

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Utilities and Regulatory Affairs, to which was referred House Bill No. 1722, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 3, line 37, after "means" insert "**pipeline quality**".
- 2 Page 3, line 38, delete "manufacturing" and insert "**gasification**".
- 3 Page 3, line 38, after "coal" insert "**from the geological formation**
- 4 **known as the Illinois Basin**".
- 5 Page 4, line 4, delete "an" and insert "**a**".
- 6 Page 4, line 10, delete "Notwithstanding" and insert "**Subject to**
- 7 **IC 8-1-8.9 and notwithstanding**".
- 8 Page 4, line 11, after "gas" insert ", **or electricity generated in**
- 9 **connection with the production of substitute natural gas,**".
- 10 Page 4, line 17, delete "transportation" and insert "**generation,**
- 11 **transmission, transportation,**".
- 12 Page 7, line 1, delete "eliminates" and insert "**avoids**".
- 13 Page 9, between lines 25 and 26, begin a new paragraph and insert:
- 14 "SECTION 14. IC 8-1-8.9 IS ADDED TO THE INDIANA CODE
- 15 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 16 UPON PASSAGE]:
- 17 **Chapter 8.9. Financing of Substitute Natural Gas Costs**
- 18 **Sec. 1. (a) As used in this chapter, "assignee" means any**
- 19 **individual, corporation, or other legal entity to which an SNG**
- 20 **property interest is transferred.**
- 21 **(b) The term includes an assignee of a person described in**

1 subsection (a).

2 Sec. 2. As used in this chapter, "commission" refers to the
3 Indiana utility regulatory commission created by IC 8-1-1-2.

4 Sec. 3. As used in this chapter, "energy utility" has the meaning
5 set forth in IC 8-1-2.5-2.

6 Sec. 4. As used in this chapter, "financing entity" means a
7 person that provides:

8 (1) equity financing; or

9 (2) debt financing;

10 that is secured by an SNG property interest.

11 Sec. 5. As used in this chapter, "qualified contract" means a
12 contract with a term of at least thirty (30) years for the sale of
13 substitute natural gas to an energy utility.

14 Sec. 6. As used in this chapter, "qualified cost" means any cost
15 incurred by an energy utility in purchasing substitute natural gas
16 under a qualified contract.

17 Sec. 7. As used in this chapter, "qualified order" means a final
18 and irrevocable order that:

19 (1) is issued by the commission; and

20 (2) approves a qualified contract adopted in accordance with
21 this chapter and IC 8-1-2-42.1.

22 Sec. 8. As used in this chapter, "substitute natural gas" or
23 "SNG" has the meaning set forth in IC 8-1-2-42.1(a).

24 Sec. 9. As used in this chapter, "SNG property interest" means
25 the right, title, and interest that:

26 (1) is held by an energy utility or its assignee;

27 (2) is created by a qualified order; and

28 (3) entitles the energy utility or its assignee to recover
29 qualified costs under IC 8-1-2-42.1.

30 Sec. 10. As used in this chapter, "SNG seller" means any
31 individual, corporation, or other legal entity that engages in the
32 production and sale of substitute natural gas.

33 Sec. 11. (a) Notwithstanding any other law, the commission may,
34 in accordance with this chapter and IC 8-1-2-42.1, issue a qualified
35 order that:

36 (1) approves the terms of a qualified contract; and

37 (2) authorizes the recovery of qualified costs by an energy
38 utility from its customers.

39 (b) A qualified order issued under this section may not be:

40 (1) rescinded;

41 (2) nullified; or

42 (3) modified;

1 in such a manner that reduces or otherwise impairs the value of an
2 SNG property interest.

3 Sec. 12. (a) An SNG property interest, including any right to
4 future purchases of substitute natural gas during the term of a
5 qualified contract, constitutes a present property right.

6 (b) Qualified costs recovered by an energy utility under a
7 qualified order constitute proceeds of only the SNG property
8 interest that is created by the qualified order.

