

# HB2861



## 101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB2861

by Rep. Lawrence Walsh, Jr.

### SYNOPSIS AS INTRODUCED:

220 ILCS 5/16-111.5

Amends the Public Utilities Act. Makes a grammatical correction in provisions relating to the procurement of power and energy, zero emission credits, and renewable energy resources by electric utilities. Effective immediately.

LRB101 07685 JRG 52733 b

A BILL FOR

1 AN ACT concerning regulation.

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

4 Section 5. The Public Utilities Act is amended by changing  
5 Section 16-111.5 as follows:

6 (220 ILCS 5/16-111.5)

7 Sec. 16-111.5. Provisions relating to procurement.

8 (a) An electric utility that on December 31, 2005 served at  
9 least 100,000 customers in Illinois shall procure power and  
10 energy for its eligible retail customers in accordance with the  
11 applicable provisions set forth in Section 1-75 of the Illinois  
12 Power Agency Act and this Section. Beginning with the delivery  
13 year commencing on June 1, 2017, such electric utility shall  
14 also procure zero emission credits from zero emission  
15 facilities in accordance with the applicable provisions set  
16 forth in Section 1-75 of the Illinois Power Agency Act, and,  
17 for years beginning on or after June 1, 2017, the utility shall  
18 procure renewable energy resources in accordance with the  
19 applicable provisions set forth in Section 1-75 of the Illinois  
20 Power Agency Act and this Section.

21 A small multi-jurisdictional electric utility that on  
22 December 31, 2005 served less than 100,000 customers in  
23 Illinois may elect to procure power and energy for all or a

1 portion of its eligible Illinois retail customers in accordance  
2 with the applicable provisions set forth in this Section and  
3 Section 1-75 of the Illinois Power Agency Act. This Section  
4 shall not apply to a small multi-jurisdictional utility until  
5 such time as a small multi-jurisdictional utility requests the  
6 Illinois Power Agency to prepare a procurement plan for its  
7 eligible retail customers. "Eligible retail customers" for the  
8 purposes of this Section means those retail customers that  
9 purchase power and energy from the electric utility under  
10 fixed-price bundled service tariffs, other than those retail  
11 customers whose service is declared or deemed competitive under  
12 Section 16-113 and those other customer groups specified in  
13 this Section, including self-generating customers, customers  
14 electing hourly pricing, or those customers who are otherwise  
15 ineligible for fixed-price bundled tariff service. For those  
16 customers that are excluded from the procurement plan's  
17 electric supply service requirements, ~~and~~ the utility shall  
18 procure any supply requirements, including capacity, ancillary  
19 services, and hourly priced energy, in the applicable markets  
20 as needed to serve those customers, provided that the utility  
21 may include in its procurement plan load requirements for the  
22 load that is associated with those retail customers whose  
23 service has been declared or deemed competitive pursuant to  
24 Section 16-113 of this Act to the extent that those customers  
25 are purchasing power and energy during one of the transition  
26 periods identified in subsection (b) of Section 16-113 of this

1 Act.

2 (b) A procurement plan shall be prepared for each electric  
3 utility consistent with the applicable requirements of the  
4 Illinois Power Agency Act and this Section. For purposes of  
5 this Section, Illinois electric utilities that are affiliated  
6 by virtue of a common parent company are considered to be a  
7 single electric utility. Small multi-jurisdictional utilities  
8 may request a procurement plan for a portion of or all of its  
9 Illinois load. Each procurement plan shall analyze the  
10 projected balance of supply and demand for those retail  
11 customers to be included in the plan's electric supply service  
12 requirements over a 5-year period, with the first planning year  
13 beginning on June 1 of the year following the year in which the  
14 plan is filed. The plan shall specifically identify the  
15 wholesale products to be procured following plan approval, and  
16 shall follow all the requirements set forth in the Public  
17 Utilities Act and all applicable State and federal laws,  
18 statutes, rules, or regulations, as well as Commission orders.  
19 Nothing in this Section precludes consideration of contracts  
20 longer than 5 years and related forecast data. Unless specified  
21 otherwise in this Section, in the procurement plan or in the  
22 implementing tariff, any procurement occurring in accordance  
23 with this plan shall be competitively bid through a request for  
24 proposals process. Approval and implementation of the  
25 procurement plan shall be subject to review and approval by the  
26 Commission according to the provisions set forth in this

1 Section. A procurement plan shall include each of the following  
2 components:

3 (1) Hourly load analysis. This analysis shall include:

4 (i) multi-year historical analysis of hourly  
5 loads;

6 (ii) switching trends and competitive retail  
7 market analysis;

8 (iii) known or projected changes to future loads;  
9 and

10 (iv) growth forecasts by customer class.

