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## UTILITIES

### (220 ILCS 5/) Public Utilities Act.

(220 ILCS 5/Art. IX heading)

#### ARTICLE IX. RATES

(220 ILCS 5/9-101) (from Ch. 111 2/3, par. 9-101)

Sec. 9-101. All rates or other charges made, demanded or received by any product or commodity furnished or to be furnished or for any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful. All rules and regulations made by a public utility affecting or pertaining to its charges to the public shall be just and reasonable.

(Source: P.A. 84-617.)

(220 ILCS 5/9-102) (from Ch. 111 2/3, par. 9-102)

Sec. 9-102. Every public utility shall file with the Commission and shall print and keep open to public inspection schedules showing all rates and other charges, and classifications, which are in force at the time for any product or commodity furnished or to be furnished by it, or for any service performed by it, or for any service in connection therewith, or performed by any public utility controlled or operated by it. Every public utility shall file with and as a part of such schedule and shall state separately all rules, regulations, storage or other charges, privileges and contracts that in any manner affect the rates charged or to be charged for any service. Such schedule shall be filed for all services performed wholly or partly within this State, and the rates and other charges and classifications shall not, without the consent of the Commission, exceed those in effect on December 31, 1985. But nothing in this section shall prevent the Commission from approving or fixing rates or other charges or classifications from time to time, in excess of or less than those shown by said schedules.

Where a schedule of joint rates or other charges, or classifications is or may be in force between two or more

public utilities such schedules shall in like manner be printed and filed with the Commission, and so much thereof as the Commission shall deem necessary for the use of the public shall be filed in every office of such public utility in accordance with the terms of Section 9-103 of this Act. Unless otherwise ordered by the Commission a schedule showing such joint rates or other charges, or classifications need not be filed with the Commission by more than one of the parties to it: Provided, that there is also filed with the Commission a concurrence in such schedule by each of the other parties thereto.

Every public utility shall file with the Commission copies of all contracts, agreements or arrangements with other public utilities, in relation to any service, product or commodity affected by the provisions of this Act, to which it may be a party, and copies of all other contracts, agreements or arrangements with any other person or corporation affecting in the judgment of the Commission the cost to such public utility of any service, product or commodity.

(Source: P.A. 84-617; 84-1025.)

(220 ILCS 5/9-102.1)

Sec. 9-102.1. Negotiated rates.

(a) Notwithstanding anything to the contrary in any other Section of Article IX of this Act, the Commission may approve one or more rate schedules filed by a public utility that enable the public utility to provide service to customers under contracts that are treated as proprietary and confidential by the Commission notwithstanding the filing thereof. Service under the contracts shall be provided on such terms and for such rates or charges as the public utility and the customer agree upon, without regard to any rate schedules the public utility may have filed with the Commission under any other Section of Article IX of this Act. The contracts shall be filed with the Commission, notwithstanding anything to the contrary in any schedule referred to in subsection (b) of this Section. For purposes of Section 3-121 of this Act, the amounts collected under the contracts shall be treated as having been collected under rates that the public utility is required to file under Section 9-102 of this Act.

(b) Each schedule described in subsection (a) that became effective before August 25, 1995, and any contract thereunder, shall be deemed to have become effective in accordance with its terms, subject to the provisions of any Commission order that purported to authorize the schedule.

(c) In any determination of the rates to be charged by an electric public utility having contracts in effect pursuant to schedules filed under this Section or schedules referred to in subsection (b) of this Section, the revenues received, or to be received, by the electric public utility under each such contract shall be deemed to be equal to the revenues, based on the actual usage of the customer, that would have been, or would be, received under the lowest rates available under schedules on file pursuant to Section 9-201, applicable to a class of consumers that includes the customer, including any applicable riders or surcharges, plus any revenues that would have been, or would be required to pay for investment or expenses incurred by the electric public utility that would not be incurred if service were provided under such lowest rates. The cost of capital used to determine rates to be

charged by the electric public utility shall be that which would have obtained if service were provided under such lowest rates. The provisions of this subsection (c) shall not apply: (1) in any determination of the rates to be charged by a gas public utility, and (2) in any determination of the rates to be charged by an electric public utility, to contracts in effect prior to the effective date of this amendatory Act of 1996 pursuant to economic development schedules referred to in Section 9-241 of this Act, under which the electric public utility is authorized to provide discounts for new electrical sales that result from the location of new or expanded industrial facilities in the electric public utility's service territory. The preceding sentence shall not be construed to diminish the Commission's existing authority as of the effective date of this amendatory Act of 1996 to allocate the costs of all public utilities equitably, in any determination of rates, so as to set rates which are just and reasonable.

(d) Any contract filed pursuant to the provisions of subsection (a) of this Section shall be accorded proprietary and confidential treatment by the Commission and otherwise deemed to be exempt from the requirements of Sections 9-102, 9-103, 9-104, 9-201, 9-240, 9-241, and 9-243, except to the extent the Commission may, in its discretion, order otherwise. The Commission shall permit any statutory consumer protection agency to have access to any such contract, provided that: (i) the agency, and each individual that will have access on behalf of the agency, agree in writing to keep such contract confidential, such agreement to be in a form established by the Commission; and (ii) access is limited to full-time employees of the agency and such other persons as are acceptable to the public utility or, if the agency and the public utility are unable to agree, are determined to be acceptable by the Commission. "Statutory consumer protection agency" means any office, corporation, or other agency created by Article XI of this Act or any other Illinois statute as of the effective date of this amendatory Act of 1996 that has an express statutory duty to represent the interest of public utility customers, any such agency subsequently created by act of the General Assembly that expressly authorizes the agency to access the information described in this subsection, or the Attorney General of the State of Illinois.

(e) Nothing in this Section shall be construed to give a public utility the authority to provide electric or natural gas service to a customer the public utility is not otherwise lawfully entitled to serve. Nothing in this Section shall be construed to affect in any way the service rights of electric suppliers as granted under the Electric Supplier Act.

(f) The provisions of subsection (b) of this Section 9-102.1 are intended to be severable from the remaining provisions of this Act; and therefore, no determination of the validity of the provisions of subsection (b) shall affect the validity of the remaining provisions of this Section 9-102.1.

(g) After January 1, 2001, no contract for electric service may be entered into under any schedule filed pursuant to the provisions of subsection (a) of this Section or under any schedule referred to in subsection (b) of this Section. The foregoing provision shall not affect any contract entered into prior to January 1, 2001.

(h) Nothing contained in this Section shall be construed as preventing any customer or other appropriate party from

filing a complaint or otherwise requesting that the Commission investigate the reasonableness of the terms and conditions of any schedule filed under this Section or referred to in subsection (b) of this Section. Nothing contained in this Section shall be construed as affecting the right of any customer or public utility to enter into and enforce any contract providing for the amounts to be charged for service where the contract is or has been filed pursuant to any other Section of this Act. Nothing contained in this Section shall be construed to limit any Commission authority to authorize a public utility to engage in experimental programs relating to competition, including direct access programs.

(Source: P.A. 89-600, eff. 8-2-96.)

(220 ILCS 5/9-103) (from Ch. 111 2/3, par. 9-103)

Sec. 9-103. Posting of rate schedules. Subject to such rules and regulations as the Commission may prescribe, the schedules referred to in Section 9-102 shall be posted or kept on file in every office of a public utility where the public transacts business with such public utility. Any or all of such schedules kept as aforesaid shall be immediately produced by such public utility for inspection upon the demand of any person. A notice printed in bold type, in size prescribed by the Commission, stating that such schedules are on file with the agent and open to inspection by any person, and that the agent will assist any person to determine from such schedules any rates or other charges, classification, rules or regulations in force, shall be kept posted by the public utility in two public and conspicuous places in every such office. The form of every such schedule shall be prescribed by the Commission: Provided, that in lieu of filing the entire schedule in each office, any public utility may, subject to the regulations of the Commission, file or keep posted at such office, schedules of such rates or other charges, classifications, rules and regulations relating thereto, as are applicable at, to and from the place where such office is located.

The Commission may determine and prescribe the form in which the schedules required by this Act to be filed with the Commission and to be kept open to public inspection shall be prepared and arranged, and may change the form from time to time if it shall be found expedient.

(Source: P.A. 91-341, eff. 7-29-99.)

(220 ILCS 5/9-104) (from Ch. 111 2/3, par. 9-104)

Sec. 9-104. No public utility shall undertake to perform any service or to furnish any product or commodity unless or until the rates and other charges and classifications, rules and regulations relating thereto, applicable to such service, product or commodity, have been filed and published in accordance with the provisions of this Act: Provided, that in cases of emergency, a service, product or commodity not specifically covered by the schedules filed, may be performed or furnished at a reasonable rate, which rate shall forthwith be filed and shall be subject to review in accordance with the provisions of this Act.

(Source: P.A. 84-617.)

(220 ILCS 5/9-201) (from Ch. 111 2/3, par. 9-201)

Sec. 9-201. (a) Unless the Commission otherwise orders, and except as otherwise provided in this Section, no change shall be made by any public utility in any rate or other charge or classification, or in any rule, regulation, practice or contract relating to or affecting any rate or other charge, classification or service, or in any privilege or facility, except after 45 days' notice to the Commission and to the public as herein provided. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules or supplements stating plainly the change or changes to be made in the schedule or schedules then in force, and the time when the change or changes will go into effect, and by publication in a newspaper of general circulation or such other notice to persons affected by such change as may be prescribed by rule of the Commission. The Commission, for good cause shown, may allow changes without requiring the 45 days' notice herein provided for, by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

When any change is proposed in any rate or other charge, or classification, or in any rule, regulation, practice, or contract relating to or affecting any rate or other charge, classification or service, or in any privilege or facility, such proposed change shall be plainly indicated on the new schedule filed with the Commission, by some character to be designated by the Commission, immediately preceding or following the item.

When any public utility providing water or sewer service proposes any change in any rate or other charge, or classification, or in any rule, regulation, practice, or contract relating to or affecting any rate or other charge, classification or service, or in any privilege or facility, such utility shall, in addition to the other notice requirements of this Act, provide notice of such change to all customers potentially affected by including a notice and description of such change, and of Commission procedures for intervention, in the first bill sent to each such customer after the filing of the proposed change.

(b) Whenever there shall be filed with the Commission any schedule stating an individual or joint rate or other charge, classification, contract, practice, rule or regulation, the Commission shall have power, and it is hereby given authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleadings by the interested public utility or utilities, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate or other charge, classification, contract, practice, rule or regulation, and pending the hearing and decision thereon, such rate or other charge, classification, contract, practice, rule or regulation shall not go into effect. The period of suspension of such rate or other charge, classification, contract, practice, rule or regulation shall not extend more than 105 days beyond the time when such rate or other charge, classification, contract, practice, rule or regulation would otherwise go into effect unless the Commission, in its discretion, extends the period of suspension for a further period not exceeding 6 months.

All rates or other charges, classifications, contracts, practices, rules or regulations not so suspended shall, on the

expiration of 45 days from the time of filing the same with the Commission, or of such lesser time as the Commission may grant, go into effect and be the established and effective rates or other charges, classifications, contracts, practices, rules and regulations, subject to the power of the Commission, after a hearing had on its own motion or upon complaint, as herein provided, to alter or modify the same.

Within 30 days after such changes have been authorized by the Commission, copies of the new or revised schedules shall be posted or filed in accordance with the terms of Section 9-103 of this Act, in such a manner that all changes shall be plainly indicated. The Commission shall incorporate into the period of suspension a review period of 4 business days during which the Commission may review and determine whether the new or revised schedules comply with the Commission's decision approving a change to the public utility's rates. Such review period shall not extend the suspension period by more than 2 days. Absent notification to the contrary within the 4 business day period, the new or revised schedules shall be deemed approved.

(c) If the Commission enters upon a hearing concerning the propriety of any proposed rate or other charge, classification, contract, practice, rule or regulation, the Commission shall establish the rates or other charges, classifications, contracts, practices, rules or regulations proposed, in whole or in part, or others in lieu thereof, which it shall find to be just and reasonable. In such hearing, the burden of proof to establish the justness and reasonableness of the proposed rates or other charges, classifications, contracts, practices, rules or regulations, in whole and in part, shall be upon the utility. The utility, the staff of the Commission, the Attorney General, or any party to a proceeding initiated under this Section who has been granted intervenor status and submitted a post-hearing brief must be given the opportunity to present oral argument, if requested no later than the date for filing exceptions, on the propriety of any proposed rate or other charge, classification, contract, practice, rule, or regulation. No rate or other charge, classification, contract, practice, rule or regulation shall be found just and reasonable unless it is consistent with Sections of this Article.

(d) Except where compliance with Section 8-401 of this Act is of urgent and immediate concern, no representative of a public utility may discuss with a commissioner, commissioner's assistant, or hearing examiner in a non-public setting a planned filing for a general rate increase. If a public utility makes a filing under this Section, then no substantive communication by any such person with a commissioner, commissioner's assistant or hearing examiner concerning the filing is permitted until a notice of hearing has been issued. After the notice of hearing has been issued, the only communications by any such person with a commissioner, commissioner's assistant, or hearing examiner concerning the filing permitted are communications permitted under Section 10-103 of this Act. If any such communication does occur, then within 5 days of the docket being initiated all details relating to the communication shall be placed on the public record of the proceeding. The record shall include any materials, whether written, recorded, filmed, or graphic in nature, produced or reproduced on any media, used in

connection with the communication. The record shall reflect the names of all persons who transmitted, received, or were otherwise involved in the communication, the duration of the communication, and whether the communication occurred in person or by other means. In the case of an oral communication, the record shall also reflect the location or locations of all persons involved in the communication and, if the communication occurred by telephone, the telephone numbers for the callers and recipients of the communication. A commissioner, commissioner's assistant, or hearing examiner who is involved in any such communication shall be recused from the affected proceeding. The Commission, or any commissioner or hearing examiner presiding over the proceeding shall, in the event of a violation of this Section, take action necessary to ensure that such violation does not prejudice any party or adversely affect the fairness of the proceedings including dismissing the affected proceeding. Nothing in this subsection (d) is intended to preclude otherwise allowable updates on issues that may be indirectly related to a general rate case filing because cost recovery for the underlying activity may be requested. Such updates may include, without limitation, issues related to outages and restoration, credit ratings, security issuances, reliability, Federal Energy Regulatory Commission matters, Federal Communications Commission matters, regional reliability organizations, consumer education, or labor matters, provided that such updates may not include cost recovery in a planned rate case.

(Source: P.A. 96-33, eff. 7-10-09.)

(220 ILCS 5/9-201.5)

Sec. 9-201.5. Decommissioning nuclear power plants; rates.

(a) The Commission may after hearing, in a rate case or otherwise, authorize the institution of rate provisions or tariffs that increase or decrease charges to customers to reflect changes in, or additional or reduced costs of, decommissioning nuclear power plants, including accruals for estimates of those costs, irrespective of any changes in other costs or revenues; provided the revenues collected under such rates or tariffs are used to recover costs associated with contributions to appropriate decommissioning trust funds or to reduce the amounts to be charged under such rates or tariffs in the future. These provisions or tariffs shall hereinafter be referred to as "decommissioning rates".

(b) A public utility that does not have a decommissioning rate in effect on the effective date of this amendatory Act of 1994 may not place a decommissioning rate in effect before January 1, 1995. Changes in charges under a decommissioning rate shall not be subject to the notice and filing requirements of subsection (a) of Section 9-201 of this Act, but a decommissioning rate of a utility that does not have such a rate in effect before the effective date of this amendatory Act of 1994 shall provide that no increase in charges under that rate may take effect until 60 days after the utility provides the proposed increased charge to the Commission for review. The Commission may require that a decommissioning rate contain provisions for reconciling amounts collected under the rate with both reasonably projected costs and actual costs prudently incurred. As used in this Section, "decommissioning costs" and "decommissioning

trust fund" have the same meaning as in Section 8-508.1 of this Act.

(c) Nothing contained in this amendatory Act of 1994 shall affect any determination of the authority of the Commission before the effective date of this amendatory Act of 1994. Nothing contained in this amendatory Act of 1994 shall be used in any determination of the authority of the Commission after the effective date of this amendatory Act of 1994, except with respect to decommissioning rates.

(d) A decommissioning rate authorized by the Commission under this Section and the decommissioning cost studies underlying the rate shall be subject to hearing and review, in a rate case or otherwise, not less than once every 6 years. (Source: P.A. 90-561, eff. 12-16-97.)

