



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB5168

Introduced 2/9/2024, by Rep. Eva-Dina Delgado

SYNOPSIS AS INTRODUCED:

220 ILCS 5/16-115D

Amends the Public Utilities Act. Provides that the provisions of the Illinois Power Agency Act relating to the payments by retail customers of a utility for the purpose of recovering the utility's costs for procuring renewable energy credits shall not apply to an alternative retail electric supplier, or its customers, that operates a combined heat and power system in this State, or that has a corporate affiliate that operates a combined heat and power system in this State, and supplies electricity primarily to or for the benefit of certain specified facilities.

LRB103 38021 CES 68153 b

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 16-115D as follows:

6 (220 ILCS 5/16-115D)

7 Sec. 16-115D. Renewable portfolio standard for alternative
8 retail electric suppliers and electric utilities operating
9 outside their service territories.

10 (a) An alternative retail electric supplier shall be
11 responsible for procuring cost-effective renewable energy
12 resources as required under item (5) of subsection (d) of
13 Section 16-115 of this Act as outlined herein:

14 (1) The definition of renewable energy resources
15 contained in Section 1-10 of the Illinois Power Agency Act
16 applies to all renewable energy resources required to be
17 procured by alternative retail electric suppliers.

18 (2) Through May 31, 2017, the quantity of renewable
19 energy resources shall be measured as a percentage of the
20 actual amount of metered electricity (megawatt-hours)
21 delivered by the alternative retail electric supplier to
22 Illinois retail customers during the 12-month period June
23 1 through May 31, commencing June 1, 2009, and the

1 comparable 12-month period in each year thereafter except
2 as provided in item (6) of this subsection (a).

3 (3) Through May 31, 2017, the quantity of renewable
4 energy resources shall be in amounts at least equal to the
5 annual percentages set forth in item (1) of subsection (c)
6 of Section 1-75 of the Illinois Power Agency Act. At least
7 60% of the renewable energy resources procured pursuant to
8 items (1) and (3) of subsection (b) of this Section shall
9 come from wind generation and, starting June 1, 2015, at
10 least 6% of the renewable energy resources procured
11 pursuant to items (1) and (3) of subsection (b) of this
12 Section shall come from solar photovoltaics. If, in any
13 given year, an alternative retail electric supplier does
14 not purchase at least these levels of renewable energy
15 resources, then the alternative retail electric supplier
16 shall make alternative compliance payments, as described
17 in subsection (d) of this Section.

18 (3.5) For the delivery year commencing June 1, 2017,
19 the quantity of renewable energy resources shall be at
20 least 13.0% of the uncovered amount of metered electricity
21 (megawatt-hours) delivered by the alternative retail
22 electric supplier to Illinois retail customers during the
23 delivery year, which uncovered amount shall equal 50% of
24 such metered electricity delivered by the alternative
25 retail electric supplier. For the delivery year commencing
26 June 1, 2018, the quantity of renewable energy resources

1 shall be at least 14.5% of the uncovered amount of metered
2 electricity (megawatt-hours) delivered by the alternative
3 retail electric supplier to Illinois retail customers
4 during the delivery year, which uncovered amount shall
5 equal 25% of such metered electricity delivered by the
6 alternative retail electric supplier. At least 32% of the
7 renewable energy resources procured by the alternative
8 retail electric supplier for its uncovered portion under
9 this paragraph (3.5) shall come from wind or photovoltaic
10 generation. The renewable energy resources procured under
11 this paragraph (3.5) shall not include any resources from
12 a facility whose costs were being recovered through rates
13 regulated by any state or states on or after January 1,
14 2017.