11 (2) Analysis of the impact of any demand side and  
12 renewable energy initiatives. This analysis shall include:

13 (i) the impact of demand response programs and  
14 energy efficiency programs, both current and  
15 projected; for small multi-jurisdictional utilities,  
16 the impact of demand response and energy efficiency  
17 programs approved pursuant to Section 8-408 of this  
18 Act, both current and projected; and

19 (ii) supply side needs that are projected to be  
20 offset by purchases of renewable energy resources, if  
21 any.

22 (3) A plan for meeting the expected load requirements  
23 that will not be met through preexisting contracts. This  
24 plan shall include:

25 (i) definitions of the different Illinois retail  
26 customer classes for which supply is being purchased;

1           (ii) the proposed mix of demand-response products  
2           for which contracts will be executed during the next  
3           year. For small multi-jurisdictional electric  
4           utilities that on December 31, 2005 served fewer than  
5           100,000 customers in Illinois, these shall be defined  
6           as demand-response products offered in an energy  
7           efficiency plan approved pursuant to Section 8-408 of  
8           this Act. The cost-effective demand-response measures  
9           shall be procured whenever the cost is lower than  
10          procuring comparable capacity products, provided that  
11          such products shall:

12                   (A) be procured by a demand-response provider  
13                   from those retail customers included in the plan's  
14                   electric supply service requirements;

15                   (B) at least satisfy the demand-response  
16                   requirements of the regional transmission  
17                   organization market in which the utility's service  
18                   territory is located, including, but not limited  
19                   to, any applicable capacity or dispatch  
20                   requirements;

21                   (C) provide for customers' participation in  
22                   the stream of benefits produced by the  
23                   demand-response products;

24                   (D) provide for reimbursement by the  
25                   demand-response provider of the utility for any  
26                   costs incurred as a result of the failure of the

1 supplier of such products to perform its  
2 obligations thereunder; and

3 (E) meet the same credit requirements as apply  
4 to suppliers of capacity, in the applicable  
5 regional transmission organization market;

6 (iii) monthly forecasted system supply  
7 requirements, including expected minimum, maximum, and  
8 average values for the planning period;

9 (iv) the proposed mix and selection of standard  
10 wholesale products for which contracts will be  
11 executed during the next year, separately or in  
12 combination, to meet that portion of its load  
13 requirements not met through pre-existing contracts,  
14 including but not limited to monthly 5 x 16 peak period  
15 block energy, monthly off-peak wrap energy, monthly 7 x  
16 24 energy, annual 5 x 16 energy, annual off-peak wrap  
17 energy, annual 7 x 24 energy, monthly capacity, annual  
18 capacity, peak load capacity obligations, capacity  
19 purchase plan, and ancillary services;

20 (v) proposed term structures for each wholesale  
21 product type included in the proposed procurement plan  
22 portfolio of products; and

23 (vi) an assessment of the price risk, load  
24 uncertainty, and other factors that are associated  
25 with the proposed procurement plan; this assessment,  
26 to the extent possible, shall include an analysis of

1 the following factors: contract terms, time frames for  
2 securing products or services, fuel costs, weather  
3 patterns, transmission costs, market conditions, and  
4 the governmental regulatory environment; the proposed  
5 procurement plan shall also identify alternatives for  
6 those portfolio measures that are identified as having  
7 significant price risk.

8 (4) Proposed procedures for balancing loads. The  
9 procurement plan shall include, for load requirements  
10 included in the procurement plan, the process for (i)  
11 hourly balancing of supply and demand and (ii) the criteria  
12 for portfolio re-balancing in the event of significant  
13 shifts in load.

14 (5) Long-Term Renewable Resources Procurement Plan.  
15 The Agency shall prepare a long-term renewable resources  
16 procurement plan for the procurement of renewable energy  
17 credits under Sections 1-56 and 1-75 of the Illinois Power  
18 Agency Act for delivery beginning in the 2017 delivery  
19 year.

20 (i) The initial long-term renewable resources  
21 procurement plan and all subsequent revisions shall be  
22 subject to review and approval by the Commission. For  
23 the purposes of this Section, "delivery year" has the  
24 same meaning as in Section 1-10 of the Illinois Power  
25 Agency Act. For purposes of this Section, "Agency"  
26 shall mean the Illinois Power Agency.



1           (ii) The long-term renewable resources planning  
2 process shall be conducted as follows:

3           (A) Electric utilities shall provide a range  
4 of load forecasts to the Illinois Power Agency  
5 within 45 days of the Agency's request for  
6 forecasts, which request shall specify the length  
7 and conditions for the forecasts including, but  
8 not limited to, the quantity of distributed  
9 generation expected to be interconnected for each  
10 year.