(220 ILCS 5/9-202) (from Ch. 111 2/3, par. 9-202)

Sec. 9-202. (a) Whenever the Commission is of the opinion and so finds after an examination of any report or reports, annual or otherwise, filed with the Commission by any public utility, together with any other facts or information which the Commission may acquire or receive from an investigation of the books, records or papers or from an inspection of the property of such public utility, that the net income of such public utility after reasonable deductions for depreciation and other proper and necessary reserves, is in excess of the amount required for a reasonable return upon the value of said public utility's property used and useful in rendering its service to the public, provided however that in computing net income, deductions shall not be made for advertising expenses as prohibited under Section 9-225 of this Act, and if the Commission is of the opinion and so finds in said cause that a hearing to determine all of the issues involved in a final determination of rates or services will require more than 105 days of elapsed time, the Commission shall have the power in cases of such emergency and it is hereby given authority to at once enter a temporary order, after notice to said public utility, fixing a temporary schedule of rates, which order shall be forthwith binding upon said public utility; provided, however, that the Commission's power to order reductions in rates and charges of any public utility by means of any such temporary order, is limited to reductions which will absorb not more than the amount found by the Commission to be in excess of the amount of income as determined by the Commission necessary to provide a reasonable return on the value of the property of said public utility as found by the Commission as aforesaid; and provided, further, however, that no such temporary order shall remain in force or effect for a longer period than 9 months from its effective date, and a further period not to exceed 3 months in addition if so ordered by the Commission; and provided, further, that if upon the final disposition of the issues involved in such proceeding, the rates or charges as finally determined by said Commission or the court having jurisdiction of the subject matter are in excess of the rates and charges prescribed in said temporary order, then and in such event such public utility shall be permitted over such reasonable time as the Commission shall fix, to amortize and recover by means of a temporary increase over and above the rates and charges finally determined, such sum as shall represent the difference between the gross income

obtained from the rates and charges prescribed in said temporary reduction order and the gross income which would have obtained, during the period such temporary reduction order was in effect, based upon the same volume, from the rates and charges finally determined.

(b) If the Commission enters upon a hearing concerning the propriety of any proposed rate or other charge, classification, contract, practice, rule or regulation pursuant to Section 9-201, and if the Commission is of the opinion and so finds in said cause that a hearing to determine all of the issues involved in a final determination of rates or services will require more than 120 days of elapsed time, the Commission shall have the power to enter a temporary order fixing a temporary schedule of rates after hearing, which order shall be forthwith binding upon the public utility. As soon as practicable after the effective date of this amendatory Act of 1985, the Commission shall determine by rule the facts and circumstances which must be established by the utility in order to justify the grant of a temporary rate increase as provided herein. The Commission shall determine any temporary rate increase according to previously established standards until the time such rules become effective.

In any case in which the Commission grants interim relief, the Commission shall, upon final disposition of the proposed permanent change in rates or other charges, classification, contract, practice, rule or regulation, also review the propriety of its prior award of interim relief based upon the criteria used by the Commission in granting the interim rate relief. If, upon such review, the Commission determines that such interim rates or charges were in excess of the rates or charges which should have been prescribed in its temporary order, the Commission shall require the public utility to refund such sum as shall represent the difference between the gross income obtained from the rates or charges prescribed in said temporary increase order and the gross income which would have been obtained during the period such temporary increase order was in effect based upon the same volume, from the rates and charges which the Commission upon final review determines were appropriate. Any refund shall include interest calculated at a rate determined by the Commission and shall be returned according to procedures prescribed by the Commission.

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

(220 ILCS 5/9-210) (from Ch. 111 2/3, par. 9-210)

Sec. 9-210. The Commission shall have power to ascertain the value of the property of every public utility in this State and every fact which in its judgment may or does have any bearing on such value. In all proceedings before the Commission, initiated by the Commission upon its own motion, or initiated by an application of such public utility, in which the value of the property of any public utility or utilities is an issue, the burden of establishing such value shall be upon such public utility or utilities. In making such valuation the Commission may avail itself of any information, books, documents, or records in the possession of any officer, department or board of the State or any subdivision thereof. The Commission shall have power to make revaluation from time to time and also to ascertain the value of all new

construction, extensions, and additions to the property of every public utility.

For purposes of establishing the value of public utility property, when determining rates or charges, or for any other reason, the Commission may base its determination on the original cost of such property.

(Source: P.A. 84-617.)

(220 ILCS 5/9-211) (from Ch. 111 2/3, par. 9-211)

Sec. 9-211. The Commission, in any determination of rates or charges, shall include in a utility's rate base only the value of such investment which is both prudently incurred and used and useful in providing service to public utility customers.

(Source: P.A. 84-617.)

(220 ILCS 5/9-212) (from Ch. 111 2/3, par. 9-212)

Sec. 9-212. No new electric utility generating plant or gas production facility, or significant addition to existing facilities or plant, shall be included in a utility's rate base unless and until the utility proves, and the Commission determines, that such plant or facility is both prudent and used and useful in providing utility service to the utility's customers. For purposes of this Section, "prudent" means that at the time of certification, initiation of construction and each subsequent evaluation of any construction project until the time of completion, based on the evidence introduced in any hearings and all information which was known or should have been known at the time, and relevant planning and certification criteria, it was prudent and reasonable to conclude that the generating or production facility would be used and useful in providing service to customers at the time of completion. If the Commission has issued a certificate of public convenience and necessity for the completed facility, and to the extent that the Commission approves continued construction upon reevaluation subsequent to certification, such actions shall constitute prima facie evidence of the prudence of construction. If the Commission determines as a result of reevaluation during construction that the facility should not be completed, such determination shall constitute prima facie evidence that subsequent construction expenditures were imprudent.

A generation or production facility is used and useful only if, and only to the extent that, it is necessary to meet customer demand or economically beneficial in meeting such demand. No generation or production facility shall be found used and useful until and unless it is capable of generation or production at significant operating levels on a consistent and sustainable basis. Any pollution control devices for the control of sulfur dioxide emissions installed or used in accordance with, and up to the cost specified in, an order or supplemental order of the Commission entered pursuant to subsection (e) of Section 8-402.1 shall be deemed prudent and shall, upon being placed into operation on a consistent, sustainable basis by the public utility, be deemed used and useful.

(Source: P.A. 90-655, eff. 7-30-98.)

(220 ILCS 5/9-213) (from Ch. 111 2/3, par. 9-213)

Sec. 9-213. The cost of new electric utility generating plants and significant additions to electric utility generating plants shall not be included in the rate base of any utility unless such cost is reasonable. Prior to including the cost of plants or additions to utility plants in the rate base, the Commission shall conduct an audit of such costs in order to ascertain whether the cost associated with the new generating plant or the addition to electric utility generating plant is reasonable. However, the Commission may, for good cause shown in individual cases, waive the auditing requirement for any generating facility which meets all of the following requirements:

- (1) the facility is wholly owned and operated by a public utility, as otherwise defined in this Act, which serves less than 20,000 electric customers within the State of Illinois, and
- (2) the facility is designed to generate less than 50 megawatts of electricity, and
- (3) the facility is located outside of the State of Illinois.

If the Commission is unable to conduct such an audit, the Commission shall arrange for it to be conducted by persons independent of the utility and selected by the Commission. The cost of such an independent audit shall be borne initially by the utility, but shall be recovered as an expense through normal ratemaking procedures. Any such audits shall be conducted in accordance with generally accepted auditing standards and shall include but not be limited to costs associated with materials, labor, equipment, professional services and other direct and indirect costs.

"Significant additions to the electric utility generating plant", as used in this Section, shall not include a public utility's investment in pollution control devices for the control of sulfur dioxide emissions. Nothing in this Section is intended to affect the provisions of Section 9-214 of this Act.

"Reasonable", as used in this Section, means that a utility's decisions, construction, and supervision of construction, underlying the costs of new electric utility generating plants and significant additions to electric utility generating plants resulted in efficient, economical and timely construction. In determining the reasonableness of plant costs, the Commission shall consider the knowledge and circumstances prevailing at the time of each relevant utility decision or action.

Nothing in this Section shall prevent or limit the Commission from either entering into and conducting joint audits concerning such electric generating plants with the regulatory authority of another state, or from relying on audits conducted by the regulatory authority of another state in lieu of an audit as required by this Section.

(Source: P.A. 87-435.)

(220 ILCS 5/9-214) (from Ch. 111 2/3, par. 9-214)

Sec. 9-214. (a) As used in this Section:

- (1) "CWIP" means those assets which are recorded as construction work in progress on a public utility's books of accounts maintained in accordance with the applicable regulations and orders of the Commission.

(2) "Rate base" means the original cost value of the property on which a return is allowed.

(3) "CWIP ratio" means the fraction, expressed as a percentage, calculated by dividing the amount of CWIP included in a public utility's rate base by the utility's rate base.

(4) "Existing CWIP" means the amount of CWIP included in the rate base on December 1, 1983.

(b) In any determination under Section 9-201, 9-202 or 9-250 of this Act in a proceeding begun on or after December 1, 1983:

(1) For any public utility with a CWIP ratio on December 1, 1983, which is less than 15%, the Commission shall not include in the rate base for such public utility an amount for CWIP to exceed 80% of existing CWIP for the period from December 1, 1983 through December 31, 1984, and 60% of existing CWIP for the period from January 1, 1985 through December 31, 1985 and 40% of existing CWIP for the period from January 1, 1986 through December 31, 1986, and 20% of existing CWIP for the period from January 1, 1987 through December 31, 1987.

(2) For any public utility with a CWIP ratio on December 1, 1983 which is greater than or equal to 15%, the Commission shall not include in the rate base for such public utility an amount for CWIP in excess of the amount of CWIP included in the rate base on December 1, 1983, plus 50% of the allowed construction expenses incurred by the public utility from the date of the most recent rate determination by the Commission prior to December 1, 1983.

(c) The limitations set forth in paragraph (b) of this Section shall not be interpreted as an expansion of the Commission's authority to include CWIP in the rate base, but rather solely as a limitation thereon.

(d) The Commission shall not include an amount for CWIP in the rate base for any public utility for the period after December 31, 1988.

(e) Notwithstanding the provisions of paragraphs (b) and (d) of this Section the Commission may include in the rate base of a public utility an amount for CWIP for a public utility's investment which is scheduled to be placed in service within 12 months of the date of the rate determination. For the purposes of this paragraph nuclear generating facilities shall be considered to be in service upon the commencement of electric generation.

(f) Notwithstanding the provisions of paragraph (b) and (d), the Commission may include in the rate base of a public utility an amount of CWIP for a public utility's investment in pollution control devices for the control of sulfur dioxide emissions and the purification of water and sewage; provided, however, that upon application by a public utility which is constructing one or more pollution control devices for the control of sulfur dioxide emissions as part of a Clean Air Act compliance plan approved by the Commission pursuant to subsection (e) of Section 8-402.1, the Commission shall include in such public utility's rate base an amount of CWIP equal to its investment in such pollution control device or devices, but not to exceed the estimated cost of such facilities specified in the Commission's order or supplemental order pursuant to subsection (e) of Section 8-402.1. For purposes of this subsection (f), the public utility's

investment shall not include the amount of any state, federal or other grants provided to the public utility to fund the design, acquisition, construction, installation and testing of pollution control devices for the control of sulfur dioxide emissions.

(g) Except for those amounts of CWIP described in paragraphs (e) and (f) of this Section, the Commission shall consider, in any rate filing subsequent to the coming on line of any new utility plant where CWIP funds have been allowed in rate base, a rate moderation plan directed towards allowing an appropriate return to ratepayers for previous amounts attributable to CWIP funds.

The Commission shall conduct an investigation and study of the costs and benefits to ratepayers of the inclusion of construction work in progress in rate base. Such study shall include a full opportunity for participation by the public through notice and hearings. If the Commission determines that in certain circumstances the inclusion of CWIP in rate base would be demonstrably beneficial to ratepayers, the Commission shall report its findings with recommendations to the General Assembly by December 31, 1988.

(Source: P.A. 87-173.)

(220 ILCS 5/9-215) (from Ch. 111 2/3, par. 9-215)

Sec. 9-215. The Commission shall have power to consider, on a case by case basis, the status of a utility's capacity and to determine whether or not such utility's capacity is in excess of that reasonably necessary to provide adequate and reliable electric service. Excess capacity for purposes of this Section shall mean capacity in excess of that reasonably necessary to provide adequate and reliable electric service. Such consideration shall be related to the utility's historic and projected peak.

The Commission is empowered to make appropriate and equitable adjustments to rates for utility service upon a finding of excess capacity.

With respect to generating capacity existing or under construction on the effective date of this amendatory Act of 1985, any such determination and adjustment to rates, and any determination as to whether such capacity is used and useful for any purpose under this Act, shall be limited to the determination and adjustment, if any, appropriate under the law in effect prior to such effective date.

(Source: P.A. 84-617.)

(220 ILCS 5/9-215.1) (from Ch. 111 2/3, par. 9-215.1)

Sec. 9-215.1. Capacity purchased from a qualified local solid waste energy facility shall not be included in the calculation of an electric utility's electricity generating capacity for the purposes of this Act, and shall not affect the determination of property that is used and useful for purposes of this Act.

(Source: P.A. 85-882.)

(220 ILCS 5/9-216) (from Ch. 111 2/3, par. 9-216)

Sec. 9-216. The Commission shall establish, by rulemaking, the policies and procedures which shall be utilized in evaluating and deciding any requests for the recovery and allocation of reasonable and prudent costs incurred in the

construction of generation or production facilities which have been cancelled. In establishing such policies and procedures the Commission shall consider all relevant factors, including, but not limited to, the prudence and reasonableness of such costs, the reasons for cancellation, the consistency of construction and cancellation with certification and reevaluation criteria and proceedings, the need to provide proper incentives for future construction and cancellation decisions, and the balance of equities between ratepayers and shareholders.

(Source: P.A. 90-655, eff. 7-30-98.)

(220 ILCS 5/9-217) (from Ch. 111 2/3, par. 9-217)

Sec. 9-217. In each case or proceeding to determine the reasonableness of rates for any electric utility which involves the proposed inclusion of a significant new generation or production facility in rate base, the Commission may consider the adoption of a rate moderation plan which is designed to diminish the immediate rate impact of such proposed inclusion.

(Source: P.A. 84-617.)

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

(Text of Section from P.A. 97-906)

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

(a) Notwithstanding the provisions of Section 9-201, the Commission may authorize the increase or decrease of rates and charges based upon changes in the cost of fuel used in the generation or production of electric power, changes in the cost of purchased power, or changes in the cost of purchased gas through the application of fuel adjustment clauses or purchased gas adjustment clauses. The Commission may also authorize the increase or decrease of rates and charges based upon expenditures or revenues resulting from the purchase or sale of emission allowances created under the federal Clean Air Act Amendments of 1990, through such fuel adjustment clauses, as a cost of fuel. For the purposes of this paragraph, cost of fuel used in the generation or production of electric power shall include the amount of any fees paid by the utility for the implementation and operation of a process for the desulfurization of the flue gas when burning high sulfur coal at any location within the State of Illinois irrespective of the attainment status designation of such location; but shall not include transportation costs of coal (i) except to the extent that for contracts entered into on and after the effective date of this amendatory Act of 1997, the cost of the coal, including transportation costs, constitutes the lowest cost for adequate and reliable fuel supply reasonably available to the public utility in comparison to the cost, including transportation costs, of other adequate and reliable sources of fuel supply reasonably available to the public utility, or (ii) except as otherwise provided in the next 3 sentences of this paragraph. Such costs of fuel shall, when requested by a utility or at the conclusion of the utility's next general electric rate proceeding, whichever shall first occur, include transportation costs of coal purchased under existing coal purchase contracts. For purposes of this paragraph "existing coal purchase contracts" means contracts for the purchase of

coal in effect on the effective date of this amendatory Act of 1991, as such contracts may thereafter be amended, but only to the extent that any such amendment does not increase the aggregate quantity of coal to be purchased under such contract. Nothing herein shall authorize an electric utility to recover through its fuel adjustment clause any amounts of transportation costs of coal that were included in the revenue requirement used to set base rates in its most recent general rate proceeding. Cost shall be based upon uniformly applied accounting principles. Annually, the Commission shall initiate public hearings to determine whether the clauses reflect actual costs of fuel, gas, power, or coal transportation purchased to determine whether such purchases were prudent, and to reconcile any amounts collected with the actual costs of fuel, power, gas, or coal transportation prudently purchased. In each such proceeding, the burden of proof shall be upon the utility to establish the prudence of its cost of fuel, power, gas, or coal transportation purchases and costs. The Commission shall issue its final order in each such annual proceeding for an electric utility by December 31 of the year immediately following the year to which the proceeding pertains, provided, that the Commission shall issue its final order with respect to such annual proceeding for the years 1996 and earlier by December 31, 1998.

(b) A public utility providing electric service, other than a public utility described in subsections (e) or (f) of this Section, may at any time during the mandatory transition period file with the Commission proposed tariff sheets that eliminate the public utility's fuel adjustment clause and adjust the public utility's base rate tariffs by the amount necessary for the base fuel component of the base rates to recover the public utility's average fuel and power supply costs per kilowatt-hour for the 2 most recent years for which the Commission has issued final orders in annual proceedings pursuant to subsection (a), where the average fuel and power supply costs per kilowatt-hour shall be calculated as the sum of the public utility's prudent and allowable fuel and power supply costs as found by the Commission in the 2 proceedings divided by the public utility's actual jurisdictional kilowatt-hour sales for those 2 years. Notwithstanding any contrary or inconsistent provisions in Section 9-201 of this Act, in subsection (a) of this Section or in any rules or regulations promulgated by the Commission pursuant to subsection (g) of this Section, the Commission shall review and shall by order approve, or approve as modified, the proposed tariff sheets within 60 days after the date of the public utility's filing. The Commission may modify the public utility's proposed tariff sheets only to the extent the Commission finds necessary to achieve conformance to the requirements of this subsection (b). During the 5 years following the date of the Commission's order, but in any event no earlier than January 1, 2007, a public utility whose fuel adjustment clause has been eliminated pursuant to this subsection shall not file proposed tariff sheets seeking, or otherwise petition the Commission for, reinstatement of a fuel adjustment clause.

