
24 danger or to require such other action as may be necessary.  
25 The court may issue an ex parte order and shall schedule a  
26 hearing on the matter not later than 3 working days after

1 the date of injunction. The Commission shall provide notice  
2 of any such actions as soon as possible on its website. The  
3 SNG facility shall incur all reasonable costs associated  
4 with any such inspection or monitoring of the sequestration  
5 sites, and these costs shall not be recoverable from a  
6 utility or its customers.

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

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

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

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

22 These pledges are for the benefit of the parties to those  
23 sourcing agreements and the issuers and holders of bonds or  
24 other obligations issued or incurred to finance or refinance  
25 the clean coal SNG brownfield facility. The clean coal SNG  
26 brownfield facility is authorized to include and refer to these

1 pledges in any financing agreement into which it may enter in  
2 regard to those sourcing agreements.

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

22 (h-10) Contract costs for SNG incurred by an Illinois gas  
23 utility are reasonable and prudent and recoverable through the  
24 purchased gas adjustment clause and are not subject to review  
25 or disallowance by the Commission. Contract costs are costs  
26 incurred by the utility under the terms of a contract that

1 incorporates the terms stated in subsection (h) of this Section  
2 as confirmed in writing by the Illinois Power Agency as set  
3 forth in subsection (h) of this Section, which confirmation  
4 shall be deemed conclusive, or as a consequence of or condition  
5 to its performance under the contract, including (i) amounts  
6 paid for SNG under the SNG contract and (ii) costs of  
7 transportation and storage services of SNG purchased from  
8 interstate pipelines under federally approved tariffs. The  
9 Illinois gas utility shall initiate a clean coal SNG facility  
10 rider mechanism that (A) shall be applicable to all customers  
11 who receive transportation service from the utility, (B) shall  
12 be designed to have an equal percentage impact on the  
13 transportation services rates of each class of the utility's  
14 total customers, and (C) shall accurately reflect the net  
15 customer savings, if any, and above market costs, if any, under  
16 the SNG contract. Any contract, the terms of which have been  
17 confirmed in writing by the Illinois Power Agency as set forth  
18 in subsection (h) of this Section and the performance of the  
19 parties under such contract cannot be grounds for challenging  
20 prudence or cost recovery by the utility through the purchased  
21 gas adjustment clause, and in such cases, the Commission is  
22 directed not to consider, and has no authority to consider, any  
23 attempted challenges.

24 The contracts entered into by Illinois gas utilities  
25 pursuant to subsection (h) of this Section shall provide that  
26 the utility retains the right to terminate the contract without

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

18 (h-11) All costs incurred by an Illinois gas utility in  
19 procuring SNG from a clean coal SNG brownfield facility  
20 pursuant to subsection (h-1) or a third-party marketer pursuant  
21 to subsection (h-1) are reasonable and prudent and recoverable  
22 through the purchased gas adjustment clause in conjunction with  
23 a SNG brownfield facility rider mechanism and are not subject  
24 to review or disallowance by the Commission; provided that if a  
25 utility is required by law or otherwise elects to connect the  
26 clean coal SNG brownfield facility to an interstate pipeline,

1 then the utility shall be entitled to recover pursuant to its  
2 tariffs all just and reasonable costs that are prudently  
3 incurred. Sourcing agreement costs are costs incurred by the  
4 utility under the terms of a sourcing agreement that  
5 incorporates the terms stated in subsection (h-1) of this  
6 Section as approved by the Commission as set forth in  
7 subsection (h-4) of this Section, which approval shall be  
8 deemed conclusive, or as a consequence of or condition to its  
9 performance under the contract, including (i) amounts paid for  
10 SNG under the SNG contract and (ii) costs of transportation and  
11 storage services of SNG purchased from interstate pipelines  
12 under federally approved tariffs. Any sourcing agreement, the  
13 terms of which have been approved by the Commission as set  
14 forth in subsection (h-4) of this Section, and the performance  
15 of the parties under the sourcing agreement cannot be grounds  
16 for challenging prudence or cost recovery by the utility, and  
17 in these cases, the Commission is directed not to consider, and  
18 has no authority to consider, any attempted challenges.

19 (h-15) Reconciliation account. The clean coal SNG facility  
20 shall establish a reconciliation account for the benefit of the  
21 retail customers of the utilities that have entered into  
22 contracts with the clean coal SNG facility pursuant to  
23 subsection (h). The reconciliation account shall be maintained  
24 and administered by an independent trustee that is mutually  
25 agreed upon by the owners of the clean coal SNG facility, the  
26 utilities, and the Commission in an interest-bearing account in

1 accordance with the following:

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

1 contract.