11           (B) The Agency shall publish for comment the  
12 initial long-term renewable resources procurement  
13 plan no later than 120 days after the effective  
14 date of this amendatory Act of the 99th General  
15 Assembly and shall review, and may revise, the plan  
16 at least every 2 years thereafter. To the extent  
17 practicable, the Agency shall review and propose  
18 any revisions to the long-term renewable energy  
19 resources procurement plan in conjunction with the  
20 Agency's other planning and approval processes  
21 conducted under this Section. The initial  
22 long-term renewable resources procurement plan  
23 shall:

24           (aa) Identify the procurement programs and  
25 competitive procurement events consistent with  
26 the applicable requirements of the Illinois

1 Power Agency Act and shall be designed to  
2 achieve the goals set forth in subsection (c)  
3 of Section 1-75 of that Act.

4 (bb) Include a schedule for procurements  
5 for renewable energy credits from  
6 utility-scale wind projects, utility-scale  
7 solar projects, and brownfield site  
8 photovoltaic projects consistent with  
9 subparagraph (G) of paragraph (1) of  
10 subsection (c) of Section 1-75 of the Illinois  
11 Power Agency Act.

12 (cc) Identify the process whereby the  
13 Agency will submit to the Commission for review  
14 and approval the proposed contracts to  
15 implement the programs required by such plan.

16 Copies of the initial long-term renewable  
17 resources procurement plan and all subsequent  
18 revisions shall be posted and made publicly  
19 available on the Agency's and Commission's  
20 websites, and copies shall also be provided to each  
21 affected electric utility. An affected utility and  
22 other interested parties shall have 45 days  
23 following the date of posting to provide comment to  
24 the Agency on the initial long-term renewable  
25 resources procurement plan and all subsequent  
26 revisions. All comments submitted to the Agency

1 shall be specific, supported by data or other  
2 detailed analyses, and, if objecting to all or a  
3 portion of the procurement plan, accompanied by  
4 specific alternative wording or proposals. All  
5 comments shall be posted on the Agency's and  
6 Commission's websites. During this 45-day comment  
7 period, the Agency shall hold at least one public  
8 hearing within each utility's service area that is  
9 subject to the requirements of this paragraph (5)  
10 for the purpose of receiving public comment.  
11 Within 21 days following the end of the 45-day  
12 review period, the Agency may revise the long-term  
13 renewable resources procurement plan based on the  
14 comments received and shall file the plan with the  
15 Commission for review and approval.

16 (C) Within 14 days after the filing of the  
17 initial long-term renewable resources procurement  
18 plan or any subsequent revisions, any person  
19 objecting to the plan may file an objection with  
20 the Commission. Within 21 days after the filing of  
21 the plan, the Commission shall determine whether a  
22 hearing is necessary. The Commission shall enter  
23 its order confirming or modifying the initial  
24 long-term renewable resources procurement plan or  
25 any subsequent revisions within 120 days after the  
26 filing of the plan by the Illinois Power Agency.

1 (D) The Commission shall approve the initial  
2 long-term renewable resources procurement plan and  
3 any subsequent revisions, including expressly the  
4 forecast used in the plan and taking into account  
5 that funding will be limited to the amount of  
6 revenues actually collected by the utilities, if  
7 the Commission determines that the plan will  
8 reasonably and prudently accomplish the  
9 requirements of Section 1-56 and subsection (c) of  
10 Section 1-75 of the Illinois Power Agency Act. The  
11 Commission shall also approve the process for the  
12 submission, review, and approval of the proposed  
13 contracts to procure renewable energy credits or  
14 implement the programs authorized by the  
15 Commission pursuant to a long-term renewable  
16 resources procurement plan approved under this  
17 Section.

18 (iii) The Agency or third parties contracted by the  
19 Agency shall implement all programs authorized by the  
20 Commission in an approved long-term renewable  
21 resources procurement plan without further review and  
22 approval by the Commission. Third parties shall not  
23 begin implementing any programs or receive any payment  
24 under this Section until the Commission has approved  
25 the contract or contracts under the process authorized  
26 by the Commission in item (D) of subparagraph (ii) of

1 paragraph (5) of this subsection (b) and the third  
2 party and the Agency or utility, as applicable, have  
3 executed the contract. For those renewable energy  
4 credits subject to procurement through a competitive  
5 bid process under the plan or under the initial forward  
6 procurements for wind and solar resources described in  
7 subparagraph (G) of paragraph (1) of subsection (c) of  
8 Section 1-75 of the Illinois Power Agency Act, the  
9 Agency shall follow the procurement process specified  
10 in the provisions relating to electricity procurement  
11 in subsections (e) through (i) of this Section.