(c) Notwithstanding any contrary or inconsistent provisions in Section 9-201 of this Act, in subsection (a) of this Section or in any rules or regulations promulgated by the Commission pursuant to subsection (g) of this Section, a

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

(d) A public utility providing electric service, or a public utility providing gas service may file with the Commission proposed tariff sheets that eliminate the public utility's fuel or purchased gas adjustment clause and adjust the public utility's base rate tariffs to provide for recovery of power supply costs or gas supply costs that would have been recovered through such clause; provided, that the provisions of this subsection (d) shall not be available to a public utility described in subsections (e) or (f) of this Section to eliminate its fuel adjustment clause. Notwithstanding any contrary or inconsistent provisions in Section 9-201 of this Act, in subsection (a) of this Section, or in any rules or regulations promulgated by the Commission pursuant to subsection (g) of this Section, the Commission shall review and shall by order approve, or approve as modified in the Commission's order, the proposed tariff sheets within 240 days after the date of the public utility's filing. The Commission's order shall approve rates and charges that the Commission, based on information in the public utility's filing or on the record if a hearing is held by the Commission, finds will recover the reasonable, prudent and necessary jurisdictional power supply costs or gas supply costs incurred or to be incurred by the public utility during a 12 month period found by the Commission to be appropriate for these purposes, provided, that such period shall be either (i) a 12 month historical period occurring during the 15 months ending on the date of the public utility's filing, or (ii) a 12 month future period ending no later than 15 months following the date of the public utility's filing. The public utility shall include with its tariff filing information showing both (1) its actual jurisdictional power supply costs or gas supply costs for a 12 month historical period conforming to (i) above and (2) its projected jurisdictional power supply costs or gas supply costs for a future 12 month period conforming to (ii) above. If the Commission's order requires modifications in the tariff sheets filed by the public utility, the public utility shall have 7 days following the date of the order to notify the Commission whether the public utility will implement the modified tariffs or elect to

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

(e) Notwithstanding any contrary or inconsistent provisions in Section 9-201 of this Act, in subsection (a) of this Section, or in any rules promulgated by the Commission pursuant to subsection (g) of this Section, a public utility providing electric service to more than 1,000,000 customers in this State may, within the first 6 months after the effective date of this amendatory Act of 1997, file with the Commission proposed tariff sheets that eliminate, effective January 1, 1997, the public utility's fuel adjustment clause without adjusting its base rates, and such tariff sheets shall be effective upon filing. To the extent the application of the fuel adjustment clause had resulted in net charges to customers after January 1, 1997, the utility shall also file a tariff sheet that provides for a refund stated on a per kilowatt-hour basis of such charges over a period not to exceed 6 months; provided however, that such refund shall not include the proportional amounts of taxes paid under the Use Tax Act, Service Use Tax Act, Service Occupation Tax Act, and Retailers' Occupation Tax Act on fuel used in generation. The Commission shall issue an order within 45 days after the date of the public utility's filing approving or approving as modified such tariff sheet. If the fuel adjustment clause is eliminated pursuant to this subsection, the Commission shall not conduct the annual hearings specified in the last 3 sentences of subsection (a) of this Section for the utility for any period after December 31, 1996 and prior to any reinstatement of such clause. A public utility whose fuel adjustment clause has been eliminated pursuant to this subsection shall not file a proposed tariff sheet seeking, or otherwise petition the Commission for, reinstatement of the fuel adjustment clause prior to January 1, 2007.

(f) Notwithstanding any contrary or inconsistent provisions in Section 9-201 of this Act, in subsection (a) of this Section, or in any rules or regulations promulgated by the Commission pursuant to subsection (g) of this Section, a public utility providing electric service to more than 500,000 customers but fewer than 1,000,000 customers in this State may, within the first 6 months after the effective date of this amendatory Act of 1997, file with the Commission proposed tariff sheets that eliminate, effective January 1, 1997, the public utility's fuel adjustment clause and adjust its base rates by the amount necessary for the base fuel component of the base rates to recover 91% of the public utility's average fuel and power supply costs for the 2 most recent years for

which the Commission, as of January 1, 1997, has issued final orders in annual proceedings pursuant to subsection (a), where the average fuel and power supply costs per kilowatt-hour shall be calculated as the sum of the public utility's prudent and allowable fuel and power supply costs as found by the Commission in the 2 proceedings divided by the public utility's actual jurisdictional kilowatt-hour sales for those 2 years, provided, that such tariff sheets shall be effective upon filing. To the extent the application of the fuel adjustment clause had resulted in net charges to customers after January 1, 1997, the utility shall also file a tariff sheet that provides for a refund stated on a per kilowatt-hour basis of such charges over a period not to exceed 6 months. Provided however, that such refund shall not include the proportional amounts of taxes paid under the Use Tax Act, Service Use Tax Act, Service Occupation Tax Act, and Retailers' Occupation Tax Act on fuel used in generation. The Commission shall issue an order within 45 days after the date of the public utility's filing approving or approving as modified such tariff sheet. If the fuel adjustment clause is eliminated pursuant to this subsection, the Commission shall not conduct the annual hearings specified in the last 3 sentences of subsection (a) of this Section for the utility for any period after December 31, 1996 and prior to any reinstatement of such clause. A public utility whose fuel adjustment clause has been eliminated pursuant to this subsection shall not file a proposed tariff sheet seeking, or otherwise petition the Commission for, reinstatement of the fuel adjustment clause prior to January 1, 2007.

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

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

dioxide pipeline or sequestration expenses, or marketing expenses.

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

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

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

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

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

- (3) review and approve the amount of budgeted

miscellaneous net revenue after cost allowance, including sale of SNG produced by the clean coal SNG facility above the nameplate capacity of the facility and other by-products produced by the facility, to be included in the pricing formula; the Illinois Power Agency shall approve the amount of budgeted miscellaneous net revenue to be

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

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

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

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

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

Within 30 days after commercial production of SNG has begun, the Commission shall initiate a review to determine whether the final capitalized plant cost of the clean coal SNG facility reflects actual incurred costs and whether the incurred costs were reasonable. In determining the actual incurred costs included in the final capitalized plant cost and the reasonableness of those costs, the Commission may in its discretion retain independent, qualified, and experienced experts to assist in its determination. The expert shall not own or control any direct or indirect interest in the clean coal SNG facility and shall have no contractual relationship with the clean coal SNG facility. If an expert is retained by the Commission, then the clean coal SNG facility shall pay the expert's reasonable fees. The fees shall not be passed on to a utility or its customers. The Commission shall adopt and make

public a policy detailing the process for retaining experts under this subsection (h).

Within 30 days after completion of its review, the Commission shall initiate a formal proceeding on the final capitalized plant cost of the clean coal SNG facility at which comments and testimony may be submitted by any interested parties and the public. If the Commission finds that the final capitalized plant cost includes costs that were not actually incurred or costs that were unreasonably incurred, then the Commission shall disallow the amount of non-incurred or unreasonable costs from the SNG price under contracts entered into under this subsection (h). If the Commission disallows any costs, then the Commission shall adjust the SNG price using the price formula in the contract approved by the Illinois Power Agency under this subsection (h) to reflect the disallowed costs and shall enter an order specifying the revised price. In addition, the Commission's order shall direct the clean coal SNG facility to issue refunds of such sums as shall represent the difference between actual gross revenues and the gross revenue that would have been obtained based upon the same volume, from the price revised by the Commission. Any refund shall include interest calculated at a rate determined by the Commission and shall be returned according to procedures prescribed by the Commission.

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

(h-1) Any Illinois gas utility may enter into a sourcing agreement for up to 30 years of supply with the clean coal SNG brownfield facility if the clean coal SNG brownfield facility has commenced construction. Any gas utility that is providing service to more than 150,000 customers on July 13, 2011 (the effective date of Public Act 97-096) shall either elect to file biennial rate proceedings before the Commission in the years 2012, 2014, and 2016 or enter into a sourcing agreement or sourcing agreements with a clean coal SNG brownfield facility with an initial term of 30 years for either (i) a percentage of 43,500,000,000 cubic feet per year, such that the utilities entering into sourcing agreements with the clean coal SNG brownfield facility purchase 100%, allocated by total therms sold to ultimate customers by each gas utility in 2008 or (ii) such lesser amount as may be available from the clean coal SNG brownfield facility; provided that no utility shall be required to purchase more than 42% of the projected annual output of the clean coal SNG brownfield facility, with the remainder of such utility's obligation to be divided proportionately between the other utilities, and provided that the Illinois Power Agency shall further adjust the allocation only as required to take into account adverse consolidation, derivative, or lease impacts to the balance sheet or income statement of any gas utility.

A gas utility electing to file biennial rate proceedings before the Commission must file a notice of its election with the Commission within 60 days after July 13, 2011 or its right to make the election is irrevocably waived. A gas utility electing to file biennial rate proceedings shall make such filings no later than August 1 of the years 2012, 2014, and 2016, consistent with all requirements of 83 Ill. Adm. Code 255 and 285 as though the gas utility were filing for an increase in its rates, without regard to whether such filing

would produce an increase, a decrease, or no change in the gas utility's rates, and notwithstanding any other provisions of this Act, the Commission shall fully review the gas utility's filing and shall issue its order in accordance with the provisions of Section 9-201 of this Act, regardless of whether the Commission has approved a formula rate for the gas utility.

Within 15 days after July 13, 2011, the owner of the clean coal SNG brownfield facility shall submit to the Illinois Power Agency and each gas utility that is providing service to more than 150,000 customers on July 13, 2011 a copy of a draft sourcing agreement. Within 45 days after receipt of the draft sourcing agreement, each such gas utility shall provide the Illinois Power Agency and the owner of a clean coal SNG brownfield facility with its comments and recommended revisions to the draft sourcing agreement. Within 15 days after the receipt of the gas utility's comments and recommended revisions, the owner of the clean coal SNG brownfield facility shall submit its responsive comments and a further revised draft of the sourcing agreement to the Illinois Power Agency. The Illinois Power Agency shall review the draft sourcing agreement and comments.

If the parties to the sourcing agreement do not agree on the terms therein, then the Illinois Power Agency shall retain an independent mediator to mediate the dispute between the parties. If the parties are in agreement on the terms of the sourcing agreement, the Illinois Power Agency shall approve the final draft sourcing agreement. If after mediation the parties have failed to come to agreement, then the Illinois Power Agency shall revise the draft sourcing agreement as necessary to confirm that the final draft sourcing agreement contains only terms that are reasonable and equitable. The Illinois Power Agency shall adopt and make public a policy detailing the process for retaining a mediator under this subsection (h-1). Any mediator retained to assist with mediating disputes between the parties regarding the sourcing agreement shall be retained no later than 60 days after July 13, 2011.

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

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

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

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

shall use coal for at least 35% of the total feedstock over the term of any sourcing agreement and with the feedstocks to be procured in accordance with requirements of Section 1-78 of the Illinois Power Agency Act.

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

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

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

"Consumer protection reserve account principal maximum amount" shall mean the maximum amount of principal to be maintained in the consumer protection reserve account. During the first 2 years of operation of the facility, there shall be no consumer protection reserve account maximum amount. After the first 2 years of operation of the facility, the consumer protection reserve account maximum amount shall be \$150,000,000. After 5 years of operation, and every 5 years thereafter, the trustee shall calculate the 5-year average balance of the consumer protection reserve account. If the trustee determines that during the prior 5 years the consumer protection reserve account has had an average account balance of less than \$75,000,000, then the consumer protection reserve account principal maximum amount shall be increased by \$5,000,000. If the trustee determines that during the prior 5 years the consumer protection reserve account has had an average account balance of more than \$75,000,000, then the consumer protection reserve account principal maximum amount shall be decreased by \$5,000,000.

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

(7) Fifty percent of all additional net revenue, defined as miscellaneous net revenue from products

produced by the facility and delivered during the month after cost allowance for costs associated with additional net revenue that are not otherwise recoverable pursuant to subsection (h-3) of this Section, including net revenue from sales of substitute natural gas derived from the facility above the nameplate capacity of the facility and other by-products produced by the facility, shall be credited to the consumer protection reserve account pursuant to subsection (h-2) of this Section.

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

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

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

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

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

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

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

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

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

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

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

(h-2) Consumer protection reserve account. The clean coal SNG brownfield facility shall guarantee a minimum of \$100,000,000 in consumer savings to customers of the utilities that have entered into sourcing agreements with the clean coal SNG brownfield facility, calculated in real 2010 dollars at the conclusion of the term of the sourcing agreement by comparing the delivered SNG price to the Chicago City-gate price on a weighted daily basis for each day over the entire term of the sourcing agreement. Prior to the clean coal SNG brownfield facility issuing a notice to proceed to construction, the clean coal SNG brownfield facility shall establish a consumer protection reserve account for the benefit of the retail customers of the utilities that have entered into sourcing agreements with the clean coal SNG brownfield facility pursuant to subsection (h-1), with cash principal in the amount of \$150,000,000. Such cash principal shall only be recovered through the consumer protection reserve account and not as a cost to be recovered in the delivered SNG price pursuant to subsection (h-3) of this

Section. The consumer protection reserve account shall be maintained and administered by an independent trustee that is mutually agreed upon by the clean coal SNG brownfield facility, the utilities, and the Commission in an interest-bearing account in accordance with the following:

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

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

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

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

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

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

(B) any amounts in the consumer protection reserve account in excess of the consumer protection reserve account principal maximum amount shall be distributed as follows: (i) if retail customers have not realized net consumer savings, calculated by comparing the delivered SNG price to the weighted average of the daily Chicago City-gate price on a daily basis over the entire term of the sourcing agreement to date, then 50% of any amounts in the consumer protection reserve account in excess of the consumer protection reserve account principal maximum shall be distributed to the clean coal SNG brownfield facility, with the remaining 50% of any such additional amounts being credited to retail customers, and (ii) if retail customers have realized net consumer savings, then 100% of any amounts in the

consumer protection reserve account in excess of the consumer protection reserve account principal maximum shall be distributed to the clean coal SNG brownfield facility; provided, however, that under no circumstances shall the total cumulative amount distributed to the clean coal SNG brownfield facility under this subparagraph (B) exceed \$150,000,000;

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

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

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

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

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

this subsection (h-2). The retail customers shall have first priority in recovering that debt above any creditors, except the original senior secured lender to the extent that the original senior secured lender has any senior secured debt outstanding, including any clean coal SNG brownfield facility parent companies or affiliates.

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

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

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

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

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

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

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

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

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

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

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

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

the Commission for each day it is in default.

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

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

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

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

The Capital Development Board shall retain an engineering expert to assist in determining both the range of capital costs and the range of operations and maintenance costs that it believes would be reasonable for the clean coal SNG brownfield facility to recover under the sourcing agreement. Provided, however, that such expert shall: (i) not have been involved in the clean coal SNG brownfield facility's facility cost report, if any, (ii) not own or control any direct or indirect interest in the initial clean coal facility, and (iii) have no contractual relationship with the clean coal SNG brownfield facility. In order to qualify as an independent expert, a person or company must have:

(i) direct previous experience conducting front-end engineering and design studies for large-scale energy facilities and administering large-scale energy operations and maintenance

contracts, which may be particularized to the specific type of financing associated with the clean coal SNG brownfield facility;

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

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

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

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

(vi) expertise in credit and contract protocols;

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

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

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

In the event that the estimate submitted by the clean coal SNG brownfield facility is within or below the range submitted by the Capital Development Board, the clean coal SNG brownfield facility's estimate shall be approved by the Commission as the amount of capital costs to be recovered under the sourcing agreement. In the event that the estimate submitted by the clean coal SNG brownfield facility is above the range submitted by the Capital Development Board, the amount of capital costs at the lowest end of the range submitted by the Capital Development Board shall be approved by the Commission as the amount of capital costs to be recovered under the sourcing agreement. Within 15 days after the Capital Development Board has submitted its range and the clean coal SNG brownfield facility has submitted its estimate, the Commission shall approve the capital costs for the clean coal SNG brownfield facility.

The Capital Development Board shall monitor the

construction of the clean coal SNG brownfield facility for the full duration of construction to assess potential cost overruns. The Capital Development Board, in its discretion, may retain an expert to facilitate such monitoring. The clean coal SNG brownfield facility shall pay a reasonable fee as required by the Capital Development Board for the Capital Development Board's services under this subsection (h-3) to be deposited into the Capital Development Board Revolving Fund, and such fee shall not be passed through to a utility or its customers. If an expert is retained by the Capital Development Board for monitoring of construction, then the clean coal SNG brownfield facility must pay for the expert's reasonable fees and such costs shall not be passed through to a utility or its customers.