15 (4) The quantity and source of renewable energy
16 resources shall be independently verified through the PJM
17 Environmental Information System Generation Attribute
18 Tracking System (PJM-GATS) or the Midwest Renewable Energy
19 Tracking System (M-RETS), which shall document the
20 location of generation, resource type, month, and year of
21 generation for all qualifying renewable energy resources
22 that an alternative retail electric supplier uses to
23 comply with this Section. No later than June 1, 2009, the
24 Illinois Power Agency shall provide PJM-GATS, M-RETS, and
25 alternative retail electric suppliers with all information
26 necessary to identify resources located in Illinois,

1 within states that adjoin Illinois or within portions of
2 the PJM and MISO footprint in the United States that
3 qualify under the definition of renewable energy resources
4 in Section 1-10 of the Illinois Power Agency Act for
5 compliance with this Section 16-115D. Alternative retail
6 electric suppliers shall not be subject to the
7 requirements in item (3) of subsection (c) of Section 1-75
8 of the Illinois Power Agency Act.

9 (5) All renewable energy credits used to comply with
10 this Section shall be permanently retired.

11 (6) The required procurement of renewable energy
12 resources by an alternative retail electric supplier shall
13 apply to all metered electricity delivered to Illinois
14 retail customers by the alternative retail electric
15 supplier pursuant to contracts executed or extended after
16 March 15, 2009.

17 (b) Compliance obligations.

18 (1) Through May 31, 2017, an alternative retail
19 electric supplier shall comply with the renewable energy
20 portfolio standards by making an alternative compliance
21 payment, as described in subsection (d) of this Section,
22 to cover at least one-half of the alternative retail
23 electric supplier's compliance obligation for the period
24 prior to June 1, 2017.

25 (2) For the delivery years beginning June 1, 2017 and
26 June 1, 2018, an alternative retail electric supplier need

1 not make any alternative compliance payment to meet any
2 portion of its compliance obligation, as set forth in
3 paragraph (3.5) of subsection (a) of this Section.

4 (3) An alternative retail electric supplier shall use
5 any one or combination of the following means to cover the
6 remainder of the alternative retail electric supplier's
7 compliance obligation, as set forth in paragraphs (3) and
8 (3.5) of subsection (a) of this Section, not covered by an
9 alternative compliance payment made under paragraphs (1)
10 and (2) of this subsection (b) of this Section:

11 (A) Generating electricity using renewable energy
12 resources identified pursuant to item (4) of
13 subsection (a) of this Section.

14 (B) Purchasing electricity generated using
15 renewable energy resources identified pursuant to item
16 (4) of subsection (a) of this Section through an
17 energy contract.

18 (C) Purchasing renewable energy credits from
19 renewable energy resources identified pursuant to item
20 (4) of subsection (a) of this Section.

21 (D) Making an alternative compliance payment as
22 described in subsection (d) of this Section.

23 (c) Use of renewable energy credits.

24 (1) Renewable energy credits that are not used by an
25 alternative retail electric supplier to comply with a
26 renewable portfolio standard in a compliance year may be

1 banked and carried forward up to 2 12-month compliance
2 periods after the compliance period in which the credit
3 was generated for the purpose of complying with a
4 renewable portfolio standard in those 2 subsequent
5 compliance periods. For the 2009-2010 and 2010-2011
6 compliance periods, an alternative retail electric
7 supplier may use renewable credits generated after
8 December 31, 2008 and before June 1, 2009 to comply with
9 this Section.

10 (2) An alternative retail electric supplier is
11 responsible for demonstrating that a renewable energy
12 credit used to comply with a renewable portfolio standard
13 is derived from a renewable energy resource and that the
14 alternative retail electric supplier has not used, traded,
15 sold, or otherwise transferred the credit.

16 (3) The same renewable energy credit may be used by an
17 alternative retail electric supplier to comply with a
18 federal renewable portfolio standard and a renewable
19 portfolio standard established under this Act. An
20 alternative retail electric supplier that uses a renewable
21 energy credit to comply with a renewable portfolio
22 standard imposed by any other state may not use the same
23 credit to comply with a renewable portfolio standard
24 established under this Act.

25 (d) Alternative compliance payments.