12 (iv) An electric utility shall recover its costs  
13 associated with the procurement of renewable energy  
14 credits under this Section through an automatic  
15 adjustment clause tariff under subsection (k) of  
16 Section 16-108 of this Act. A utility shall not be  
17 required to advance any payment or pay any amounts  
18 under this Section that exceed the actual amount of  
19 revenues collected by the utility under paragraph (6)  
20 of subsection (c) of Section 1-75 of the Illinois Power  
21 Agency Act and subsection (k) of Section 16-108 of this  
22 Act, and contracts executed under this Section shall  
23 expressly incorporate this limitation.

24 (v) For the public interest, safety, and welfare,  
25 the Agency and the Commission may adopt rules to carry  
26 out the provisions of this Section on an emergency

1 basis immediately following the effective date of this  
2 amendatory Act of the 99th General Assembly.

3 (vi) On or before July 1 of each year, the  
4 Commission shall hold an informal hearing for the  
5 purpose of receiving comments on the prior year's  
6 procurement process and any recommendations for  
7 change.

8 (c) The procurement process set forth in Section 1-75 of  
9 the Illinois Power Agency Act and subsection (e) of this  
10 Section shall be administered by a procurement administrator  
11 and monitored by a procurement monitor.

12 (1) The procurement administrator shall:

13 (i) design the final procurement process in  
14 accordance with Section 1-75 of the Illinois Power  
15 Agency Act and subsection (e) of this Section following  
16 Commission approval of the procurement plan;

17 (ii) develop benchmarks in accordance with  
18 subsection (e)(3) to be used to evaluate bids; these  
19 benchmarks shall be submitted to the Commission for  
20 review and approval on a confidential basis prior to  
21 the procurement event;

22 (iii) serve as the interface between the electric  
23 utility and suppliers;

24 (iv) manage the bidder pre-qualification and  
25 registration process;

26 (v) obtain the electric utilities' agreement to

1 the final form of all supply contracts and credit  
2 collateral agreements;

3 (vi) administer the request for proposals process;

4 (vii) have the discretion to negotiate to  
5 determine whether bidders are willing to lower the  
6 price of bids that meet the benchmarks approved by the  
7 Commission; any post-bid negotiations with bidders  
8 shall be limited to price only and shall be completed  
9 within 24 hours after opening the sealed bids and shall  
10 be conducted in a fair and unbiased manner; in  
11 conducting the negotiations, there shall be no  
12 disclosure of any information derived from proposals  
13 submitted by competing bidders; if information is  
14 disclosed to any bidder, it shall be provided to all  
15 competing bidders;

16 (viii) maintain confidentiality of supplier and  
17 bidding information in a manner consistent with all  
18 applicable laws, rules, regulations, and tariffs;

19 (ix) submit a confidential report to the  
20 Commission recommending acceptance or rejection of  
21 bids;

22 (x) notify the utility of contract counterparties  
23 and contract specifics; and

24 (xi) administer related contingency procurement  
25 events.

26 (2) The procurement monitor, who shall be retained by

1 the Commission, shall:

2 (i) monitor interactions among the procurement  
3 administrator, suppliers, and utility;

4 (ii) monitor and report to the Commission on the  
5 progress of the procurement process;

6 (iii) provide an independent confidential report  
7 to the Commission regarding the results of the  
8 procurement event;

9 (iv) assess compliance with the procurement plans  
10 approved by the Commission for each utility that on  
11 December 31, 2005 provided electric service to at least  
12 100,000 customers in Illinois and for each small  
13 multi-jurisdictional utility that on December 31, 2005  
14 served less than 100,000 customers in Illinois;

15 (v) preserve the confidentiality of supplier and  
16 bidding information in a manner consistent with all  
17 applicable laws, rules, regulations, and tariffs;

18 (vi) provide expert advice to the Commission and  
19 consult with the procurement administrator regarding  
20 issues related to procurement process design, rules,  
21 protocols, and policy-related matters; and

22 (vii) consult with the procurement administrator  
23 regarding the development and use of benchmark  
24 criteria, standard form contracts, credit policies,  
25 and bid documents.

26 (d) Except as provided in subsection (j), the planning



1 process shall be conducted as follows:

2 (1) Beginning in 2008, each Illinois utility procuring  
3 power pursuant to this Section shall annually provide a  
4 range of load forecasts to the Illinois Power Agency by  
5 July 15 of each year, or such other date as may be required  
6 by the Commission or Agency. The load forecasts shall cover  
7 the 5-year procurement planning period for the next  
8 procurement plan and shall include hourly data  
9 representing a high-load, low-load, and expected-load  
10 scenario for the load of those retail customers included in  
11 the plan's electric supply service requirements. The  
12 utility shall provide supporting data and assumptions for  
13 each of the scenarios.