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

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

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

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

The Capital Development Board shall calculate a range of operations and maintenance costs that it believes would be reasonable for the clean coal SNG brownfield facility to recover under the sourcing agreement, incorporating an inflation index or combination of inflation indices to most accurately reflect the actual costs of operating the clean coal SNG brownfield facility. In making this determination, the Capital Development Board shall review the facility cost report, if any, of the clean coal SNG brownfield facility, adjusting the results for inflation based on the change in the Annual Consumer Price Index for All Urban Consumers for the Midwest Region as published in April by the United States Department of Labor, Bureau of Labor Statistics, the final draft of the sourcing agreement, and the rate of return approved by the Commission. In addition, the Capital Development Board may consult as much as it deems necessary with the clean coal SNG brownfield facility and conduct whatever research and investigation it deems necessary. As set forth in subparagraph (A) of paragraph (1) of this subsection (h-3), the Capital Development Board shall retain an independent engineering expert to assist in determining both the range of operations and maintenance costs that it believes would be reasonable for the clean coal SNG brownfield facility to recover under the sourcing agreement. The clean coal SNG brownfield facility and the Illinois Power Agency shall cooperate with the Capital Development Board in any investigation it deems necessary. The Capital Development Board shall make its final determination of the range of operations and maintenance costs confidentially and shall submit that range to the Commission in a confidential filing within 120 days after July 13, 2011.

The clean coal SNG brownfield facility shall submit to the Commission its estimate of the operations and maintenance costs to be recovered under the sourcing agreement. Only after the clean coal SNG brownfield facility has submitted this estimate shall the Commission publicly announce the range of operations and maintenance costs submitted by the Capital Development Board. In the event that the estimate submitted by the clean coal SNG brownfield facility is within or below the range submitted by the Capital Development Board, the clean coal SNG brownfield facility's estimate shall be approved by the Commission as the amount of operations and maintenance costs to be recovered under the sourcing agreement. In the event that the estimate submitted by the clean coal SNG brownfield facility is above the range submitted by the Capital Development Board, the amount of operations and maintenance costs at the lowest end of the range submitted by the Capital Development Board shall be approved by the Commission as the amount of operations and maintenance costs to be recovered under the sourcing agreement. Within 15 days after the Capital Development Board has submitted its range and the clean coal SNG brownfield facility has submitted its estimate, the Commission shall approve the operations and maintenance costs for the clean coal SNG

brownfield facility.

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

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

- (A) capture carbon dioxide;
- (B) build, operate, and maintain a sequestration site in which carbon dioxide may be injected;
- (C) build, operate, and maintain a carbon dioxide pipeline; and
- (D) transport the carbon dioxide to the sequestration site or a pipeline.

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

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

(4) Actual delivered and processed fuel costs shall be set by the Illinois Power Agency through a SNG feedstock procurement, pursuant to Sections 1-20, 1-77, and 1-78 of the Illinois Power Agency Act, to be performed at least every 5 years and purchased by the clean coal SNG brownfield facility pursuant to feedstock procurement contracts developed by the Illinois Power Agency, with coal comprising at least 50% of the total feedstock over the term of the sourcing agreement and petroleum coke comprising the remainder of the SNG feedstock. If the Commission fails to approve a feedstock procurement plan

or fails to approve the results of a feedstock procurement event, then the fuel shall be purchased by the company month-by-month on the spot market and those actual delivered and processed fuel costs shall be recoverable under the sourcing agreement. If a supplier defaults under the terms of a procurement contract, then the Illinois Power Agency shall immediately initiate a feedstock procurement process to obtain a replacement supply, and, prior to the conclusion of that process, fuel shall be purchased by the company month-by-month on the spot market and those actual delivered and processed fuel costs shall be recoverable under the sourcing agreement.

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

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

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

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

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

(h-4) No later than 90 days after the Illinois Power Agency submits the final draft sourcing agreement pursuant to subsection (h-1), the Commission shall approve a sourcing

agreement containing (i) the capital costs, rate of return, and operations and maintenance costs established pursuant to subsection (h-3) and (ii) all other terms and conditions, rights, provisions, exceptions, and limitations contained in the final draft sourcing agreement; provided, however, the Commission shall correct typographical and scrivener's errors and modify the contract only as necessary to provide that the gas utility does not have the right to terminate the sourcing agreement due to any future events that may occur other than the clean coal SNG brownfield facility's failure to timely meet milestones, uncured default, extended force majeure, or abandonment. Once the sourcing agreement is approved, then the gas utility subject to that sourcing agreement shall have 45 days after the date of the Commission's approval to enter into the sourcing agreement.

(h-5) Sequestration enforcement.

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

(B) If, in any year, the owner of the clean coal SNG facility fails to demonstrate that the SNG facility captured and sequestered at least 90% of the total carbon dioxide emissions that the facility would otherwise emit or that sequestration of emissions from prior years has failed, resulting in the release of carbon dioxide into the atmosphere, then the owner of the clean coal SNG facility must pay a penalty of \$20 per ton of excess carbon dioxide emissions not to exceed \$40,000,000, in any given year which shall be deposited into the Energy Efficiency Trust Fund and distributed pursuant to subsection (b) of Section 6-6 of the Renewable Energy, Energy Efficiency, and Coal Resources Development Law of 1997. On or before the 5-year anniversary of the execution of the contract and every 5 years thereafter, an expert hired by the owner of the facility with the approval of the Attorney General shall conduct an analysis to determine the cost of sequestration of at least 90% of the total carbon dioxide emissions the plant would otherwise emit. If the analysis shows that the actual annual cost is greater than the penalty, then the penalty shall be increased to equal the actual cost. Provided, however, to the extent that the owner of the facility described in subsection (h) of this Section can demonstrate that the failure was as a result of acts of God (including fire, flood, earthquake, tornado, lightning, hurricane, or other natural disaster); any amendment, modification, or abrogation of any applicable law or regulation that would prevent performance; war; invasion; act of foreign enemies; hostilities (regardless of whether war is declared); civil war; rebellion; revolution; insurrection;

military or usurped power or confiscation; terrorist activities; civil disturbance; riots; nationalization; sabotage; blockage; or embargo, the owner of the facility described in subsection (h) of this Section shall not be subject to a penalty if and only if (i) it promptly provides notice of its failure to the Commission; (ii) as soon as practicable and consistent with any order or direction from the Commission, it submits to the Commission proposed modifications to its carbon capture and sequestration plan; and (iii) it carries out its proposed modifications in the manner and time directed by the Commission.

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

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

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

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

The clean coal SNG facility is prohibited from transporting or sequestering carbon dioxide unless the owner of the carbon dioxide pipeline that transfers the carbon dioxide from the facility and the owner of the sequestration site where the carbon dioxide captured by

the facility is stored has acquired all applicable permits under applicable State and federal laws, statutes, rules, or regulations prior to the transfer or sequestration of carbon dioxide. The responsibility for compliance with the sequestration requirements specified in this subsection (h-5) for the clean coal SNG facility shall reside solely with the clean coal SNG facility, regardless of whether the facility has contracted with another party to capture, transport, or sequester carbon dioxide.

(C) If, in any year, the owner of a clean coal SNG brownfield facility fails to demonstrate that the clean coal SNG brownfield facility captured and sequestered at least 85% of the total carbon dioxide emissions that the facility would otherwise emit, then the owner of the clean coal SNG brownfield facility must pay a penalty of \$20 per ton of excess carbon emissions up to \$20,000,000, which shall be deposited into the Energy Efficiency Trust Fund and distributed pursuant to subsection (b) of Section 6-6 of the Renewable Energy, Energy Efficiency, and Coal Resources Development Law of 1997. Provided, however, to the extent that the owner of the clean coal SNG brownfield facility can demonstrate that the failure was as a result of acts of God (including fire, flood, earthquake, tornado, lightning, hurricane, or other natural disaster); any amendment, modification, or abrogation of any applicable law or regulation that would prevent performance; war; invasion; act of foreign enemies; hostilities (regardless of whether war is declared); civil war; rebellion; revolution; insurrection; military or usurped power or confiscation; terrorist activities; civil disturbances; riots; nationalization; sabotage; blockage; or embargo, the owner of the clean coal SNG brownfield facility shall not be subject to a penalty if and only if (i) it promptly provides notice of its failure to the Commission; (ii) as soon as practicable and consistent with any order or direction from the Commission, it submits to the Commission proposed modifications to its carbon capture and sequestration plan; and (iii) it carries out its proposed modifications in the manner and time directed by the Commission. If the Commission finds that the facility has not satisfied each of these requirements, then the facility shall be subject to the penalty. If the owner of a clean coal SNG brownfield facility demonstrates that the clean coal SNG brownfield facility captured and sequestered more than 85% of the total carbon emissions that the facility would otherwise emit, the owner of the clean coal SNG brownfield facility may credit such additional amounts to reduce the amount of any future penalty to be paid. The penalty resulting from the failure to capture and sequester at least the minimum amount of carbon dioxide shall not be passed on to a utility or its customers.

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

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

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

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

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

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

(2) The Commission shall review carbon dioxide transportation and sequestration methods proposed by a clean coal facility or a clean coal SNG brownfield facility and shall approve those methods it deems reasonable and cost-effective. For purposes of this review, "cost-effective" means a commercially reasonable price for similar carbon dioxide transportation or sequestration techniques. In determining whether sequestration is reasonable and cost-effective, the Commission may consult with the Illinois State Geological Survey and retain third parties to assist in its determination, provided that such third parties shall not own or control any direct or indirect interest in the facility that is proposing the carbon dioxide transportation or the carbon dioxide sequestration method and shall have no contractual relationship with that facility. If a third party is retained by the Commission, then the facility proposing the carbon dioxide transportation or sequestration method shall pay for the expert's reasonable fees, and these costs shall not be passed through to a utility or its customers.

No later than 6 months prior to the date upon which the owner intends to commence construction of a clean coal facility or the clean coal SNG brownfield facility, the owner of the facility shall file with the Commission a carbon dioxide transportation or sequestration plan. The Commission shall hold a public hearing within 30 days after receipt of the facility's carbon dioxide

transportation or sequestration plan. The Commission shall post notice of the review on its website upon submission of a carbon dioxide transportation or sequestration method and shall accept written public comments. The Commission shall take the comments into account when making its decision.

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

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

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

(4) (Blank).

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

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

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

(3) deny the clean coal SNG brownfield facility full

cost and revenue recovery as provided under those sourcing agreements that are recoverable pursuant to subsection (h-3) of this Section.

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

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

(h-10) Contract costs for SNG incurred by an Illinois gas utility are reasonable and prudent and recoverable through the purchased gas adjustment clause and are not subject to review or disallowance by the Commission. Contract costs are costs incurred by the utility under the terms of a contract that incorporates the terms stated in subsection (h) of this Section as confirmed in writing by the Illinois Power Agency as set forth in subsection (h) of this Section, which confirmation shall be deemed conclusive, or as a consequence of or condition to its performance under the contract, including (i) amounts paid for SNG under the SNG contract and (ii) costs of transportation and storage services of SNG purchased from interstate pipelines under federally approved tariffs. The Illinois gas utility shall initiate a clean coal SNG facility rider mechanism that (A) shall be applicable to all customers who receive transportation service from the utility, (B) shall be designed to have an equal percentage impact on the transportation services rates of each class of the utility's total customers, and (C) shall accurately reflect the net customer savings, if any, and above market costs, if any, under the SNG contract. Any contract, the terms of which have been confirmed in writing by the Illinois Power Agency as set forth in subsection (h) of this Section and the performance of the parties under such contract cannot be grounds for challenging prudence or cost recovery by the utility through the purchased gas adjustment clause, and in such cases, the Commission is directed not to consider, and has no authority to consider, any attempted challenges.

The contracts entered into by Illinois gas utilities pursuant to subsection (h) of this Section shall provide that

the utility retains the right to terminate the contract without further obligation or liability to any party if the contract has been impaired as a result of any legislative, administrative, judicial, or other governmental action that is taken that eliminates all or part of the prudence protection of this subsection (h-10) or denies the recoverability of all or part of the contract costs through the purchased gas adjustment clause. Should any Illinois gas utility exercise its right under this subsection (h-10) to terminate the contract, all contract costs incurred prior to termination are and will be deemed reasonable, prudent, and recoverable as and when incurred and not subject to review or disallowance by the Commission. Any order, issued by the State requiring or authorizing the discontinuation of the merchant function, defined as the purchase and sale of natural gas by an Illinois gas utility for the ultimate consumer in its service territory shall include provisions necessary to prevent the impairment of the value of any contract hereunder over its full term.

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

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

(1) The clean coal SNG facility shall conduct an analysis annually within 60 days after receiving the necessary cost information, which shall be provided by the gas utility within 6 months after the end of the preceding calendar year, to determine (i) the average annual

contract SNG cost, which shall be calculated as the total amount paid for SNG purchased from the clean coal SNG facility over the preceding 12 months, plus the cost to the utility of the required transportation and storage services of SNG, divided by the total number of MMBtus of SNG actually purchased from the clean coal SNG facility in the preceding 12 months under the utility contract; (ii) the average annual natural gas purchase cost, which shall be calculated as the total annual supply costs paid for baseload natural gas (excluding any SNG) purchased by such utility over the preceding 12 months plus the costs of transportation and storage services of such natural gas (excluding such costs for SNG), divided by the total number of MMBtus of baseload natural gas (excluding SNG) actually purchased by the utility during the year; (iii) the cost differential, which shall be the difference between the average annual contract SNG cost and the average annual natural gas purchase cost; and (iv) the revenue share target which shall be the cost differential multiplied by the total amount of SNG purchased over the preceding 12 months under such utility contract.

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

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

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

the utilities, then the owners of the clean coal SNG facility shall have no further obligation to the utility or the retail customers.

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

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

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

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

- (A) the revenue share target amount;
  - (B) the amount credited or debited to the reconciliation account during the year;
  - (C) the amount credited to the utilities to be used to reduce the utilities natural gas costs through the purchase gas adjustment clause;
  - (D) the total amount of reconciliation account at the beginning and end of the year;
  - (E) the total amount of consumer savings to date;
- and
- (F) any additional information the Commission may require.

When any report is erroneous or defective or appears to the Commission to be erroneous or defective, the Commission

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

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

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

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

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

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

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

pledges in any finance agreement into which they may enter in regard to such contracts.

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

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

(Source: P.A. 96-1364, eff. 7-28-10; 97-96, eff. 7-13-11; 97-239, eff. 8-2-11; 97-630, eff. 12-8-11; 97-906, eff. 8-7-12.)

(Text of Section from P.A. 97-1081)

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

(a) Notwithstanding the provisions of Section 9-201, the Commission may authorize the increase or decrease of rates and charges based upon changes in the cost of fuel used in the generation or production of electric power, changes in the cost of purchased power, or changes in the cost of purchased gas through the application of fuel adjustment clauses or purchased gas adjustment clauses. The Commission may also authorize the increase or decrease of rates and charges based upon expenditures or revenues resulting from the purchase or sale of emission allowances created under the federal Clean Air Act Amendments of 1990, through such fuel adjustment clauses, as a cost of fuel. For the purposes of this paragraph, cost of fuel used in the generation or production of electric power shall include the amount of any fees paid by the utility for the implementation and operation of a process for the desulfurization of the flue gas when burning high sulfur coal at any location within the State of Illinois irrespective of the attainment status designation of such location; but shall not include transportation costs of coal (i) except to the extent that for contracts entered into on and after the effective date of this amendatory Act of 1997, the cost of the coal, including transportation costs, constitutes the lowest cost for adequate and reliable fuel supply reasonably available to the public utility in comparison to the cost, including transportation costs, of other adequate and reliable sources of fuel supply reasonably available to the public utility, or (ii) except as otherwise provided in the next 3 sentences of this paragraph. Such costs of fuel shall, when requested by a utility or at the conclusion of the utility's next general electric rate proceeding, whichever shall first occur, include transportation costs of coal purchased under existing coal purchase contracts. For purposes of this paragraph "existing coal purchase contracts" means contracts for the purchase of coal in effect on the effective date of this amendatory Act of 1991, as such contracts may thereafter be amended, but only to the extent that any such amendment does not increase the aggregate quantity of coal to be purchased under such contract. Nothing herein shall authorize an electric utility

to recover through its fuel adjustment clause any amounts of transportation costs of coal that were included in the revenue requirement used to set base rates in its most recent general rate proceeding. Cost shall be based upon uniformly applied accounting principles. Annually, the Commission shall initiate public hearings to determine whether the clauses reflect actual costs of fuel, gas, power, or coal transportation purchased to determine whether such purchases were prudent, and to reconcile any amounts collected with the actual costs of fuel, power, gas, or coal transportation prudently purchased. In each such proceeding, the burden of proof shall be upon the utility to establish the prudence of its cost of fuel, power, gas, or coal transportation purchases and costs. The Commission shall issue its final order in each such annual proceeding for an electric utility by December 31 of the year immediately following the year to which the proceeding pertains, provided, that the Commission shall issue its final order with respect to such annual proceeding for the years 1996 and earlier by December 31, 1998.

(b) A public utility providing electric service, other than a public utility described in subsections (e) or (f) of this Section, may at any time during the mandatory transition period file with the Commission proposed tariff sheets that eliminate the public utility's fuel adjustment clause and adjust the public utility's base rate tariffs by the amount necessary for the base fuel component of the base rates to recover the public utility's average fuel and power supply costs per kilowatt-hour for the 2 most recent years for which the Commission has issued final orders in annual proceedings pursuant to subsection (a), where the average fuel and power supply costs per kilowatt-hour shall be calculated as the sum of the public utility's prudent and allowable fuel and power supply costs as found by the Commission in the 2 proceedings divided by the public utility's actual jurisdictional kilowatt-hour sales for those 2 years. Notwithstanding any contrary or inconsistent provisions in Section 9-201 of this Act, in subsection (a) of this Section or in any rules or regulations promulgated by the Commission pursuant to subsection (g) of this Section, the Commission shall review and shall by order approve, or approve as modified, the proposed tariff sheets within 60 days after the date of the public utility's filing. The Commission may modify the public utility's proposed tariff sheets only to the extent the Commission finds necessary to achieve conformance to the requirements of this subsection (b). During the 5 years following the date of the Commission's order, but in any event no earlier than January 1, 2007, a public utility whose fuel adjustment clause has been eliminated pursuant to this subsection shall not file proposed tariff sheets seeking, or otherwise petition the Commission for, reinstatement of a fuel adjustment clause.