9 (c) If the commission issues a qualified order under section 11
10 of this chapter, the state covenants and agrees, for the benefit of
11 the energy utility and any assignee or financing entity involved,
12 that the state will not take or permit any action that would:

13 (1) reduce or otherwise impair the value of the SNG property
14 interest created by the qualified order; or

15 (2) limit, alter, or impair:

16 (A) the qualified order;

17 (B) the SNG property interest created by the qualified
18 order; or

19 (C) qualified costs that are:

20 (i) imposed on and collected by the energy utility; and

21 (ii) remitted to the SNG seller;

22 under the terms of the qualified contract;

23 until the qualified contract has been performed in full.

24 Sec. 13. (a) An energy utility may assign an SNG property
25 interest to an assignee, including:

26 (1) another party to the qualified contract; or

27 (2) a financing entity.

28 An assignee may in turn assign an SNG property interest to a
29 financing entity that provides financing to the assignee.

30 (b) An assignment to a financing entity under this section may
31 be:

32 (1) an absolute assignment of the SNG property interest; or

33 (2) an assignment of the SNG property interest as collateral
34 for an obligation owed to the financing entity.

35 (c) An assignee under this section may enforce the SNG
36 property interest by all applicable legal and equitable means.

37 (d) Any amounts collected by an energy utility in connection
38 with the sale, transfer, or disposition of substitute natural gas
39 under a qualified contract that forms the basis of an SNG property
40 interest assigned under this section constitutes the property of the
41 assignee. Pending the transfer of the SNG property interest to the
42 assignee, the amounts described in this subsection shall be:

1 **(1) segregated by the energy utility; and**
 2 **(2) held in trust for the benefit of the assignee;**
 3 **subject to the terms of the qualified contract that forms the basis**
 4 **of the SNG property interest that is being assigned.**

5 **Sec. 14. The interest of an assignee in:**

- 6 **(1) an SNG property interest transferred to the assignee**
 7 **under section 13 of this chapter; and**
 8 **(2) any revenues or collections arising from the SNG property**
 9 **interest transferred;**

10 **are not subject to setoff by the energy utility that transferred the**
 11 **SNG property interest, or by any other person, in connection with**
 12 **any bankruptcy proceeding involving the energy utility.**

13 **Sec. 15. (a) If an agreement by an energy utility or an assignee**
 14 **to assign an SNG property interest expressly states that the**
 15 **assignment is a sale or is otherwise an absolute transfer:**

16 **(1) the resulting transaction:**

- 17 **(A) is a true sale; and**
 18 **(B) is not a secured transaction; and**

19 **(2) title, both legal and equitable, passes to the person to**
 20 **which the SNG property interest is assigned.**

21 **(b) A transaction resulting from an agreement described in**
 22 **subsection (a) is a true sale regardless of whether:**

23 **(1) the assignee has recourse against the assignor; or**

24 **(2) the agreement provides for any of the following:**

25 **(A) The assignor's retention of an equity interest in the**
 26 **SNG property interest transferred.**

27 **(B) Continuing obligations of the energy utility under the**
 28 **qualified contract, including the obligation of the energy**
 29 **utility to serve as the collector of qualified costs.**

30 **(C) The treatment of the transfer as a financing for tax,**
 31 **financial reporting, or other purposes.**

32 **Sec. 16. (a) An SNG property interest does not constitute an**
 33 **account or a general intangible under IC 26-1-9.1-102. The**
 34 **creation, granting, perfection, and enforcement of liens and**
 35 **security interests in SNG property interests are governed by this**
 36 **chapter and not by IC 26-1-9.1.**

37 **(b) A valid and enforceable lien and security interest in an SNG**
 38 **property interest may be created only by the execution and**
 39 **delivery of a security agreement with a financing entity in**
 40 **connection with the issuance of indebtedness. The security interest**
 41 **attaches automatically from the time that value is received for the**
 42 **indebtedness secured by the SNG property interest and, upon**

1 **perfection through the filing of notice with the secretary of state:**

2 **(1) constitutes a continuously perfected lien and security**
 3 **interest in the SNG property interest and all proceeds of the**
 4 **SNG property interest, whether or not accrued;**

5 **(2) has priority in the order of its filing; and**

6 **(3) takes precedence over any subsequent judicial lien or**
 7 **other creditor's lien.**