14 (2) Beginning in 2008, the Illinois Power Agency shall  
15 prepare a procurement plan by August 15th of each year, or  
16 such other date as may be required by the Commission. The  
17 procurement plan shall identify the portfolio of  
18 demand-response and power and energy products to be  
19 procured. Cost-effective demand-response measures shall be  
20 procured as set forth in item (iii) of subsection (b) of  
21 this Section. Copies of the procurement plan shall be  
22 posted and made publicly available on the Agency's and  
23 Commission's websites, and copies shall also be provided to  
24 each affected electric utility. An affected utility shall  
25 have 30 days following the date of posting to provide  
26 comment to the Agency on the procurement plan. Other

1 interested entities also may comment on the procurement  
2 plan. All comments submitted to the Agency shall be  
3 specific, supported by data or other detailed analyses,  
4 and, if objecting to all or a portion of the procurement  
5 plan, accompanied by specific alternative wording or  
6 proposals. All comments shall be posted on the Agency's and  
7 Commission's websites. During this 30-day comment period,  
8 the Agency shall hold at least one public hearing within  
9 each utility's service area for the purpose of receiving  
10 public comment on the procurement plan. Within 14 days  
11 following the end of the 30-day review period, the Agency  
12 shall revise the procurement plan as necessary based on the  
13 comments received and file the procurement plan with the  
14 Commission and post the procurement plan on the websites.

15 (3) Within 5 days after the filing of the procurement  
16 plan, any person objecting to the procurement plan shall  
17 file an objection with the Commission. Within 10 days after  
18 the filing, the Commission shall determine whether a  
19 hearing is necessary. The Commission shall enter its order  
20 confirming or modifying the procurement plan within 90 days  
21 after the filing of the procurement plan by the Illinois  
22 Power Agency.

23 (4) The Commission shall approve the procurement plan,  
24 including expressly the forecast used in the procurement  
25 plan, if the Commission determines that it will ensure  
26 adequate, reliable, affordable, efficient, and

1 environmentally sustainable electric service at the lowest  
2 total cost over time, taking into account any benefits of  
3 price stability.

4 (e) The procurement process shall include each of the  
5 following components:

6 (1) Solicitation, pre-qualification, and registration  
7 of bidders. The procurement administrator shall  
8 disseminate information to potential bidders to promote a  
9 procurement event, notify potential bidders that the  
10 procurement administrator may enter into a post-bid price  
11 negotiation with bidders that meet the applicable  
12 benchmarks, provide supply requirements, and otherwise  
13 explain the competitive procurement process. In addition  
14 to such other publication as the procurement administrator  
15 determines is appropriate, this information shall be  
16 posted on the Illinois Power Agency's and the Commission's  
17 websites. The procurement administrator shall also  
18 administer the prequalification process, including  
19 evaluation of credit worthiness, compliance with  
20 procurement rules, and agreement to the standard form  
21 contract developed pursuant to paragraph (2) of this  
22 subsection (e). The procurement administrator shall then  
23 identify and register bidders to participate in the  
24 procurement event.

25 (2) Standard contract forms and credit terms and  
26 instruments. The procurement administrator, in

1 consultation with the utilities, the Commission, and other  
2 interested parties and subject to Commission oversight,  
3 shall develop and provide standard contract forms for the  
4 supplier contracts that meet generally accepted industry  
5 practices. Standard credit terms and instruments that meet  
6 generally accepted industry practices shall be similarly  
7 developed. The procurement administrator shall make  
8 available to the Commission all written comments it  
9 receives on the contract forms, credit terms, or  
10 instruments. If the procurement administrator cannot reach  
11 agreement with the applicable electric utility as to the  
12 contract terms and conditions, the procurement  
13 administrator must notify the Commission of any disputed  
14 terms and the Commission shall resolve the dispute. The  
15 terms of the contracts shall not be subject to negotiation  
16 by winning bidders, and the bidders must agree to the terms  
17 of the contract in advance so that winning bids are  
18 selected solely on the basis of price.

19 (3) Establishment of a market-based price benchmark.  
20 As part of the development of the procurement process, the  
21 procurement administrator, in consultation with the  
22 Commission staff, Agency staff, and the procurement  
23 monitor, shall establish benchmarks for evaluating the  
24 final prices in the contracts for each of the products that  
25 will be procured through the procurement process. The  
26 benchmarks shall be based on price data for similar

1 products for the same delivery period and same delivery  
2 hub, or other delivery hubs after adjusting for that  
3 difference. The price benchmarks may also be adjusted to  
4 take into account differences between the information  
5 reflected in the underlying data sources and the specific  
6 products and procurement process being used to procure  
7 power for the Illinois utilities. The benchmarks shall be  
8 confidential but shall be provided to, and will be subject  
9 to Commission review and approval, prior to a procurement  
10 event.