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

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

(d) A public utility providing electric service, or a public utility providing gas service may file with the Commission proposed tariff sheets that eliminate the public utility's fuel or purchased gas adjustment clause and adjust the public utility's base rate tariffs to provide for recovery of power supply costs or gas supply costs that would have been recovered through such clause; provided, that the provisions of this subsection (d) shall not be available to a public utility described in subsections (e) or (f) of this Section to eliminate its fuel adjustment clause. Notwithstanding any contrary or inconsistent provisions in Section 9-201 of this Act, in subsection (a) of this Section, or in any rules or regulations promulgated by the Commission pursuant to subsection (g) of this Section, the Commission shall review and shall by order approve, or approve as modified in the Commission's order, the proposed tariff sheets within 240 days after the date of the public utility's filing. The Commission's order shall approve rates and charges that the Commission, based on information in the public utility's filing or on the record if a hearing is held by the Commission, finds will recover the reasonable, prudent and necessary jurisdictional power supply costs or gas supply costs incurred or to be incurred by the public utility during a 12 month period found by the Commission to be appropriate for these purposes, provided, that such period shall be either (i) a 12 month historical period occurring during the 15 months ending on the date of the public utility's filing, or (ii) a 12 month future period ending no later than 15 months following the date of the public utility's filing. The public utility shall include with its tariff filing information showing both (1) its actual jurisdictional power supply costs or gas supply costs for a 12 month historical period conforming to (i) above and (2) its projected jurisdictional power supply costs or gas supply costs for a future 12 month period conforming to (ii) above. If the Commission's order requires modifications in the tariff sheets filed by the public utility, the public utility shall have 7 days following the date of the order to notify the Commission whether the public utility will implement the modified tariffs or elect to continue its fuel or purchased gas adjustment clause in force as though no order had been entered. The Commission's order shall provide for any reconciliation of power supply costs or gas supply costs, as the case may be, and associated revenues through the date that the public utility's fuel or purchased

gas adjustment clause is eliminated. During the 5 years following the date of the Commission's order, a public utility whose fuel or purchased gas adjustment clause has been eliminated pursuant to this subsection shall not file proposed tariff sheets seeking, or otherwise petition the Commission for, reinstatement or adoption of a fuel or purchased gas adjustment clause. Nothing in this subsection (d) shall be construed as limiting the Commission's authority to eliminate a public utility's fuel adjustment clause or purchased gas adjustment clause in accordance with any other applicable provisions of this Act.

(e) Notwithstanding any contrary or inconsistent provisions in Section 9-201 of this Act, in subsection (a) of this Section, or in any rules promulgated by the Commission pursuant to subsection (g) of this Section, a public utility providing electric service to more than 1,000,000 customers in this State may, within the first 6 months after the effective date of this amendatory Act of 1997, file with the Commission proposed tariff sheets that eliminate, effective January 1, 1997, the public utility's fuel adjustment clause without adjusting its base rates, and such tariff sheets shall be effective upon filing. To the extent the application of the fuel adjustment clause had resulted in net charges to customers after January 1, 1997, the utility shall also file a tariff sheet that provides for a refund stated on a per kilowatt-hour basis of such charges over a period not to exceed 6 months; provided however, that such refund shall not include the proportional amounts of taxes paid under the Use Tax Act, Service Use Tax Act, Service Occupation Tax Act, and Retailers' Occupation Tax Act on fuel used in generation. The Commission shall issue an order within 45 days after the date of the public utility's filing approving or approving as modified such tariff sheet. If the fuel adjustment clause is eliminated pursuant to this subsection, the Commission shall not conduct the annual hearings specified in the last 3 sentences of subsection (a) of this Section for the utility for any period after December 31, 1996 and prior to any reinstatement of such clause. A public utility whose fuel adjustment clause has been eliminated pursuant to this subsection shall not file a proposed tariff sheet seeking, or otherwise petition the Commission for, reinstatement of the fuel adjustment clause prior to January 1, 2007.

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

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

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

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

Any gas utility that is providing service to more than 150,000 customers on August 2, 2011 (the effective date of Public Act 97-239) shall either elect to enter into a contract

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

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

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

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

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

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

(4) review and confirm in writing that using the EIA Annual Energy Outlook-2011 Henry Hub Spot Price, the contract terms set out in subsection (h), the reconciliation account terms as set out in subsection (h-

15), and an estimated inflation rate of 2.5% for each corresponding year, that there will be no cumulative estimated increase for residential customers; and

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

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

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

Within 30 days after commercial production of SNG has begun, the Commission shall initiate a review to determine whether the final capitalized plant cost of the clean coal SNG facility reflects actual incurred costs and whether the incurred costs were reasonable. In determining the actual incurred costs included in the final capitalized plant cost and the reasonableness of those costs, the Commission may in its discretion retain independent, qualified, and experienced experts to assist in its determination. The expert shall not own or control any direct or indirect interest in the clean coal SNG facility and shall have no contractual relationship with the clean coal SNG facility. If an expert is retained by the Commission, then the clean coal SNG facility shall pay the expert's reasonable fees. The fees shall not be passed on to a utility or its customers. The Commission shall adopt and make public a policy detailing the process for retaining experts under this subsection (h).

Within 30 days after completion of its review, the Commission shall initiate a formal proceeding on the final capitalized plant cost of the clean coal SNG facility at which comments and testimony may be submitted by any interested

parties and the public. If the Commission finds that the final capitalized plant cost includes costs that were not actually incurred or costs that were unreasonably incurred, then the Commission shall disallow the amount of non-incurred or unreasonable costs from the SNG price under contracts entered into under this subsection (h). If the Commission disallows any costs, then the Commission shall adjust the SNG price using the price formula in the contract approved by the Illinois Power Agency under this subsection (h) to reflect the disallowed costs and shall enter an order specifying the revised price. In addition, the Commission's order shall direct the clean coal SNG facility to issue refunds of such sums as shall represent the difference between actual gross revenues and the gross revenue that would have been obtained based upon the same volume, from the price revised by the Commission. Any refund shall include interest calculated at a rate determined by the Commission and shall be returned according to procedures prescribed by the Commission.

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

(h-1) Any Illinois gas utility may enter into a sourcing agreement for up to 30 years of supply with the clean coal SNG brownfield facility if the clean coal SNG brownfield facility has commenced construction. Any gas utility that is providing service to more than 150,000 customers on July 13, 2011 (the effective date of Public Act 97-096) shall either elect to file biennial rate proceedings before the Commission in the years 2012, 2014, and 2016 or enter into a sourcing agreement or sourcing agreements with a clean coal SNG brownfield facility with an initial term of 30 years for either (i) a percentage of 43,500,000,000 cubic feet per year, such that the utilities entering into sourcing agreements with the clean coal SNG brownfield facility purchase 100%, allocated by total therms sold to ultimate customers by each gas utility in 2008 or (ii) such lesser amount as may be available from the clean coal SNG brownfield facility; provided that no utility shall be required to purchase more than 42% of the projected annual output of the clean coal SNG brownfield facility, with the remainder of such utility's obligation to be divided proportionately between the other utilities, and provided that the Illinois Power Agency shall further adjust the allocation only as required to take into account adverse consolidation, derivative, or lease impacts to the balance sheet or income statement of any gas utility.

A gas utility electing to file biennial rate proceedings before the Commission must file a notice of its election with the Commission within 60 days after July 13, 2011 or its right to make the election is irrevocably waived. A gas utility electing to file biennial rate proceedings shall make such filings no later than August 1 of the years 2012, 2014, and 2016, consistent with all requirements of 83 Ill. Adm. Code 255 and 285 as though the gas utility were filing for an increase in its rates, without regard to whether such filing would produce an increase, a decrease, or no change in the gas utility's rates, and notwithstanding any other provisions of this Act, the Commission shall fully review the gas utility's filing and shall issue its order in accordance with the provisions of Section 9-201 of this Act, regardless of whether the Commission has approved a formula rate for the gas

utility.

Within 15 days after July 13, 2011, the owner of the clean coal SNG brownfield facility shall submit to the Illinois Power Agency and each gas utility that is providing service to more than 150,000 customers on July 13, 2011 a copy of a draft sourcing agreement. Within 45 days after receipt of the draft sourcing agreement, each such gas utility shall provide the Illinois Power Agency and the owner of a clean coal SNG brownfield facility with its comments and recommended revisions to the draft sourcing agreement. Within 15 days after the receipt of the gas utility's comments and recommended revisions, the owner of the clean coal SNG brownfield facility shall submit its responsive comments and a further revised draft of the sourcing agreement to the Illinois Power Agency. The Illinois Power Agency shall review the draft sourcing agreement and comments.

If the parties to the sourcing agreement do not agree on the terms therein, then the Illinois Power Agency shall retain an independent mediator to mediate the dispute between the parties. If the parties are in agreement on the terms of the sourcing agreement, the Illinois Power Agency shall approve the final draft sourcing agreement. If after mediation the parties have failed to come to agreement, then the Illinois Power Agency shall revise the draft sourcing agreement as necessary to confirm that the final draft sourcing agreement contains only terms that are reasonable and equitable. The Illinois Power Agency shall adopt and make public a policy detailing the process for retaining a mediator under this subsection (h-1). Any mediator retained to assist with mediating disputes between the parties regarding the sourcing agreement shall be retained no later than 60 days after July 13, 2011.

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

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

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

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

(3) The sourcing agreement has an initial term that once entered into terminates no more than 30 years after

the commencement of the commercial production of SNG at the clean coal SNG brownfield facility.

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

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

"Consumer protection reserve account principal maximum amount" shall mean the maximum amount of principal to be maintained in the consumer protection reserve account. During the first 2 years of operation of the facility, there shall be no consumer protection reserve account maximum amount. After the first 2 years of operation of the facility, the consumer protection reserve account maximum amount shall be \$150,000,000. After 5 years of operation, and every 5 years thereafter, the trustee shall calculate the 5-year average balance of the consumer protection reserve account. If the trustee determines that during the prior 5 years the consumer protection reserve account has had an average account balance of less than \$75,000,000, then the consumer protection reserve account principal maximum amount shall be increased by \$5,000,000. If the trustee determines that during the prior 5 years the consumer protection reserve account has had an average account balance of more than \$75,000,000, then the consumer protection reserve account principal maximum amount shall be decreased by \$5,000,000.

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

(7) Fifty percent of all additional net revenue, defined as miscellaneous net revenue from products produced by the facility and delivered during the month after cost allowance for costs associated with additional net revenue that are not otherwise recoverable pursuant to subsection (h-3) of this Section, including net revenue from sales of substitute natural gas derived from the facility above the nameplate capacity of the facility and

other by-products produced by the facility, shall be credited to the consumer protection reserve account pursuant to subsection (h-2) of this Section.

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

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

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

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

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

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

(14) Nothing in the sourcing agreement will require a utility to construct any facilities to accept delivery of SNG. Provided, however, if a utility is required by law or otherwise elects to connect the clean coal SNG brownfield facility to an interstate pipeline, then the utility shall be entitled to recover pursuant to its tariffs all just and reasonable costs that are prudently incurred. Any costs incurred by the utility to receive, deliver, manage, or otherwise accommodate purchases under the SNG sourcing agreement will be fully recoverable through a utility's purchased gas adjustment clause rider mechanism in conjunction with a SNG brownfield facility rider mechanism. The SNG brownfield facility rider mechanism (A) shall be applicable to all customers who receive transportation service from the utility, (B) shall be

designed to have an equal percent impact on the transportation services rates of each class of the utility's customers, and (C) shall accurately reflect the net consumer savings, if any, and above-market costs, if any, associated with the utility receiving, delivering, managing, or otherwise accommodating purchases under the SNG sourcing agreement.

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

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

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

(h-2) Consumer protection reserve account. The clean coal SNG brownfield facility shall guarantee a minimum of \$100,000,000 in consumer savings to customers of the utilities that have entered into sourcing agreements with the clean coal SNG brownfield facility, calculated in real 2010 dollars at the conclusion of the term of the sourcing agreement by comparing the delivered SNG price to the Chicago City-gate price on a weighted daily basis for each day over the entire term of the sourcing agreement. Prior to the clean coal SNG brownfield facility issuing a notice to proceed to construction, the clean coal SNG brownfield facility shall establish a consumer protection reserve account for the benefit of the retail customers of the utilities that have entered into sourcing agreements with the clean coal SNG brownfield facility pursuant to subsection (h-1), with cash principal in the amount of \$150,000,000. Such cash principal shall only be recovered through the consumer protection reserve account and not as a cost to be recovered in the delivered SNG price pursuant to subsection (h-3) of this Section. The consumer protection reserve account shall be maintained and administered by an independent trustee that is mutually agreed upon by the clean coal SNG brownfield facility, the utilities, and the Commission in an interest-bearing account in accordance with the following:

(1) The clean coal SNG brownfield facility monthly

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

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

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

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

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

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

(B) any amounts in the consumer protection reserve account in excess of the consumer protection reserve account principal maximum amount shall be distributed as follows: (i) if retail customers have not realized net consumer savings, calculated by comparing the delivered SNG price to the weighted average of the daily Chicago City-gate price on a daily basis over the entire term of the sourcing agreement to date, then 50% of any amounts in the consumer protection reserve account in excess of the consumer protection reserve account principal maximum shall be distributed to the clean coal SNG brownfield facility, with the remaining 50% of any such additional amounts being credited to retail customers, and (ii) if retail customers have realized net consumer savings, then 100% of any amounts in the consumer protection reserve account in excess of the consumer protection reserve account principal maximum shall be distributed to the clean coal SNG brownfield facility; provided, however, that under no circumstances shall the total cumulative amount distributed to the clean coal SNG brownfield facility

under this subparagraph (B) exceed \$150,000,000;

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

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

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

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

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

(7) The clean coal SNG brownfield facility, the

utilities, and the trustee shall work together to take commercially reasonable steps to minimize the tax impact of these transactions, while preserving the consumer benefits.

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

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

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

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

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

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

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

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

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

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

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

Any person who willfully makes any false report to the Commission or to any member, officer, or employee thereof, any person who willfully in a report withholds or fails to provide material information to which the Commission is entitled under this paragraph (8) and which

information is either required to be filed by statute, rule, regulation, order, or decision of the Commission or has been requested by the Commission, and any person who willfully aids or abets such person shall be guilty of a Class A misdemeanor.

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

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

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

The Capital Development Board shall retain an engineering expert to assist in determining both the range of capital costs and the range of operations and maintenance costs that it believes would be reasonable for the clean coal SNG brownfield facility to recover under the sourcing agreement. Provided, however, that such expert shall: (i) not have been involved in the clean coal SNG brownfield facility's facility cost report, if any, (ii) not own or control any direct or indirect interest in the initial clean coal facility, and (iii) have no contractual relationship with the clean coal SNG brownfield facility. In order to qualify as an independent expert, a person or company must have:

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

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

(iii) ten years of experience in the energy

sector, including construction and risk management experience;

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

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

(vi) expertise in credit and contract protocols;

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

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

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

In the event that the estimate submitted by the clean coal SNG brownfield facility is within or below the range submitted by the Capital Development Board, the clean coal SNG brownfield facility's estimate shall be approved by the Commission as the amount of capital costs to be recovered under the sourcing agreement. In the event that the estimate submitted by the clean coal SNG brownfield facility is above the range submitted by the Capital Development Board, the amount of capital costs at the lowest end of the range submitted by the Capital Development Board shall be approved by the Commission as the amount of capital costs to be recovered under the sourcing agreement. Within 15 days after the Capital Development Board has submitted its range and the clean coal SNG brownfield facility has submitted its estimate, the Commission shall approve the capital costs for the clean coal SNG brownfield facility.

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

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

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

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

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

The Capital Development Board shall calculate a range of operations and maintenance costs that it believes would be reasonable for the clean coal SNG brownfield facility

to recover under the sourcing agreement, incorporating an inflation index or combination of inflation indices to most accurately reflect the actual costs of operating the clean coal SNG brownfield facility. In making this determination, the Capital Development Board shall review the facility cost report, if any, of the clean coal SNG brownfield facility, adjusting the results for inflation based on the change in the Annual Consumer Price Index for All Urban Consumers for the Midwest Region as published in April by the United States Department of Labor, Bureau of Labor Statistics, the final draft of the sourcing agreement, and the rate of return approved by the Commission. In addition, the Capital Development Board may consult as much as it deems necessary with the clean coal SNG brownfield facility and conduct whatever research and investigation it deems necessary. As set forth in subparagraph (A) of paragraph (1) of this subsection (h-3), the Capital Development Board shall retain an independent engineering expert to assist in determining both the range of operations and maintenance costs that it believes would be reasonable for the clean coal SNG brownfield facility to recover under the sourcing agreement. The clean coal SNG brownfield facility and the Illinois Power Agency shall cooperate with the Capital Development Board in any investigation it deems necessary. The Capital Development Board shall make its final determination of the range of operations and maintenance costs confidentially and shall submit that range to the Commission in a confidential filing within 120 days after July 13, 2011.