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

16 (B) To the extent the annual average contract SNG  
17 cost is greater than the annual average natural gas  
18 purchase cost, the reconciliation account shall be  
19 used to provide a credit equal to the revenue share  
20 target to the utilities to be used to reduce the  
21 utility's natural gas costs through the purchased gas  
22 adjustment clause. Such payment shall be made within 30  
23 days after the completed analysis pursuant to this  
24 subsection (h-15), but only to the extent that the  
25 reconciliation account has a positive balance.

26 (2) At the conclusion of the term of the SNG contracts

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

18           If, at the conclusion of the term of the contracts  
19          pursuant to subsection (h) and the completion of the final  
20          annual analysis pursuant to this subsection (h-15), the  
21          facility owes any amount to retail customers and the  
22          account has been depleted, then the clean coal SNG facility  
23          shall be liable for any remaining amount owed to the retail  
24          customers. The clean coal SNG facility shall market the  
25          daily production of SNG and distribute on a monthly basis  
26          5% of the amounts collected with respect to such future

1 sales to the utilities in proportion to each utility's SNG  
2 contract to be used to reduce the utility's natural gas  
3 costs through the purchase gas adjustment clause; such  
4 payments to the utility shall continue until either 15  
5 years after the conclusion of the contract or such time as  
6 the sum of such payments equals the remaining amount owed  
7 to the retail customers at the end of the contract,  
8 whichever is earlier. If the debt to the retail customers  
9 is not repaid within 15 years after the conclusion of the  
10 contract, then the owner of the clean coal SNG facility  
11 must sell the facility, and all proceeds from that sale  
12 must be used to repay any amount owed to the retail  
13 customers under this subsection (h-15).

14 The retail customers shall have first priority in  
15 recovering that debt above any creditors, except the  
16 secured lenders to the extent that the secured lenders have  
17 any secured debt outstanding, including any parent  
18 companies or affiliates of the clean coal SNG facility.

19 (3) 50% of all additional net revenue, defined as  
20 miscellaneous net revenue after cost allowance and above  
21 the budgeted estimate established for revenue pursuant to  
22 subsection (h), including sale of substitute natural gas  
23 derived from the clean coal SNG facility above the  
24 nameplate capacity of the facility and other by-products  
25 produced by the facility, shall be credited to the  
26 reconciliation account on an annual basis with such payment

1           made within 30 days after the end of each calendar year  
2           during the term of the contract.

3           (4) The clean coal SNG facility shall each year,  
4           starting in the facility's first year of commercial  
5           operation, file with the Commission, in such form as the  
6           Commission shall require, a report as to the reconciliation  
7           account. The annual report must contain the following  
8           information:

9                   (A) the revenue share target amount;

10                   (B) the amount credited or debited to the  
11           reconciliation account during the year;

12                   (C) the amount credited to the utilities to be used  
13           to reduce the utilities natural gas costs though the  
14           purchase gas adjustment clause;

15                   (D) the total amount of reconciliation account at  
16           the beginning and end of the year;

17                   (E) the total amount of consumer savings to date;  
18           and

19                   (F) any additional information the Commission may  
20           require.

21           When any report is erroneous or defective or appears to the  
22           Commission to be erroneous or defective, the Commission may  
23           notify the clean coal SNG facility to amend the report within  
24           30 days; before or after the termination of the 30-day period,  
25           the Commission may examine the trustee of the reconciliation  
26           account or the officers, agents, employees, books, records, or

1 accounts of the clean coal SNG facility and correct such items  
2 in the report as upon such examination the Commission may find  
3 defective or erroneous. All reports shall be under oath.

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

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

21 Any person who willfully makes any false report to the  
22 Commission or to any member, officer, or employee thereof, any  
23 person who willfully in a report withholds or fails to provide  
24 material information to which the Commission is entitled under  
25 this paragraph (4) and which information is either required to  
26 be filed by statute, rule, regulation, order, or decision of

1 the Commission or has been requested by the Commission, and any  
2 person who willfully aids or abets such person shall be guilty  
3 of a Class A misdemeanor.

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

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

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

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

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

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

19 (Source: P.A. 96-1364, eff. 7-28-10; 97-96, eff. 7-13-11;  
20 97-239, eff. 8-2-11; 97-630, eff. 12-8-11.)

21 Section 99. Effective date. This Act takes effect upon  
22 becoming law.