11 (4) Request for proposals competitive procurement  
12 process. The procurement administrator shall design and  
13 issue a request for proposals to supply electricity in  
14 accordance with each utility's procurement plan, as  
15 approved by the Commission. The request for proposals shall  
16 set forth a procedure for sealed, binding commitment  
17 bidding with pay-as-bid settlement, and provision for  
18 selection of bids on the basis of price.

19 (5) A plan for implementing contingencies in the event  
20 of supplier default or failure of the procurement process  
21 to fully meet the expected load requirement due to  
22 insufficient supplier participation, Commission rejection  
23 of results, or any other cause.

24 (i) Event of supplier default: In the event of  
25 supplier default, the utility shall review the  
26 contract of the defaulting supplier to determine if the

1 amount of supply is 200 megawatts or greater, and if  
2 there are more than 60 days remaining of the contract  
3 term. If both of these conditions are met, and the  
4 default results in termination of the contract, the  
5 utility shall immediately notify the Illinois Power  
6 Agency that a request for proposals must be issued to  
7 procure replacement power, and the procurement  
8 administrator shall run an additional procurement  
9 event. If the contracted supply of the defaulting  
10 supplier is less than 200 megawatts or there are less  
11 than 60 days remaining of the contract term, the  
12 utility shall procure power and energy from the  
13 applicable regional transmission organization market,  
14 including ancillary services, capacity, and day-ahead  
15 or real time energy, or both, for the duration of the  
16 contract term to replace the contracted supply;  
17 provided, however, that if a needed product is not  
18 available through the regional transmission  
19 organization market it shall be purchased from the  
20 wholesale market.

21 (ii) Failure of the procurement process to fully  
22 meet the expected load requirement: If the procurement  
23 process fails to fully meet the expected load  
24 requirement due to insufficient supplier participation  
25 or due to a Commission rejection of the procurement  
26 results, the procurement administrator, the

1 procurement monitor, and the Commission staff shall  
2 meet within 10 days to analyze potential causes of low  
3 supplier interest or causes for the Commission  
4 decision. If changes are identified that would likely  
5 result in increased supplier participation, or that  
6 would address concerns causing the Commission to  
7 reject the results of the prior procurement event, the  
8 procurement administrator may implement those changes  
9 and rerun the request for proposals process according  
10 to a schedule determined by those parties and  
11 consistent with Section 1-75 of the Illinois Power  
12 Agency Act and this subsection. In any event, a new  
13 request for proposals process shall be implemented by  
14 the procurement administrator within 90 days after the  
15 determination that the procurement process has failed  
16 to fully meet the expected load requirement.

17 (iii) In all cases where there is insufficient  
18 supply provided under contracts awarded through the  
19 procurement process to fully meet the electric  
20 utility's load requirement, the utility shall meet the  
21 load requirement by procuring power and energy from the  
22 applicable regional transmission organization market,  
23 including ancillary services, capacity, and day-ahead  
24 or real time energy, or both; provided, however, that  
25 if a needed product is not available through the  
26 regional transmission organization market it shall be

1 purchased from the wholesale market.

2 (6) The procurement process described in this  
3 subsection is exempt from the requirements of the Illinois  
4 Procurement Code, pursuant to Section 20-10 of that Code.

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

22 (g) Within 3 business days after the Commission decision  
23 approving the results of a procurement event, the utility shall  
24 enter into binding contractual arrangements with the winning  
25 suppliers using the standard form contracts; except that the  
26 utility shall not be required either directly or indirectly to



1 execute the contracts if a tariff that is consistent with  
2 subsection (l) of this Section has not been approved and placed  
3 into effect for that utility.

4 (h) The names of the successful bidders and the load  
5 weighted average of the winning bid prices for each contract  
6 type and for each contract term shall be made available to the  
7 public at the time of Commission approval of a procurement  
8 event. The Commission, the procurement monitor, the  
9 procurement administrator, the Illinois Power Agency, and all  
10 participants in the procurement process shall maintain the  
11 confidentiality of all other supplier and bidding information  
12 in a manner consistent with all applicable laws, rules,  
13 regulations, and tariffs. Confidential information, including  
14 the confidential reports submitted by the procurement  
15 administrator and procurement monitor pursuant to subsection  
16 (f) of this Section, shall not be made publicly available and  
17 shall not be discoverable by any party in any proceeding,  
18 absent a compelling demonstration of need, nor shall those  
19 reports be admissible in any proceeding other than one for law  
20 enforcement purposes.

21 (i) Within 2 business days after a Commission decision  
22 approving the results of a procurement event or such other date  
23 as may be required by the Commission from time to time, the  
24 utility shall file for informational purposes with the  
25 Commission its actual or estimated retail supply charges, as  
26 applicable, by customer supply group reflecting the costs

1 associated with the procurement and computed in accordance with  
2 the tariffs filed pursuant to subsection (l) of this Section  
3 and approved by the Commission.