26 (1) The Commission shall establish and post on its

1 website, within 5 business days after entering an order
2 approving a procurement plan pursuant to Section 1-75 of
3 the Illinois Power Agency Act, maximum alternative
4 compliance payment rates, expressed on a per kilowatt-hour
5 basis, that will be applicable in the first compliance
6 period following the plan approval. A separate maximum
7 alternative compliance payment rate shall be established
8 for the service territory of each electric utility that is
9 subject to subsection (c) of Section 1-75 of the Illinois
10 Power Agency Act. Each maximum alternative compliance
11 payment rate shall be equal to the maximum allowable
12 annual estimated average net increase due to the costs of
13 the utility's purchase of renewable energy resources
14 included in the amounts paid by eligible retail customers
15 in connection with electric service, as described in item
16 (2) of subsection (c) of Section 1-75 of the Illinois
17 Power Agency Act for the compliance period, and as
18 established in the approved procurement plan. Following
19 each procurement event through which renewable energy
20 resources are purchased for one or more of these utilities
21 for the compliance period, the Commission shall establish
22 and post on its website estimates of the alternative
23 compliance payment rates, expressed on a per kilowatt-hour
24 basis, that shall apply for that compliance period.
25 Posting of the estimates shall occur no later than 10
26 business days following the procurement event, however,

1 the Commission shall not be required to establish and post
2 such estimates more often than once per calendar month. By
3 July 1 of each year, the Commission shall establish and
4 post on its website the actual alternative compliance
5 payment rates for the preceding compliance year. For
6 compliance years beginning prior to June 1, 2014, each
7 alternative compliance payment rate shall be equal to the
8 total amount of dollars that the utility contracted to
9 spend on renewable resources, excepting the additional
10 incremental cost attributable to solar resources, for the
11 compliance period divided by the forecasted load of
12 eligible retail customers, at the customers' meters, as
13 previously established in the Commission-approved
14 procurement plan for that compliance year. For compliance
15 years commencing on or after June 1, 2014, each
16 alternative compliance payment rate shall be equal to the
17 total amount of dollars that the utility contracted to
18 spend on all renewable resources for the compliance period
19 divided by the forecasted load of retail customers for
20 which the utility is procuring renewable energy resources
21 in a given delivery year, at the customers' meters, as
22 previously established in the Commission-approved
23 procurement plan for that compliance year. The actual
24 alternative compliance payment rates may not exceed the
25 maximum alternative compliance payment rates established
26 for the compliance period. For purposes of this subsection

1 (d), the term "eligible retail customers" has the same
2 meaning as found in Section 16-111.5 of this Act.

3 (2) In any given compliance year, an alternative
4 retail electric supplier may elect to use alternative
5 compliance payments to comply with all or a part of the
6 applicable renewable portfolio standard. In the event that
7 an alternative retail electric supplier elects to make
8 alternative compliance payments to comply with all or a
9 part of the applicable renewable portfolio standard, such
10 payments shall be made by September 1, 2010 for the period
11 of June 1, 2009 to May 1, 2010 and by September 1 of each
12 year thereafter for the subsequent compliance period, in
13 the manner and form as determined by the Commission. Any
14 election by an alternative retail electric supplier to use
15 alternative compliance payments is subject to review by
16 the Commission under subsection (e) of this Section.

17 (3) An alternative retail electric supplier's
18 alternative compliance payments shall be computed
19 separately for each electric utility's service territory
20 within which the alternative retail electric supplier
21 provided retail service during the compliance period,
22 provided that the electric utility was subject to
23 subsection (c) of Section 1-75 of the Illinois Power
24 Agency Act. For each service territory, the alternative
25 retail electric supplier's alternative compliance payment
26 shall be equal to (i) the actual alternative compliance

1 payment rate established in item (1) of this subsection
2 (d), multiplied by (ii) the actual amount of metered
3 electricity delivered by the alternative retail electric
4 supplier to retail customers for which the supplier has a
5 compliance obligation within the service territory during
6 the compliance period, multiplied by (iii) the result of
7 one minus the ratios of the quantity of renewable energy
8 resources used by the alternative retail electric supplier
9 to comply with the requirements of this Section within the
10 service territory to the product of the percentage of
11 renewable energy resources required under item (3) or
12 (3.5) of subsection (a) of this Section and the actual
13 amount of metered electricity delivered by the alternative
14 retail electrical supplier to retail customers for which
15 the supplier has a compliance obligation within the
16 service territory during the compliance period.