8 **If notice is filed with the secretary of state not later than ten (10)**
 9 **days after value is received for the indebtedness, the security**
 10 **interest is perfected retroactive to the date the value was received.**

11 **If notice is not filed with the secretary of state within ten (10) days**
 12 **after value is received for the indebtedness, the security interest is**
 13 **perfected as of the date of filing.**

14 **(c) Transfer of an SNG property interest to an assignee is**
 15 **perfected against all third parties, including subsequent judicial or**
 16 **other lien creditors, upon:**

17 **(1) the delivery of transfer documents to the assignee; and**

18 **(2) the filing of notice with the secretary of state in accordance**
 19 **with subsection (b).**

20 **However, if notice of the transfer is not filed with the secretary of**
 21 **state within ten (10) days after the delivery of the transfer**
 22 **documentation, the transfer of the SNG property interest is not**
 23 **perfected against third parties until the notice is filed.**

24 **(d) The priority of a lien and security interest under this section**
 25 **is not impaired by either of the following:**

26 **(1) A later modification of the qualified order creating the**
 27 **SNG property interest being transferred.**

28 **(2) The commingling of other funds with funds collected in**
 29 **connection with a qualified contract. Any other security**
 30 **interest that may apply to funds collected in connection with**
 31 **a qualified contract terminates when the funds are**
 32 **transferred to a segregated account for the benefit of the**
 33 **assignee or a financing entity. If an SNG property interest has**
 34 **been transferred to an assignee, any proceeds from the SNG**
 35 **property interest shall be held in trust for the assignee.**

36 **(e) If a default or termination occurs in connection with a**
 37 **financing secured by an SNG property interest, the financing entity**
 38 **or its representative may foreclose on or otherwise enforce its lien**
 39 **and security interest in the SNG property interest as if the**
 40 **financing entity were a secured party under IC 26-1-9.1. Amounts**
 41 **arising from the qualified contract that is the basis of the SNG**
 42 **property interest shall be transferred to a separate account for the**

1 financing entity's benefit and are subject to the financing entity's
2 security interest and lien.

3 Sec. 17. An assignee or a financing party is not considered an
4 energy utility solely by virtue of its participation in any transaction
5 described in this chapter.

6 Sec. 18. Any entity that becomes a successor to an energy utility,
7 as the result of:

8 (1) any bankruptcy, reorganization, or other insolvency
9 proceeding;

10 (2) any merger, sale, or transfer involving the energy utility;
11 or

12 (3) the operation of law;

13 or for any other reason, shall perform and satisfy any obligations
14 of the energy utility incurred under this chapter in the same
15 manner and to the same extent as the energy utility would have
16 been obligated to perform, including the obligation to pay to an
17 assignee any funds collected by the energy utility in connection
18 with the SNG property interest assigned to the assignee.

19 Sec. 19. An SNG seller that is an assignee may contract with the
20 energy utility, in the qualified contract or in another contract, for
21 the performance of services related to the sale of substitute natural
22 gas under the qualified contract, including:

23 (1) the transportation and distribution of substitute natural
24 gas; and

25 (2) billing, collection, and other related services;

26 according to terms and conditions that reasonably compensate the
27 energy utility for its services and adequately secure payment to the
28 SNG seller.

29 Sec. 20. If an energy utility makes a true sale of an SNG
30 property interest to an SNG seller under section 15 of this chapter,
31 the SNG seller:

32 (1) retains title to all substitute natural gas distributed by the
33 energy utility to the energy utility's retail end use customers;

34 (2) is entitled to all amounts collected by the energy utility
35 from its retail end use customers for the distribution of the
36 substitute natural gas, subject to the terms of the qualified
37 contract; and

38 (3) has the same rights to payments made by the energy

- 1 **utility's retail end use customers as does the energy utility that**
- 2 **provides the substitute natural gas to those customers."**
- 3 Renumber all SECTIONS consecutively.
(Reference is to HB 1722 as printed January 26, 2007.)

and when so amended that said bill do pass .

Committee Vote: Yeas 10, Nays 0.

Senator Hershman, Chairperson