The clean coal SNG brownfield facility shall submit to the Commission its estimate of the operations and maintenance costs to be recovered under the sourcing agreement. Only after the clean coal SNG brownfield facility has submitted this estimate shall the Commission publicly announce the range of operations and maintenance costs submitted by the Capital Development Board. In the event that the estimate submitted by the clean coal SNG brownfield facility is within or below the range submitted by the Capital Development Board, the clean coal SNG brownfield facility's estimate shall be approved by the Commission as the amount of operations and maintenance costs to be recovered under the sourcing agreement. In the event that the estimate submitted by the clean coal SNG brownfield facility is above the range submitted by the Capital Development Board, the amount of operations and maintenance costs at the lowest end of the range submitted by the Capital Development Board shall be approved by the Commission as the amount of operations and maintenance costs to be recovered under the sourcing agreement. Within 15 days after the Capital Development Board has submitted its range and the clean coal SNG brownfield facility has submitted its estimate, the Commission shall approve the operations and maintenance costs for the clean coal SNG brownfield facility.

The clean coal SNG brownfield facility shall pay for the independent engineering expert's reasonable fees and such costs shall not be passed through to a utility or its customers. The clean coal SNG brownfield facility shall pay a reasonable fee as required by the Capital

Development Board for the Capital Development Board's services under this subsection (h-3) to be deposited into the Capital Development Board Revolving Fund, and such fee shall not be passed through to a utility or its customers.

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

- (A) capture carbon dioxide;
- (B) build, operate, and maintain a sequestration site in which carbon dioxide may be injected;
- (C) build, operate, and maintain a carbon dioxide pipeline; and
- (D) transport the carbon dioxide to the sequestration site or a pipeline.

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

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

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

Power Agency shall immediately initiate a feedstock procurement process to obtain a replacement supply, and, prior to the conclusion of that process, fuel shall be purchased by the company month-by-month on the spot market and those actual delivered and processed fuel costs shall be recoverable under the sourcing agreement.

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

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

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

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

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

(h-4) No later than 90 days after the Illinois Power Agency submits the final draft sourcing agreement pursuant to subsection (h-1), the Commission shall approve a sourcing agreement containing (i) the capital costs, rate of return, and operations and maintenance costs established pursuant to subsection (h-3) and (ii) all other terms and conditions, rights, provisions, exceptions, and limitations contained in the final draft sourcing agreement; provided, however, the Commission shall correct typographical and scrivener's errors

and modify the contract only as necessary to provide that the gas utility does not have the right to terminate the sourcing agreement due to any future events that may occur other than the clean coal SNG brownfield facility's failure to timely meet milestones, uncured default, extended force majeure, or abandonment. Once the sourcing agreement is approved, then the gas utility subject to that sourcing agreement shall have 45 days after the date of the Commission's approval to enter into the sourcing agreement.

(h-5) Sequestration enforcement.

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

(B) If, in any year, the owner of the clean coal SNG facility fails to demonstrate that the SNG facility captured and sequestered at least 90% of the total carbon dioxide emissions that the facility would otherwise emit or that sequestration of emissions from prior years has failed, resulting in the release of carbon dioxide into the atmosphere, then the owner of the clean coal SNG facility must pay a penalty of \$20 per ton of excess carbon dioxide emissions not to exceed \$40,000,000, in any given year which shall be deposited into the Energy Efficiency Trust Fund and distributed pursuant to subsection (b) of Section 6-6 of the Renewable Energy, Energy Efficiency, and Coal Resources Development Law of 1997. On or before the 5-year anniversary of the execution of the contract and every 5 years thereafter, an expert hired by the owner of the facility with the approval of the Attorney General shall conduct an analysis to determine the cost of sequestration of at least 90% of the total carbon dioxide emissions the plant would otherwise emit. If the analysis shows that the actual annual cost is greater than the penalty, then the penalty shall be increased to equal the actual cost. Provided, however, to the extent that the owner of the facility described in subsection (h) of this Section can demonstrate that the failure was as a result of acts of God (including fire, flood, earthquake, tornado, lightning, hurricane, or other natural disaster); any amendment, modification, or abrogation of any applicable law or regulation that would prevent performance; war; invasion; act of foreign enemies; hostilities (regardless of whether war is declared); civil war; rebellion; revolution; insurrection; military or usurped power or confiscation; terrorist activities; civil disturbance; riots; nationalization; sabotage; blockage; or embargo, the owner of the facility described in subsection (h) of this Section shall not be subject to a penalty if and only if (i) it promptly provides notice of its failure to the Commission; (ii) as

soon as practicable and consistent with any order or direction from the Commission, it submits to the Commission proposed modifications to its carbon capture and sequestration plan; and (iii) it carries out its proposed modifications in the manner and time directed by the Commission.

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

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

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

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

The clean coal SNG facility is prohibited from transporting or sequestering carbon dioxide unless the owner of the carbon dioxide pipeline that transfers the carbon dioxide from the facility and the owner of the sequestration site where the carbon dioxide captured by the facility is stored has acquired all applicable permits under applicable State and federal laws, statutes, rules, or regulations prior to the transfer or sequestration of carbon dioxide. The responsibility for compliance with the sequestration requirements specified in this subsection (h-5) for the clean coal SNG facility shall reside solely

with the clean coal SNG facility, regardless of whether the facility has contracted with another party to capture, transport, or sequester carbon dioxide.

(C) If, in any year, the owner of a clean coal SNG brownfield facility fails to demonstrate that the clean coal SNG brownfield facility captured and sequestered at least 85% of the total carbon dioxide emissions that the facility would otherwise emit, then the owner of the clean coal SNG brownfield facility must pay a penalty of \$20 per ton of excess carbon emissions up to \$20,000,000, which shall be deposited into the Energy Efficiency Trust Fund and distributed pursuant to subsection (b) of Section 6-6 of the Renewable Energy, Energy Efficiency, and Coal Resources Development Law of 1997. Provided, however, to the extent that the owner of the clean coal SNG brownfield facility can demonstrate that the failure was as a result of acts of God (including fire, flood, earthquake, tornado, lightning, hurricane, or other natural disaster); any amendment, modification, or abrogation of any applicable law or regulation that would prevent performance; war; invasion; act of foreign enemies; hostilities (regardless of whether war is declared); civil war; rebellion; revolution; insurrection; military or usurped power or confiscation; terrorist activities; civil disturbances; riots; nationalization; sabotage; blockage; or embargo, the owner of the clean coal SNG brownfield facility shall not be subject to a penalty if and only if (i) it promptly provides notice of its failure to the Commission; (ii) as soon as practicable and consistent with any order or direction from the Commission, it submits to the Commission proposed modifications to its carbon capture and sequestration plan; and (iii) it carries out its proposed modifications in the manner and time directed by the Commission. If the Commission finds that the facility has not satisfied each of these requirements, then the facility shall be subject to the penalty. If the owner of a clean coal SNG brownfield facility demonstrates that the clean coal SNG brownfield facility captured and sequestered more than 85% of the total carbon emissions that the facility would otherwise emit, the owner of the clean coal SNG brownfield facility may credit such additional amounts to reduce the amount of any future penalty to be paid. The penalty resulting from the failure to capture and sequester at least the minimum amount of carbon dioxide shall not be passed on to a utility or its customers.

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

Compliance with the sequestration requirements and penalty requirements specified in this subsection (h-5)

for the clean coal SNG brownfield facility shall be assessed annually by the Commission, which may in its discretion retain an expert to facilitate its assessment. If an expert is retained by the Commission, then the clean coal SNG brownfield facility shall pay for the expert's reasonable fees, and such costs shall not be passed through to a utility or its customers. A SNG facility operating pursuant to this subsection (h-5) shall not forfeit its designation as a clean coal SNG facility or a clean coal SNG brownfield facility if the facility fails to fully comply with the applicable carbon sequestration requirements in any given year, provided the requisite offsets are purchased or requisite penalties are paid.

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

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

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

(2) The Commission shall review carbon dioxide transportation and sequestration methods proposed by a clean coal facility or a clean coal SNG brownfield facility and shall approve those methods it deems reasonable and cost-effective. For purposes of this review, "cost-effective" means a commercially reasonable price for similar carbon dioxide transportation or sequestration techniques. In determining whether sequestration is reasonable and cost-effective, the Commission may consult with the Illinois State Geological Survey and retain third parties to assist in its determination, provided that such third parties shall not own or control any direct or indirect interest in the facility that is proposing the carbon dioxide transportation or the carbon dioxide sequestration method and shall have no contractual relationship with that facility. If a third party is retained by the Commission, then the facility proposing the carbon dioxide transportation or sequestration method shall pay for the expert's reasonable fees, and these costs shall not be passed through to a utility or its customers.

No later than 6 months prior to the date upon which the owner intends to commence construction of a clean coal facility or the clean coal SNG brownfield facility, the owner of the facility shall file with the Commission a carbon dioxide transportation or sequestration plan. The Commission shall hold a public hearing within 30 days after receipt of the facility's carbon dioxide

transportation or sequestration plan. The Commission shall post notice of the review on its website upon submission of a carbon dioxide transportation or sequestration method and shall accept written public comments. The Commission shall take the comments into account when making its decision.

The Commission may not approve a carbon dioxide sequestration method if the owner or operator of the sequestration site has not received (i) an Underground Injection Control permit from the United States Environmental Protection Agency, or from the Illinois Environmental Protection Agency pursuant to the Environmental Protection Act; (ii) an Underground Injection Control permit from the Illinois Department of Natural Resources pursuant to the Illinois Oil and Gas Act; or (iii) an Underground Injection Control permit from the United States Environmental Protection Agency or a permit similar to items (i) or (ii) from the state in which the sequestration site is located if the sequestration will take place outside of Illinois. The Commission shall approve or deny the carbon dioxide transportation or sequestration method within 90 days after the receipt of all required information.

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

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

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

In circumstances whereby a carbon dioxide pipeline

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

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

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

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

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

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

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

(h-10) Contract costs for SNG incurred by an Illinois gas utility are reasonable and prudent and recoverable through the

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

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

(h-11) All costs incurred by an Illinois gas utility in procuring SNG from a clean coal SNG brownfield facility pursuant to subsection (h-1) or a third-party marketer pursuant to subsection (h-1) are reasonable and prudent and recoverable through the purchased gas adjustment clause in conjunction with a SNG brownfield facility rider mechanism and are not subject to review or disallowance by the Commission; provided that if a utility is required by law or otherwise elects to connect the clean coal SNG brownfield facility to an interstate pipeline, then the utility shall be entitled to recover pursuant to its tariffs all just and reasonable costs that are prudently incurred. Sourcing agreement costs are costs incurred by the utility under the terms of a sourcing agreement that incorporates the terms stated in subsection (h-

1) of this Section as approved by the Commission as set forth in subsection (h-4) of this Section, which approval shall be deemed conclusive, or as a consequence of or condition to its performance under the contract, including (i) amounts paid for SNG under the SNG contract and (ii) costs of transportation and storage services of SNG purchased from interstate pipelines under federally approved tariffs. Any sourcing agreement, the terms of which have been approved by the Commission as set forth in subsection (h-4) of this Section, and the performance of the parties under the sourcing agreement cannot be grounds for challenging prudence or cost recovery by the utility, and in these cases, the Commission is directed not to consider, and has no authority to consider, any attempted challenges.

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

(1) The clean coal SNG facility shall conduct an analysis annually within 60 days after receiving the necessary cost information, which shall be provided by the gas utility within 6 months after the end of the preceding calendar year, to determine (i) the average annual contract SNG cost, which shall be calculated as the total amount paid for SNG purchased from the clean coal SNG facility over the preceding 12 months, plus the cost to the utility of the required transportation and storage services of SNG, divided by the total number of MMBtus of SNG actually purchased from the clean coal SNG facility in the preceding 12 months under the utility contract; (ii) the average annual natural gas purchase cost, which shall be calculated as the total annual supply costs paid for baseload natural gas (excluding any SNG) purchased by such utility over the preceding 12 months plus the costs of transportation and storage services of such natural gas (excluding such costs for SNG), divided by the total number of MMBtus of baseload natural gas (excluding SNG) actually purchased by the utility during the year; (iii) the cost differential, which shall be the difference between the average annual contract SNG cost and the average annual natural gas purchase cost; and (iv) the revenue share target which shall be the cost differential multiplied by the total amount of SNG purchased over the preceding 12 months under such utility contract.

(A) To the extent the annual average contract SNG cost is less than the annual average natural gas purchase cost, the utility shall credit an amount equal to the revenue share target to the reconciliation account. Such credit payment shall be made monthly starting within 30 days after the completed analysis in this subsection (h-15) and based on collections from all customers via a line item charge in all customer bills designed to have an equal percentage impact on the transportation services of each class of customers. Credit payments made pursuant

to this subparagraph (A) shall be deemed prudent and reasonable and not subject to Commission prudence review.

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

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

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

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

(3) 50% of all additional net revenue, defined as miscellaneous net revenue after cost allowance and above

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

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

(A) the revenue share target amount;

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

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

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

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

(F) any additional information the Commission may require.

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

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

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

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

any person who willfully aids or abets such person shall be guilty of a Class A misdemeanor.

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

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

(h-25) The State of Illinois pledges that the State may not enact any law or take any action to (1) break or repeal the authority for SNG purchase contracts entered into between public gas utilities and the clean coal SNG facility pursuant to subsection (h) of this Section or (2) deny public gas utilities their full cost recovery for contract costs, as defined in subsection (h-10), that are incurred under such SNG purchase contracts. These pledges are for the benefit of the parties to such SNG purchase contracts and the issuers and holders of bonds or other obligations issued or incurred to finance or refinance the clean coal SNG facility. The beneficiaries are authorized to include and refer to these pledges in any finance agreement into which they may enter in regard to such contracts.

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

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

(Source: P.A. 96-1364, eff. 7-28-10; 97-96, eff. 7-13-11; 97-239, eff. 8-2-11; 97-630, eff. 12-8-11; 97-1081, eff. 8-24-12.)

(220 ILCS 5/9-220.1) (from Ch. 111 2/3, par. 9-220.1)

Sec. 9-220.1. Environmental fees - modification of rates and charges. Any electric public utility may file a separate tariff designed to recover the fees paid under subsection 18 of Section 39.5 of the Environmental Protection Act as they are incurred, independent of any other matters related to its revenue requirements. Annually, the Commission shall initiate hearings to reconcile amounts collected under the tariff with the amounts properly disbursed by the utility under subsection 18 of Section 39.5 of the Environmental Protection Act.

(Source: P.A. 87-1213.)

(220 ILCS 5/9-220.2)

Sec. 9-220.2. Water and sewer surcharges authorized.

(a) The Commission may authorize a water or sewer utility to file a surcharge which adjusts rates and charges to provide for recovery of (i) the cost of purchased water, (ii) the cost of purchased sewage treatment service, (iii) other costs which fluctuate for reasons beyond the utility's control or are difficult to predict, or (iv) costs associated with an investment in qualifying infrastructure plant, independent of any other matters related to the utility's revenue requirement. A surcharge approved under this Section can operate on an historical or a prospective basis.

(b) For purposes of this Section, "costs associated with an investment in qualifying infrastructure plant" include a return on the investment in and depreciation expense related to plant items or facilities (including, but not limited to, replacement mains, meters, services, and hydrants) which (i) are not reflected in the rate base used to establish the utility's base rates and (ii) are non-revenue producing. For purposes of this Section, a "non-revenue producing facility" is one that is not constructed or installed for the purpose of serving a new customer.

(c) On a periodic basis, the Commission shall initiate hearings to reconcile amounts collected under each surcharge authorized pursuant to this Section with the actual prudently incurred costs recoverable for each annual period during which the surcharge was in effect.

(Source: P.A. 91-638, eff. 1-1-00.)

(220 ILCS 5/9-221) (from Ch. 111 2/3, par. 9-221)

Sec. 9-221. Whenever a municipality pursuant to Section 8-11-2 of the Illinois Municipal Code, as heretofore and hereafter amended, imposes a tax on any public utility, such utility may charge its customers, other than customers who are certified business enterprises under paragraph (e) of Section 8-11-2 of the Illinois Municipal Code or are exempted from those taxes under paragraph (f) of that Section, to the extent of such exemption and during the period in which such exemption is in effect, in addition to any rate authorized by this Act, an additional charge equal to the sum of (1) an amount equal to such municipal tax, or any part thereof (2) 3% of such tax, or any part thereof, as the case may be, to cover costs of accounting, and (3) an amount equal to the increase in taxes and other payments to governmental bodies resulting from the amount of such additional charge. Such utility shall file with the Commission a true and correct copy of the municipal ordinance imposing such tax; and also shall file with the Commission a supplemental schedule applicable to such municipality which shall specify such additional charge and which shall become effective upon filing without further notice. Such additional charge shall be shown separately on the utility bill to each customer. The Commission shall have power to investigate whether or not such supplemental schedule correctly specifies such additional charge, but shall have no power to suspend such supplemental schedule. If the Commission finds, after a hearing, that such supplemental schedule does not correctly specify such additional charge, it shall by order require a refund to the appropriate customers of the excess, if any, with interest, in such manner as it shall deem

just and reasonable, and in and by such order shall require the utility to file an amended supplemental schedule corresponding to the finding and order of the Commission. (Source: P.A. 87-895; 88-132.)