17 (4) Through May 31, 2017, all alternative compliance
18 payments by alternative retail electric suppliers shall be
19 deposited in the Illinois Power Agency Renewable Energy
20 Resources Fund and used to purchase renewable energy
21 credits, in accordance with Section 1-56 of the Illinois
22 Power Agency Act. Beginning April 1, 2012 and by April 1 of
23 each year thereafter, the Illinois Power Agency shall
24 submit an annual report to the General Assembly, the
25 Commission, and alternative retail electric suppliers that
26 shall include, but not be limited to:

1 (A) the total amount of alternative compliance
2 payments received in aggregate from alternative retail
3 electric suppliers by planning year for all previous
4 planning years in which the alternative compliance
5 payment was in effect;

6 (B) the amount of those payments utilized to
7 purchased renewable energy credits itemized by the
8 date of each procurement in which the payments were
9 utilized; and

10 (C) the unused and remaining balance in the Agency
11 Renewable Energy Resources Fund attributable to those
12 payments.

13 (4.5) Beginning with the delivery year commencing June
14 1, 2017, all alternative compliance payments by
15 alternative retail electric suppliers shall be remitted to
16 the applicable electric utility. To facilitate this
17 remittance, each electric utility shall file a tariff with
18 the Commission no later than 30 days following the
19 effective date of this amendatory Act of the 99th General
20 Assembly, which the Commission shall approve, after notice
21 and hearing, no later than 45 days after its filing. The
22 Illinois Power Agency shall use such payments to increase
23 the amount of renewable energy resources otherwise to be
24 procured under subsection (c) of Section 1-75 of the
25 Illinois Power Agency Act.

26 (5) The Commission, in consultation with the Illinois

1 Power Agency, shall establish a process or proceeding to
2 consider the impact of a federal renewable portfolio
3 standard, if enacted, on the operation of the alternative
4 compliance mechanism, which shall include, but not be
5 limited to, developing, to the extent permitted by the
6 applicable federal statute, an appropriate methodology to
7 apportion renewable energy credits retired as a result of
8 alternative compliance payments made in accordance with
9 this Section. The Commission shall commence any such
10 process or proceeding within 35 days after enactment of a
11 federal renewable portfolio standard.

12 (e) Each alternative retail electric supplier shall, by
13 September 1, 2010 and by September 1 of each year thereafter,
14 prepare and submit to the Commission a report, in a format to
15 be specified by the Commission, that provides information
16 certifying compliance by the alternative retail electric
17 supplier with this Section, including copies of all PJM-GATS
18 and M-RETS reports, and documentation relating to banking,
19 retiring renewable energy credits, and any other information
20 that the Commission determines necessary to ensure compliance
21 with this Section.

22 An alternative retail electric supplier may file
23 commercially or financially sensitive information or trade
24 secrets with the Commission as provided under the rules of the
25 Commission. To be filed confidentially, the information shall
26 be accompanied by an affidavit that sets forth both the

1 reasons for the confidentiality and a public synopsis of the
2 information.

3 (f) The Commission may initiate a contested case to review
4 allegations that the alternative retail electric supplier has
5 violated this Section, including an order issued or rule
6 promulgated under this Section. In any such proceeding, the
7 alternative retail electric supplier shall have the burden of
8 proof. If the Commission finds, after notice and hearing, that
9 an alternative retail electric supplier has violated this
10 Section, then the Commission shall issue an order requiring
11 the alternative retail electric supplier to:

12 (1) immediately comply with this Section; and

13 (2) if the violation involves a failure to procure the
14 requisite quantity of renewable energy resources or pay
15 the applicable alternative compliance payment by the
16 annual deadline, the Commission shall require the
17 alternative retail electric supplier to double the
18 applicable alternative compliance payment that would
19 otherwise be required to bring the alternative retail
20 electric supplier into compliance with this Section.