4 (j) Within 60 days following August 28, 2007 (the effective  
5 date of Public Act 95-481), each electric utility that on  
6 December 31, 2005 provided electric service to at least 100,000  
7 customers in Illinois shall prepare and file with the  
8 Commission an initial procurement plan, which shall conform in  
9 all material respects to the requirements of the procurement  
10 plan set forth in subsection (b); provided, however, that the  
11 Illinois Power Agency Act shall not apply to the initial  
12 procurement plan prepared pursuant to this subsection. The  
13 initial procurement plan shall identify the portfolio of power  
14 and energy products to be procured and delivered for the period  
15 June 2008 through May 2009, and shall identify the proposed  
16 procurement administrator, who shall have the same experience  
17 and expertise as is required of a procurement administrator  
18 hired pursuant to Section 1-75 of the Illinois Power Agency  
19 Act. Copies of the procurement plan shall be posted and made  
20 publicly available on the Commission's website. The initial  
21 procurement plan may include contracts for renewable resources  
22 that extend beyond May 2009.

23 (i) Within 14 days following filing of the initial  
24 procurement plan, any person may file a detailed objection  
25 with the Commission contesting the procurement plan  
26 submitted by the electric utility. All objections to the

1 electric utility's plan shall be specific, supported by  
2 data or other detailed analyses. The electric utility may  
3 file a response to any objections to its procurement plan  
4 within 7 days after the date objections are due to be  
5 filed. Within 7 days after the date the utility's response  
6 is due, the Commission shall determine whether a hearing is  
7 necessary. If it determines that a hearing is necessary, it  
8 shall require the hearing to be completed and issue an  
9 order on the procurement plan within 60 days after the  
10 filing of the procurement plan by the electric utility.

11 (ii) The order shall approve or modify the procurement  
12 plan, approve an independent procurement administrator,  
13 and approve or modify the electric utility's tariffs that  
14 are proposed with the initial procurement plan. The  
15 Commission shall approve the procurement plan if the  
16 Commission determines that it will ensure adequate,  
17 reliable, affordable, efficient, and environmentally  
18 sustainable electric service at the lowest total cost over  
19 time, taking into account any benefits of price stability.

20 (k) (Blank).

21 (k-5) (Blank).

22 (l) An electric utility shall recover its costs incurred  
23 under this Section, including, but not limited to, the costs of  
24 procuring power and energy demand-response resources under  
25 this Section. The utility shall file with the initial  
26 procurement plan its proposed tariffs through which its costs

1 of procuring power that are incurred pursuant to a  
2 Commission-approved procurement plan and those other costs  
3 identified in this subsection (1), will be recovered. The  
4 tariffs shall include a formula rate or charge designed to pass  
5 through both the costs incurred by the utility in procuring a  
6 supply of electric power and energy for the applicable customer  
7 classes with no mark-up or return on the price paid by the  
8 utility for that supply, plus any just and reasonable costs  
9 that the utility incurs in arranging and providing for the  
10 supply of electric power and energy. The formula rate or charge  
11 shall also contain provisions that ensure that its application  
12 does not result in over or under recovery due to changes in  
13 customer usage and demand patterns, and that provide for the  
14 correction, on at least an annual basis, of any accounting  
15 errors that may occur. A utility shall recover through the  
16 tariff all reasonable costs incurred to implement or comply  
17 with any procurement plan that is developed and put into effect  
18 pursuant to Section 1-75 of the Illinois Power Agency Act and  
19 this Section, including any fees assessed by the Illinois Power  
20 Agency, costs associated with load balancing, and contingency  
21 plan costs. The electric utility shall also recover its full  
22 costs of procuring electric supply for which it contracted  
23 before the effective date of this Section in conjunction with  
24 the provision of full requirements service under fixed-price  
25 bundled service tariffs subsequent to December 31, 2006. All  
26 such costs shall be deemed to have been prudently incurred. The

1 pass-through tariffs that are filed and approved pursuant to  
2 this Section shall not be subject to review under, or in any  
3 way limited by, Section 16-111(i) of this Act. All of the costs  
4 incurred by the electric utility associated with the purchase  
5 of zero emission credits in accordance with subsection (d-5) of  
6 Section 1-75 of the Illinois Power Agency Act and, beginning  
7 June 1, 2017, all of the costs incurred by the electric utility  
8 associated with the purchase of renewable energy resources in  
9 accordance with Sections 1-56 and 1-75 of the Illinois Power  
10 Agency Act, shall be recovered through the electric utility's  
11 tariffed charges applicable to all of its retail customers, as  
12 specified in subsection (k) of Section 16-108 of this Act, and  
13 shall not be recovered through the electric utility's tariffed  
14 charges for electric power and energy supply to its eligible  
15 retail customers.