(220 ILCS 5/9-222) (from Ch. 111 2/3, par. 9-222)

Sec. 9-222. Whenever a tax is imposed upon a public utility engaged in the business of distributing, supplying, furnishing, or selling gas for use or consumption pursuant to Section 2 of the Gas Revenue Tax Act, or whenever a tax is required to be collected by a delivering supplier pursuant to Section 2-7 of the Electricity Excise Tax Act, or whenever a tax is imposed upon a public utility pursuant to Section 2-202 of this Act, such utility may charge its customers, other than customers who are high impact businesses under Section 5.5 of the Illinois Enterprise Zone Act, or certified business enterprises under Section 9-222.1 of this Act, to the extent of such exemption and during the period in which such exemption is in effect, in addition to any rate authorized by this Act, an additional charge equal to the total amount of such taxes. The exemption of this Section relating to high impact businesses shall be subject to the provisions of subsections (a), (b), and (b-5) of Section 5.5 of the Illinois Enterprise Zone Act. This requirement shall not apply to taxes on invested capital imposed pursuant to the Messages Tax Act, the Gas Revenue Tax Act and the Public Utilities Revenue Act. Such utility shall file with the Commission a supplemental schedule which shall specify such additional charge and which shall become effective upon filing without further notice. Such additional charge shall be shown separately on the utility bill to each customer. The Commission shall have the power to investigate whether or not such supplemental schedule correctly specifies such additional charge, but shall have no power to suspend such supplemental schedule. If the Commission finds, after a hearing, that such supplemental schedule does not correctly specify such additional charge, it shall by order require a refund to the appropriate customers of the excess, if any, with interest, in such manner as it shall deem just and reasonable, and in and by such order shall require the utility to file an amended supplemental schedule corresponding to the finding and order of the Commission. Except with respect to taxes imposed on invested capital, such tax liabilities shall be recovered from customers solely by means of the additional charges authorized by this Section. (Source: P.A. 91-914, eff. 7-7-00; 92-12, eff. 7-1-01.)

(220 ILCS 5/9-222.1) (from Ch. 111 2/3, par. 9-222.1)

Sec. 9-222.1. A business enterprise which is located within an area designated by a county or municipality as an enterprise zone pursuant to the Illinois Enterprise Zone Act or located in a federally designated Foreign Trade Zone or Sub-Zone shall be exempt from the additional charges added to the business enterprise's utility bills as a pass-on of municipal and State utility taxes under Sections 9-221 and 9-222 of this Act, to the extent such charges are exempted by ordinance adopted in accordance with paragraph (e) of Section 8-11-2 of the Illinois Municipal Code in the case of municipal utility taxes, and to the extent such charges are exempted by the percentage specified by the Department of Commerce and

Economic Opportunity in the case of State utility taxes, provided such business enterprise meets the following criteria:

(1) it (i) makes investments which cause the creation of a minimum of 200 full-time equivalent jobs in Illinois; (ii) makes investments of at least \$175,000,000 which cause the creation of a minimum of 150 full-time equivalent jobs in Illinois; (iii) makes investments that cause the retention of a minimum of 300 full-time equivalent jobs in the manufacturing sector, as defined by the North American Industry Classification System, in an area in Illinois in which the unemployment rate is above 9% and makes an application to the Department within 3 months after the effective date of this amendatory Act of the 96th General Assembly and certifies relocation of the 300 full-time equivalent jobs within 48 months after the application; (iv) makes investments which cause the retention of a minimum of 1,000 full-time jobs in Illinois; or (v) makes an application to the Department within 2 months after the effective date of this amendatory Act of the 96th General Assembly and makes investments that cause the retention of a minimum of 500 full-time equivalent jobs in 2009 and 2010, 675 full-time jobs in Illinois in 2011, 850 full-time jobs in 2012, and 1,000 full-time jobs in 2013, in the manufacturing sector as defined by the North American Industry Classification System; and

(2) it is either (i) located in an Enterprise Zone established pursuant to the Illinois Enterprise Zone Act or (ii) located in a federally designated Foreign Trade Zone or Sub-Zone and is designated a High Impact Business by the Department of Commerce and Economic Opportunity; and

(3) it is certified by the Department of Commerce and Economic Opportunity as complying with the requirements specified in clauses (1) and (2) of this Section.

The Department of Commerce and Economic Opportunity shall determine the period during which such exemption from the charges imposed under Section 9-222 is in effect which shall not exceed 30 years or the certified term of the enterprise zone, whichever period is shorter, except that the exemption period for a business enterprise qualifying under item (iii) of clause (1) of this Section shall not exceed 30 years.

The Department of Commerce and Economic Opportunity shall have the power to promulgate rules and regulations to carry out the provisions of this Section including procedures for complying with the requirements specified in clauses (1) and (2) of this Section and procedures for applying for the exemptions authorized under this Section; to define the amounts and types of eligible investments which business enterprises must make in order to receive State utility tax exemptions pursuant to Sections 9-222 and 9-222.1 of this Act; to approve such utility tax exemptions for business enterprises whose investments are not yet placed in service; and to require that business enterprises granted tax exemptions repay the exempted tax should the business enterprise fail to comply with the terms and conditions of the certification. However, no business enterprise shall be required, as a condition for certification under clause (3) of

this Section, to attest that its decision to invest under clause (1) of this Section and to locate under clause (2) of this Section is predicated upon the availability of the exemptions authorized by this Section.

A business enterprise shall be exempt, in whole or in part, from the pass-on charges of municipal utility taxes imposed under Section 9-221, only if it meets the criteria specified in clauses (1) through (3) of this Section and the municipality has adopted an ordinance authorizing the exemption under paragraph (e) of Section 8-11-2 of the Illinois Municipal Code. Upon certification of the business enterprises by the Department of Commerce and Economic Opportunity, the Department of Commerce and Economic Opportunity shall notify the Department of Revenue of such certification. The Department of Revenue shall notify the public utilities of the exemption status of business enterprises from the pass-on charges of State and municipal utility taxes. Such exemption status shall be effective within 3 months after certification of the business enterprise. (Source: P.A. 96-716, eff. 8-25-09; 96-865, eff. 1-21-10; 97-818, eff. 7-16-12.)

(220 ILCS 5/9-222.1A)

Sec. 9-222.1A. High impact business. Beginning on August 1, 1998 and thereafter, a business enterprise that is certified as a High Impact Business by the Department of Commerce and Economic Opportunity (formerly Department of Commerce and Community Affairs) is exempt from the tax imposed by Section 2-4 of the Electricity Excise Tax Law, if the High Impact Business is registered to self-assess that tax, and is exempt from any additional charges added to the business enterprise's utility bills as a pass-on of State utility taxes under Section 9-222 of this Act, to the extent the tax or charges are exempted by the percentage specified by the Department of Commerce and Economic Opportunity for State utility taxes, provided the business enterprise meets the following criteria:

- (1) (A) it intends either (i) to make a minimum eligible investment of \$12,000,000 that will be placed in service in qualified property in Illinois and is intended to create at least 500 full-time equivalent jobs at a designated location in Illinois; or (ii) to make a minimum eligible investment of \$30,000,000 that will be placed in service in qualified property in Illinois and is intended to retain at least 1,500 full-time equivalent jobs at a designated location in Illinois; or
- (B) it meets the criteria of subdivision (a) (3) (B), (a) (3) (C), or (a) (3) (D) of Section 5.5 of the Illinois Enterprise Zone Act;
- (2) it is designated as a High Impact Business by the Department of Commerce and Economic Opportunity; and
- (3) it is certified by the Department of Commerce and Economic Opportunity as complying with the requirements specified in clauses (1) and (2) of this Section.

The Department of Commerce and Economic Opportunity shall determine the period during which the exemption from the Electricity Excise Tax Law and the charges imposed under Section 9-222 are in effect, which shall not exceed 20 years

from the date of initial certification, and shall specify the percentage of the exemption from those taxes or additional charges.

The Department of Commerce and Economic Opportunity is authorized to promulgate rules and regulations to carry out the provisions of this Section, including procedures for complying with the requirements specified in clauses (1) and (2) of this Section and procedures for applying for the exemptions authorized under this Section; to define the amounts and types of eligible investments that business enterprises must make in order to receive State utility tax exemptions or exemptions from the additional charges imposed under Section 9-222 and this Section; to approve such utility tax exemptions for business enterprises whose investments are not yet placed in service; and to require that business enterprises granted tax exemptions or exemptions from additional charges under Section 9-222 repay the exempted amount if the business enterprise fails to comply with the terms and conditions of the certification.

Upon certification of the business enterprises by the Department of Commerce and Economic Opportunity, the Department of Commerce and Economic Opportunity shall notify the Department of Revenue of the certification. The Department of Revenue shall notify the public utilities of the exemption status of business enterprises from the tax or pass-on charges of State utility taxes. The exemption status shall take effect within 3 months after certification of the business enterprise.

(Source: P.A. 94-793, eff. 5-19-06.)

(220 ILCS 5/9-222.2) (from Ch. 111 2/3, par. 9-222.2)

Sec. 9-222.2. Additional Charge - Recovery. The additional charge authorized by Section 9-221 or Section 9-222 shall be made (i) in the case of a tax measured by gross receipts or gross revenue, by adding to the customer's bill a uniform percentage to those amounts payable by the customer for intrastate utility service which are includible in the measure of such tax, except, however, such method is not required where practical considerations justify a utility's or telecommunications carrier's use of another just and reasonable method of recovering its entire liability for such tax, and (ii) in the case of a tax measured by the number of therms or kilowatt-hours distributed, supplied, furnished, sold, transported or transmitted, by adding to the customer's bill an amount equal to the number of therms or kilowatt-hours which are includible in the measure of such tax, multiplied by the applicable tax rate. Without limiting the generality of the foregoing, it shall not be deemed unjust and unreasonable or a violation of Section 9-241 for telecommunications carriers to recover the expense of taxes imposed by any municipality pursuant to Section 8-11-2 of the Illinois Municipal Code on coin revenues generated by coin-operated telecommunications devices by including the expense of the tax within the coin rates for intra-state coin paid telecommunications services.

(Source: P.A. 87-750.)

(220 ILCS 5/9-222.3) (from Ch. 111 2/3, par. 9-222.3)

Sec. 9-222.3. Recovery of additional charges refunded to

customers.

(a) If a telecommunications carrier is required to make a refund as a result of an additional charge collected to recover the expense of taxes imposed by any municipality pursuant to Section 8-11-2 of the Illinois Municipal Code on revenues generated by coin-operated telecommunications devices, the telecommunications carrier shall be entitled to amortize the total amount refunded over a reasonable period not to exceed 5 years and shall be permitted to recover such refunded amount in full over the amortization period by means of temporary supplemental rates approved by the Illinois Commerce Commission applicable to that carrier's intrastate utility services paid for by inserting coins in coin-operated telecommunications devices. The Commission shall monitor the amortization of the expense and discontinue any temporary supplemental rate as to each municipality immediately when the recovery of the expense is complete. This provision shall be applicable only if all of the following conditions are met:

(1) The refund is made pursuant to a final judgment of a court of competent jurisdiction, including a judgment approving settlement of a disputed claim.

(2) The additional charges giving rise to the refund were collected pursuant to tariffs, permitted to become effective by the Commission, with or without formal hearings.

(3) The additional charges giving rise to the refund recovered the expense of taxes paid to a governmental body, plus the expense of collection as authorized by Section 9-221, and such amounts have not been recovered by the telecommunications carrier from the public body.

(b) This amendatory Act of 1991 shall be applicable to all refunds made on or subsequent to June 1, 1991, including but not limited to refunds made pursuant to judgments entered before the effective date of this amendatory Act of 1991.

(Source: P.A. 87-750.)

(220 ILCS 5/9-223) (from Ch. 111 2/3, par. 9-223)  
Sec. 9-223. Fire protection charge.

(a) The Commission may authorize any public utility engaged in the production, storage, transmission, sale, delivery or furnishing of water to impose a fire protection charge, in addition to any rate authorized by this Act, sufficient to cover a reasonable portion of the cost of providing the capacity, facilities and the water necessary to meet the fire protection needs of any municipality or public fire protection district. Such fire protection charge shall be in the form of a fixed amount per bill and shall be shown separately on the utility bill of each customer of the municipality or fire protection district. Any filing by a public utility to impose such a fire protection charge or to modify a charge shall be made pursuant to Section 9-201 of this Act. Any fire protection charge imposed shall reflect the costs associated with providing fire protection service for each municipality or fire protection district. No such charge shall be imposed directly on any municipality or fire protection district for a reasonable level of fire protection services unless provided for in a separate agreement between the municipality or the fire protection district and the utility.

(b) By December 31, 2007, the Commission shall conduct at least 3 public forums to evaluate the purpose and use of each fire protection charge imposed under this Section. At least one forum must be held in northern Illinois, at least one forum must be held in central Illinois, and at least one forum must be held in southern Illinois. The Commission must invite a representative from each municipality and fire protection district affected by a fire protection charge under this Section to attend a public forum. The Commission shall report its findings concerning recommendations concerning the purpose and use of each fire protection charge to the General Assembly no later than the last day of the veto session in 2008. (Source: P.A. 94-950, eff. 6-27-06.)

(220 ILCS 5/9-224) (from Ch. 111 2/3, par. 9-224)

Sec. 9-224. The Commission shall not consider as an expense of any public utility company, for the purpose of determining any rate or charge, any amount expended for political activity or lobbying as defined in the "Lobbyist Registration Act". (Source: P.A. 84-617.)

(220 ILCS 5/9-225) (from Ch. 111 2/3, par. 9-225)

Sec. 9-225. (1) For the purposes of this Section:

(a) "Advertising" means the commercial use, by an electric, gas, water, or sewer utility, of any media, including newspapers, printed matter, radio and television, in order to transmit a message to a substantial number of members of the public or to such utility's consumers;

(b) "Political advertising" means any advertising for the purpose of influencing public opinion with respect to legislative, administrative or electoral matters, or with respect to any controversial issue of public importance;

(c) "Promotional advertising" means any advertising for the purpose of encouraging any person to select or use the service or additional service of a utility or the selection or installation of any appliance or equipment designed to use such utility's service; and

(d) "Goodwill or institutional advertising" means any advertising either on a local or national basis designed primarily to bring the utility's name before the general public in such a way as to improve the image of the utility or to promote controversial issues for the utility or the industry.

(2) In any general rate increase requested by any gas, electric, water, or sewer utility company under the provisions of this Act, the Commission shall not consider, for the purpose of determining any rate, charge or classification of costs, any direct or indirect expenditures for promotional, political, institutional or goodwill advertising, unless the Commission finds the advertising to be in the best interest of the Consumer or authorized as provided pursuant to subsection 3 of this Section.

(3) The following categories of advertising shall be considered allowable operating expenses for gas, electric, water, or sewer utilities:

(a) Advertising which informs consumers how they can conserve energy or water, reduce peak demand for electric

or gas energy, or reduce demand for water;

(b) Advertising required by law or regulations, including advertising required under Part I of Title II of the National Energy Conservation Policy Act;

(c) Advertising regarding service interruptions, safety measures or emergency conditions;

(d) Advertising concerning employment opportunities with such utility;

(e) Advertising which promotes the use of energy efficient appliances, equipment or services;

(f) Explanations of existing or proposed rate schedules or notifications of hearings thereon;

(g) Advertising that identifies the location and operating hours of company business offices;

(h) Advertising which promotes the shifting of demand from peak to off-peak hours or which encourages the off-peak usage of the service; and

(i) "Other" categories of advertisements not includable in paragraphs (a) through (h), but which are not political, promotional, institutional or goodwill advertisements.

(Source: P.A. 95-814, eff. 8-13-08.)

(220 ILCS 5/9-226) (from Ch. 111 2/3, par. 9-226)

Sec. 9-226. In any general rate increase proceeding in which Section 9-225 of this Act applies, the following materials shall be made available to the Commission:

(a) Copies of all advertisements and scripts included in the operating expense, listing the production costs for each ad, the publication schedule and costs for each ad;

(b) Copies of all advertisements included in the operating expense purchased on a cooperative basis with manufacturers, developers or others and the company's cost for each ad; and

(c) All expenses incurred by the utility included in the operating expense for ads or scripts produced by a trade association including all monies paid to the association for advertising purposes, either in the form of dues, assessments or subscriptions.

(Source: P.A. 84-617.)

(220 ILCS 5/9-227) (from Ch. 111 2/3, par. 9-227)

Sec. 9-227. It shall be proper for the Commission to consider as an operating expense, for the purpose of determining whether a rate or other charge or classification is sufficient, donations made by a public utility for the public welfare or for charitable scientific, religious or educational purposes, provided that such donations are reasonable in amount. In determining the reasonableness of such donations, the Commission may not establish, by rule, a presumption that any particular portion of an otherwise reasonable amount may not be considered as an operating expense. The Commission shall be prohibited from disallowing by rule, as an operating expense, any portion of a reasonable donation for public welfare or charitable purposes.

(Source: P.A. 85-122.)