21 If an alternative retail electric supplier fails to comply
22 with the renewable energy resource portfolio requirement in
23 this Section more than once in a 5-year period, then the
24 Commission shall revoke the alternative electric supplier's
25 certificate of service authority. The Commission shall not
26 accept an application for a certificate of service authority

1 from an alternative retail electric supplier that has lost
2 certification under this subsection (f), or any corporate
3 affiliate thereof, for at least one year after the date of
4 revocation.

5 (g) All of the provisions of this Section apply to
6 electric utilities operating outside their service area except
7 under item (2) of subsection (a) of this Section the quantity
8 of renewable energy resources shall be measured as a
9 percentage of the actual amount of electricity
10 (megawatt-hours) supplied in the State outside of the
11 utility's service territory during the 12-month period June 1
12 through May 31, commencing June 1, 2009, and the comparable
13 12-month period in each year thereafter except as provided in
14 item (6) of subsection (a) of this Section.

15 If any such utility fails to procure the requisite
16 quantity of renewable energy resources by the annual deadline,
17 then the Commission shall require the utility to double the
18 alternative compliance payment that would otherwise be
19 required to bring the utility into compliance with this
20 Section.

21 If any such utility fails to comply with the renewable
22 energy resource portfolio requirement in this Section more
23 than once in a 5-year period, then the Commission shall order
24 the utility to cease all sales outside of the utility's
25 service territory for a period of at least one year.

26 (h) The provisions of this Section and the provisions of

1 subsection (d) of Section 16-115 of this Act relating to
2 procurement of renewable energy resources, and the provisions
3 of paragraph (6) of subsection (c) of Section 1-75 of the
4 Illinois Power Agency Act relating to the payments by retail
5 customers of a utility for the purpose of recovering the
6 utility's costs for procuring renewable energy credits, shall
7 not apply to an alternative retail electric supplier, or the
8 retail customers of an alternative retail electric supplier,
9 that operates a combined heat and power system in this State or
10 that has a corporate affiliate that operates such a combined
11 heat and power system in this State that supplies electricity
12 primarily to or for the benefit of: (i) facilities owned by the
13 supplier, its subsidiary, or other corporate affiliate; (ii)
14 facilities electrically integrated with the electrical system
15 of facilities owned by the supplier, its subsidiary, or other
16 corporate affiliate; or (iii) facilities that are adjacent to
17 the site on which the combined heat and power system is
18 located.

19 (i) The obligations of alternative retail electric
20 suppliers and electric utilities operating outside their
21 service territories to procure renewable energy resources,
22 make alternative compliance payments, and file annual reports,
23 and the obligations of the Commission to determine and post
24 alternative compliance payment rates, shall terminate after
25 May 31, 2019, provided that alternative retail electric
26 suppliers and electric utilities operating outside their

1 service territories shall be obligated to make all alternative
2 compliance payments that they were obligated to pay for
3 periods through and including May 31, 2019, but were not paid
4 as of that date. The Commission shall continue to enforce the
5 payment of unpaid alternative compliance payments in
6 accordance with subsections (f) and (g) of this Section. All
7 alternative compliance payments made after May 31, 2016 shall
8 be remitted to the applicable electric utility and used to
9 purchase renewable energy credits, in accordance with Section
10 1-75 of the Illinois Power Agency Act.

11 This subsection (i) is intended to accommodate the
12 transition to the procurement of renewable energy resources
13 for all retail customers in the amounts specified under
14 subsection (c) of Section 1-75 of the Illinois Power Agency
15 Act and Section 16-111.5 of this Act, including but not
16 limited to the transition to a single charge applicable to all
17 retail customers to recover the costs of these resources. Each
18 alternative retail electric supplier shall certify in its
19 annual reports filed pursuant to subsection (e) of this
20 Section after May 31, 2019, that its retail customers are not
21 paying the costs of alternative compliance payments or
22 renewable energy resources that the alternative retail
23 electric supplier is not required to remit or purchase under
24 this Section. The Commission shall have the authority to
25 initiate an emergency rulemaking to adopt rules regarding such
26 certification.

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