16 (m) The Commission has the authority to adopt rules to  
17 carry out the provisions of this Section. For the public  
18 interest, safety, and welfare, the Commission also has  
19 authority to adopt rules to carry out the provisions of this  
20 Section on an emergency basis immediately following August 28,  
21 2007 (the effective date of Public Act 95-481).

22 (n) Notwithstanding any other provision of this Act, any  
23 affiliated electric utilities that submit a single procurement  
24 plan covering their combined needs may procure for those  
25 combined needs in conjunction with that plan, and may enter  
26 jointly into power supply contracts, purchases, and other

1 procurement arrangements, and allocate capacity and energy and  
2 cost responsibility therefor among themselves in proportion to  
3 their requirements.

4 (o) On or before June 1 of each year, the Commission shall  
5 hold an informal hearing for the purpose of receiving comments  
6 on the prior year's procurement process and any recommendations  
7 for change.

8 (p) An electric utility subject to this Section may propose  
9 to invest, lease, own, or operate an electric generation  
10 facility as part of its procurement plan, provided the utility  
11 demonstrates that such facility is the least-cost option to  
12 provide electric service to those retail customers included in  
13 the plan's electric supply service requirements. If the  
14 facility is shown to be the least-cost option and is included  
15 in a procurement plan prepared in accordance with Section 1-75  
16 of the Illinois Power Agency Act and this Section, then the  
17 electric utility shall make a filing pursuant to Section 8-406  
18 of this Act, and may request of the Commission any statutory  
19 relief required thereunder. If the Commission grants all of the  
20 necessary approvals for the proposed facility, such supply  
21 shall thereafter be considered as a pre-existing contract under  
22 subsection (b) of this Section. The Commission shall in any  
23 order approving a proposal under this subsection specify how  
24 the utility will recover the prudently incurred costs of  
25 investing in, leasing, owning, or operating such generation  
26 facility through just and reasonable rates charged to those

1 retail customers included in the plan's electric supply service  
2 requirements. Cost recovery for facilities included in the  
3 utility's procurement plan pursuant to this subsection shall  
4 not be subject to review under or in any way limited by the  
5 provisions of Section 16-111(i) of this Act. Nothing in this  
6 Section is intended to prohibit a utility from filing for a  
7 fuel adjustment clause as is otherwise permitted under Section  
8 9-220 of this Act.

9 (q) If the Illinois Power Agency filed with the Commission,  
10 under Section 16-111.5 of this Act, its proposed procurement  
11 plan for the period commencing June 1, 2017, and the Commission  
12 has not yet entered its final order approving the plan on or  
13 before the effective date of this amendatory Act of the 99th  
14 General Assembly, then the Illinois Power Agency shall file a  
15 notice of withdrawal with the Commission, after the effective  
16 date of this amendatory Act of the 99th General Assembly, to  
17 withdraw the proposed procurement of renewable energy  
18 resources to be approved under the plan, other than the  
19 procurement of renewable energy credits from distributed  
20 renewable energy generation devices using funds previously  
21 collected from electric utilities' retail customers that take  
22 service pursuant to electric utilities' hourly pricing tariff  
23 or tariffs and, for an electric utility that serves less than  
24 100,000 retail customers in the State, other than the  
25 procurement of renewable energy credits from distributed  
26 renewable energy generation devices. Upon receipt of the

1 notice, the Commission shall enter an order that approves the  
2 withdrawal of the proposed procurement of renewable energy  
3 resources from the plan. The initially proposed procurement of  
4 renewable energy resources shall not be approved or be the  
5 subject of any further hearing, investigation, proceeding, or  
6 order of any kind.

7 This amendatory Act of the 99th General Assembly preempts  
8 and supersedes any order entered by the Commission that  
9 approved the Illinois Power Agency's procurement plan for the  
10 period commencing June 1, 2017, to the extent it is  
11 inconsistent with the provisions of this amendatory Act of the  
12 99th General Assembly. To the extent any previously entered  
13 order approved the procurement of renewable energy resources,  
14 the portion of that order approving the procurement shall be  
15 void, other than the procurement of renewable energy credits  
16 from distributed renewable energy generation devices using  
17 funds previously collected from electric utilities' retail  
18 customers that take service under electric utilities' hourly  
19 pricing tariff or tariffs and, for an electric utility that  
20 serves less than 100,000 retail customers in the State, other  
21 than the procurement of renewable energy credits for  
22 distributed renewable energy generation devices.

23 (Source: P.A. 99-906, eff. 6-1-17.)

24 Section 99. Effective date. This Act takes effect upon  
25 becoming law.