(220 ILCS 5/9-229)

Sec. 9-229. Consideration of attorney and expert compensation as an expense. The Commission shall specifically

assess the justness and reasonableness of any amount expended by a public utility to compensate attorneys or technical experts to prepare and litigate a general rate case filing. This issue shall be expressly addressed in the Commission's final order.

(Source: P.A. 96-33, eff. 7-10-09.)

(220 ILCS 5/9-230) (from Ch. 111 2/3, par. 9-230)

Sec. 9-230. Rate of return; financial involvement with nonutility or unregulated companies. In determining a reasonable rate of return upon investment for any public utility in any proceeding to establish rates or charges, the Commission shall not include any (i) incremental risk, (ii) increased cost of capital, or (iii) after May 31, 2003, revenue or expense attributed to telephone directory operations, which is the direct or indirect result of the public utility's affiliation with unregulated or nonutility companies.

(Source: P.A. 92-22, eff. 6-30-01.)

(220 ILCS 5/9-240) (from Ch. 111 2/3, par. 9-240)

Sec. 9-240. Except as in this Act otherwise provided, no public utility shall charge, demand, collect or receive a greater or less or different compensation for any product, or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates or other charges applicable to such product or commodity or service as specified in its schedules on file and in effect at the time, except as provided in Section 9-104, nor shall any such public utility refund or remit, directly or indirectly, in any manner or by any device, any portion of the rates or other charges so specified, nor extend to any corporation or person any form of contract or agreement or any rule or regulation or any facility or privilege except such as are regularly and uniformly extended to all corporations and persons.

No law of the State shall be construed to prohibit a public utility from furnishing its service, product or commodity to its employees, officers, directors or pensioners, or its employees, officers, directors or pensioners from receiving such service, product or commodity, free or at rates or charges less than those specified in its filed schedules.

(Source: P.A. 84-617.)

(220 ILCS 5/9-241) (from Ch. 111 2/3, par. 9-241)

Sec. 9-241. No public utility shall, as to rates or other charges, services, facilities or in other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or other charges, services, facilities, or in any other respect, either as between localities or as between classes of service.

However, nothing in this Section shall be construed as limiting the authority of the Commission to permit the establishment of economic development rates as incentives to economic development either in enterprise zones as designated by the State of Illinois or in other areas of a utility's service area. Such rates should be available to existing businesses which demonstrate an increase to existing load as

well as new businesses which create new load for a utility so as to create a more balanced utilization of generating capacity. The Commission shall ensure that such rates are established at a level which provides a net benefit to customers within a public utility's service area.

Prior to October 1, 1989, no public utility providing electrical or gas service shall consider the use of solar or other nonconventional renewable sources of energy by a customer as a basis for establishing higher rates or charges for any service or commodity sold to such customer; nor shall a public utility subject any customer utilizing such energy source or sources to any other prejudice or disadvantage on account of such use. No public utility shall without the consent of the Commission, charge or receive any greater compensation in the aggregate for a lesser commodity, product, or service than for a greater commodity, product or service of like character.

The Commission, in order to expedite the determination of rate questions, or to avoid unnecessary and unreasonable expense, or to avoid unjust or unreasonable discrimination between classes of customers, or, whenever in the judgment of the Commission public interest so requires, may, for rate making and accounting purposes, or either of them, consider one or more municipalities either with or without the adjacent or intervening rural territory as a regional unit where the same public utility serves such region under substantially similar conditions, and may within such region prescribe uniform rates for consumers or patrons of the same class.

Any public utility, with the consent and approval of the Commission, may as a basis for the determination of the charges made by it classify its service according to the amount used, the time when used, the purpose for which used, and other relevant factors.

(Source: P.A. 91-357, eff. 7-29-99.)

(220 ILCS 5/9-242) (from Ch. 111 2/3, par. 9-242)

Sec. 9-242. The Commission shall study the costs and benefits of implementing promotional rates for a public utility's industrial and commercial customers when such rates are intended to encourage increased consumption of gas or electric service by such customers, to increase employment or production by such customers, or to improve the likelihood that existing customers will remain, or additional industrial or commercial customers will locate, in Illinois. The Commission shall include in its study, in particular, an analysis of (1) the extent to which existing industrial and commercial customers change short-term production or employment levels in response to any change in prices for gas or electric service; (2) the extent to which industrial and commercial customers base long-term location, production and employment decisions on the short-term and long-term prices of gas or electric service; and (3) the extent to which rates or charges paid by utility customers other than those directly benefitting from promotional rates are affected by the utilization of such rates by industrial and commercial customers. The Commission's study shall be subject to hearing and comment, and the findings shall be reported to the General Assembly together with any recommendations for legislative action.

(Source: P.A. 84-617.)

(220 ILCS 5/9-243) (from Ch. 111 2/3, par. 9-243)

Sec. 9-243. No public utility, or any officer or agent thereof, or any person acting for or employed by it, shall directly or indirectly, by any device or means whatsoever, suffer or permit any corporation or person to obtain any service, commodity, or product at less than the rate or other charge then established and in force as shown by the schedules filed and in effect at the time. No person or corporation shall, directly or indirectly, by any device or means whatsoever, whether with or without the consent or connivance of a public utility or any of its officers, or employees, seek to obtain or obtain any service, commodity, or product at less than the rate or other charge then established and in force therefor. If prior to June 30, 1913, any real estate or other tangible property shall have been sold or transferred to any public utility or public service corporation, or, if before that date, any obligation of any public utility or public service corporation created in consideration of the transfer to it of any real estate or other tangible property, shall have been released or cancelled, upon consideration in whole or in part of an agreement by such public utility or public service corporation expressed in writing to render any service, or furnish any commodity or product in the future to the party or parties making such conveyance or transfer or owning such obligation, nothing in this Act contained shall be construed to in any way affect such agreement or to prevent the performance or enforcement thereof according to its terms, or to authorize the Commission to interfere with such performance or enforcement.

(Source: P.A. 84-617.)

(220 ILCS 5/9-244) (from Ch. 111 2/3, par. 9-244)

Sec. 9-244. Alternative rate regulation.

(a) Notwithstanding any of the ratemaking provisions of this Article IX or other Sections of this Act, or the Commission's rules that are deemed to require rate of return regulation, and except as provided in Article XVI, the Commission, upon petition by an electric or gas public utility, and after notice and hearing, may authorize for some or all of the regulated services of that utility, the implementation of one or more programs consisting of (i) alternatives to rate of return regulation, including but not limited to earnings sharing, rate moratoria, price caps or flexible rate options, or (ii) other regulatory mechanisms that reward or penalize the utility through the adjustment of rates based on utility performance. In the case of other regulatory mechanisms that reward or penalize utilities through the adjustment of rates based on utility performance, the utility's performance shall be compared to standards established in the Commission order authorizing the implementation of other regulatory mechanisms. The Commission is specifically authorized to approve in response to such petitions different forms of alternatives to rate of return regulation or other regulatory mechanisms to fit the particular characteristics and requirements of different utilities and their service territories.

(b) The Commission shall approve the program if it finds,

based on the record, that:

(1) the program is likely to result in rates lower than otherwise would have been in effect under traditional rate of return regulation for the services covered by the program and that are consistent with the provisions of Section 9-241 of the Act; and

(2) the program is likely to result in other substantial and identifiable benefits that would be realized by customers served under the program and that would not be realized in the absence of the program; and

(3) the utility is in compliance with applicable Commission standards for reliability and implementation of the program is not likely to adversely affect service reliability; and

(4) implementation of the program is not likely to result in deterioration of the utility's financial condition; and

(5) implementation of the program is not likely to adversely affect the development of competitive markets; and

(6) the electric utility is in compliance with its obligation to offer delivery services pursuant to Article XVI; and

(7) the program includes annual reporting requirements and other provisions that will enable the Commission to adequately monitor its implementation of the program; and

(8) the program includes provisions for an equitable sharing of any net economic benefits between the utility and its customers to the extent the program is likely to result in such benefits.

The Commission shall issue its order approving or denying the program no later than 270 days from the date of filing of the petition. Any program approved under this Section shall continue in effect until revised, modified or terminated by order of the Commission as provided in this Section. If the Commission cannot make the above findings, it shall specifically identify in its order the reason or reasons why the proposed program does not meet the above criteria, and shall identify any modifications supported in the record, if any, that would cause the program to satisfy the above criteria. In the event the order identifies any such modifications it shall not become a final order subject to petitions for rehearing until 15 days after service of same by the Commission. The utility shall have 14 days following the date of service of the order to notify the Commission in writing whether it will accept any modifications so identified in the order or whether it has elected not to proceed with the program. If the utility notifies the Commission that it will accept such modifications, the Commission shall issue an amended order, without further hearing, within 14 days following such notification, approving the program as modified and such order shall be considered to be a final order of the Commission subject to petitions for rehearing and appellate procedures.

(c) The Commission shall open a proceeding to review any program approved under subsection (b) 2 years after the program is first implemented to determine whether the program is meeting its objectives, and may make such revisions, no

later than 270 days after the proceeding is opened, as are necessary to result in the program meeting its objectives. A utility may elect to discontinue any program so revised. The Commission shall not otherwise direct a utility to revise, modify or cancel a program during its term of operation, except as found necessary, after notice and hearing, to ensure system reliability.

(d) Upon its own motion or complaint, the Commission may investigate whether the utility is implementing an approved program in accordance with the Commission order approving the program. If the Commission finds after notice and hearing, that the utility is not implementing the program in accordance with such order, the Commission shall order the utility to comply with the terms of the order. Complaints relating to the program filed under Section 9-250 of this Act, alleging that the program does not comply with that Section or the requirements of subsection (b) shall not be filed sooner than one year after the review provided for in subsection (c). The complainant shall bear the burden of proving the allegations in the complaint.

(e) The Commission shall not be authorized to allow or order an electric utility to place a program into effect, pursuant to this Section, applicable to delivery services provided by a utility, unless the utility already has in effect a delivery services tariff conforming to the requirements of Section 16-108 of this Act.

(f) The Commission may, upon subsequent petition by the utility, after notice and hearing, authorize the extension of a program that was previously approved pursuant to this Section or approve revisions or modifications of such a program to be effective, after the initially approved program has been in effect. Any such petition seeking an extension, revision, or modification of such a program must be accompanied by an evaluation of the program addressing the criteria set forth in subsection (b) hereof. The utility's petition may, but is not required to, specify a termination date for the extended, revised or modified program. The Commission may require a review of the extended, revised, or modified program at such intervals as may be ordered by the Commission, for the purpose of determining whether the program should be revised, modified, or terminated.

(Source: P.A. 89-194, eff. 1-1-96; 90-561, eff. 12-16-97.)

(220 ILCS 5/9-245)

Sec. 9-245. Rates; environmental fines and remediation. In determining the rates for a public utility engaged in providing natural gas service, the Commission may not include any expenditure for fines or remediation and related activities incurred as a result of mercury spills associated with gas pressure regulators, manometers, or any other devices containing mercury in the utility's system. Any related insurance or third party recoveries must also be excluded for ratemaking purposes.

(Source: P.A. 92-71, eff. 7-12-01.)

(220 ILCS 5/9-250) (from Ch. 111 2/3, par. 9-250)

Sec. 9-250. Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that the rates or other charges, or classifications, or any of them,

demanded, observed, charged or collected by any public utility for any service or product or commodity, or in connection therewith, or that the rules, regulations, contracts, or practices or any of them, affecting such rates or other charges, or classifications, or any of them, are unjust, unreasonable, discriminatory or preferential, or in any way in violation of any provisions of law, or that such rates or other charges or classifications are insufficient, the Commission shall determine the just, reasonable or sufficient rates or other charges, classifications, rules, regulations, contracts or practices to be thereafter observed and in force, and shall fix the same by order as hereinafter provided.

The Commission shall have power, upon a hearing, had upon its own motion or upon complaint, to investigate a single rate or other charge, classification, rule, regulation, contract or practice, or any number thereof, or the entire schedule or schedules of rates or other charges, classifications, rules, regulations, contracts and practices, or any thereof of any public utility, and to establish new rates or other charges, classifications, rules, regulations, contracts or practices or schedule or schedules, in lieu thereof.

(Source: P.A. 84-617; 84-1025.)

(220 ILCS 5/9-251) (from Ch. 111 2/3, par. 9-251)

Sec. 9-251. The Commission shall have the power to investigate all existing or proposed interstate rates or other charges, and classifications, and all rules and practices in relation thereto, of any public utility, where any act in relation thereto shall take place within this State; and when the same are, in the opinion of the Commission, excessive or discriminatory or in violation of any Act of Congress, the Commission may apply by petition or otherwise to any court of competent jurisdiction for relief.

The Commission shall also have the power, after a hearing had upon its own motion or upon complaint, to order any public utilities to establish and fix reasonable and sufficient joint rates or other charges or classifications. In case such public utilities do not agree upon the division between them of such joint rates or other charges the Commission shall, after hearing, establish such division by supplemental order.

(Source: P.A. 84-617; 84-1025.)

(220 ILCS 5/9-252) (from Ch. 111 2/3, par. 9-252)

Sec. 9-252. When complaint is made to the Commission concerning any rate or other charge of any public utility and the Commission finds, after a hearing, that the public utility has charged an excessive or unjustly discriminatory amount for its product, commodity or service, the Commission may order that the public utility make due reparation to the complainant therefor, with interest at the legal rate from the date of payment of such excessive or unjustly discriminatory amount.

If the public utility does not comply with an order of the Commission for the payment of money within the time fixed in such order, the complainant, or any person for whose benefit such order was made, may file in a circuit court of competent jurisdiction a complaint setting forth briefly the causes for which the person claims damages and the order of the Commission in the premises. Such action shall proceed in all respects like other civil actions for damages, except that on

the trial of such action the order of the Commission shall be prima facie evidence of the facts therein stated. If the plaintiff shall finally prevail, he or she shall be allowed a reasonable attorney's fee to be taxed and collected as a part of the costs of the action.

All complaints for the recovery of damages shall be filed with the Commission within 2 years from the time the produce, commodity or service as to which complaint is made was furnished or performed, and a petition for the enforcement of an order of the Commission for the payment of money shall be filed in the proper court within one year from the date of the order, except that if an appeal is taken from the order of the Commission, the time from the taking of the appeal until its final adjudication shall be excluded in computing the one year allowed for filing the complaint to enforce such order.

The remedy provided in this section shall be cumulative, and in addition to any other remedy or remedies in this Act provided in case of failure of a public utility to obey a rule, regulation, order or decision of the Commission.

(Source: P.A. 88-323.)

(220 ILCS 5/9-252.1)

Sec. 9-252.1. When a customer pays a bill as submitted by a public utility and the billing is later found to be incorrect due to an error either in charging more than the published rate or in measuring the quantity or volume of service provided, the utility shall refund the overcharge with interest from the date of overpayment at the legal rate or at a rate prescribed by rule of the Commission. Refunds and interest for such overcharges may be paid by the utility without the need for a hearing and order of the Commission. Any complaint relating to an incorrect billing must be filed with the Commission no more than 2 years after the date the customer first has knowledge of the incorrect billing.

(Source: P.A. 88-323.)

(220 ILCS 5/9-253)

Sec. 9-253. Refunds.

(a) If the Commission or a court determines that a public utility has overcharged its customers and orders that a refund be made to customers of the utility, a portion of the refund shall be set aside during the refund period or for 120 days after the refund is ordered, whichever is longer, and shall be used to pay refunds to customers who were overcharged and are no longer customers of the utility. The Commission shall determine the amount to be set aside for refunds to former customers. The Commission shall periodically review the appropriateness of the amount of funds set aside for purposes of compensating former customers and make adjustments as needed.

(b) The utility ordered to make the refund shall notify the public in the form designated by the Commission. In determining the form of the notice, the Commission shall take into account the effectiveness of the format in reaching former customers as well as the administrative costs of notifying past customers.

(c) A portion of the funds set aside for refunds to former customers may be used to cover administrative costs of the refund. The Commission shall determine the reasonableness of such administrative costs and shall establish a formula for

determining how much of the funds may be used for administrative costs.

(d) Only a former customer who was a customer of the utility during the period of the overcharges and who files a claim with the utility during the refund period or within 120 days after the refund is ordered, whichever is longer, and proves that he was a customer of the utility during the period of overcharges shall be entitled to a refund under this Section. A claim for a refund shall be in writing on a form provided by the utility. For purposes of this Section, "prove" means providing a copy of a past bill for utility services which shows that the claimant was a customer of record of the utility during the period of overcharges. The claimant shall not be obligated to provide a past bill if there is less than 24 months between the date of the refund and the period of the service to which the refund applies.

(e) If a former customer claims a refund and owes a past due amount to the utility, the refund amount shall be reduced by the amount the customer owes the utility and that past due amount shall be returned to the utility.

(f) Interest shall accrue on the funds set aside until all moneys have been paid out to customers.

(g) At the end of the refund period or 120 days after the refund is ordered, whichever is longer, any balance remaining after all legitimate claims for refunds have been paid shall be refunded to current customers of the utility as a credit on their bills.

(h) The Commission shall determine the formula on how amounts for refunds to former customers shall be calculated.

(i) This Section does not apply to refunds which were ordered prior to the effective date of this amendatory Act of 1994.

(j) This Section does not apply to refunds ordered in reconciliation proceedings pursuant to Section 9-220 of the Public Utilities Act.

(Source: P.A. 88-639, eff. 9-9-94.)

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