



Rep. Gary Hannig

Filed: 5/30/2008

09500SB1987ham001

LRB095 14199 MJR 51793 a

1 AMENDMENT TO SENATE BILL 1987

2 AMENDMENT NO. _____. Amend Senate Bill 1987 by replacing
3 everything after the enacting clause with the following:

4 "ARTICLE 1

5 Section 1-1. Short title. This Article may be cited as the
6 Clean Coal Portfolio Standard Law.

7 Section 1-5. The Illinois Power Agency Act is amended by
8 changing Sections 1-5, 1-10, 1-75, and 1-80 as follows:

9 (20 ILCS 3855/1-5)

10 Sec. 1-5. Legislative declarations and findings. The
11 General Assembly finds and declares:

12 (1) The health, welfare, and prosperity of all Illinois
13 citizens require the provision of adequate, reliable,
14 affordable, efficient, and environmentally sustainable

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

3 (2) The transition to retail competition is not
4 complete. Some customers, especially residential and small
5 commercial customers, have failed to benefit from lower
6 electricity costs from retail and wholesale competition.

7 (3) Escalating prices for electricity in Illinois pose
8 a serious threat to the economic well-being, health, and
9 safety of the residents of and the commerce and industry of
10 the State.

11 (4) To protect against this threat to economic
12 well-being, health, and safety it is necessary to improve
13 the process of procuring electricity to serve Illinois
14 residents, to promote investment in energy efficiency and
15 demand-response measures, and to support development of
16 clean coal technologies and renewable resources.

17 (5) Procuring a diverse electricity supply portfolio
18 will ensure the lowest total cost over time for adequate,
19 reliable, efficient, and environmentally sustainable
20 electric service.

21 (6) Including cost-effective renewable resources in
22 that portfolio will reduce long-term direct and indirect
23 costs to consumers by decreasing environmental impacts and
24 by avoiding or delaying the need for new generation,
25 transmission, and distribution infrastructure.

26 (7) Energy efficiency, demand-response measures, and

1 renewable energy are resources currently underused in
2 Illinois.

3 (8) The State should encourage the use of advanced
4 clean coal technologies that capture and sequester carbon
5 dioxide emissions to advance environmental protection
6 goals and to demonstrate the viability of coal and
7 coal-derived fuels in a carbon-constrained economy.

8 The General Assembly therefore finds that it is necessary
9 to create the Illinois Power Agency and that the goals and
10 objectives of that Agency are to accomplish each of the
11 following:

12 (A) Develop electricity procurement plans to ensure
13 adequate, reliable, affordable, efficient, and
14 environmentally sustainable electric service at the lowest
15 total cost over time, taking into account any benefits of
16 price stability, for electric utilities that on December
17 31, 2005 provided electric service to at least 100,000
18 customers in Illinois. The procurement plan shall be
19 updated on an annual basis and shall include renewable
20 energy resources sufficient to achieve the standards
21 specified in this Act.

22 (B) Conduct competitive procurement processes to
23 procure the supply resources identified in the procurement
24 plan.

25 (C) Develop electric generation and co-generation
26 facilities that use indigenous coal or renewable

1 resources, or both, financed with bonds issued by the
2 Illinois Finance Authority.

3 (D) Supply electricity from the Agency's facilities at
4 cost to one or more of the following: municipal electric
5 systems, governmental aggregators, or rural electric
6 cooperatives in Illinois.

7 (Source: P.A. 95-481, eff. 8-28-07.)

8 (20 ILCS 3855/1-10)

9 Sec. 1-10. Definitions.

10 "Agency" means the Illinois Power Agency.

11 "Agency loan agreement" means any agreement pursuant to
12 which the Illinois Finance Authority agrees to loan the
13 proceeds of revenue bonds issued with respect to a project to
14 the Agency upon terms providing for loan repayment installments
15 at least sufficient to pay when due all principal of, interest
16 and premium, if any, on those revenue bonds, and providing for
17 maintenance, insurance, and other matters in respect of the
18 project.

19 "Authority" means the Illinois Finance Authority.

20 "Clean coal facility" means an electric generating
21 facility that uses primarily coal as a feedstock and that
22 captures and sequesters carbon emissions at the following
23 levels: at least 50% of the total carbon emissions that the
24 facility would otherwise emit if, at the time construction
25 commences, the facility is scheduled to commence operation

1 before 2015, at least 70% of the total carbon emissions that
2 the facility would otherwise emit if, at the time construction
3 commences, the facility is scheduled to commence operation
4 during 2015 or 2016, and at least 90% of the total carbon
5 emissions that the facility would otherwise emit if, at the
6 time construction commences, the facility is scheduled to
7 commence operation after 2016. The power block of the clean
8 coal facility shall not exceed allowable emission rates for
9 sulfur dioxide, nitrogen oxides, carbon monoxide, particulates
10 and mercury for a natural gas-fired combined-cycle facility the
11 same size as and in the same location as the clean coal
12 facility at the time the clean coal facility obtains an
13 approved air permit. All coal used by a clean coal facility
14 shall have high volatile bituminous rank and greater than 1.7
15 pounds of sulfur per million btu content, unless the clean coal
16 facility does not use gasification technology and was operating
17 as a conventional coal-fired electric generating facility on
18 the effective date of this amendatory Act of the 95th General
19 Assembly.

20 "Clean coal SNG facility" means a facility that uses a
21 gasification process to produce substitute natural gas, that
22 sequesters at least 90% of the total carbon emissions that the
23 facility would otherwise emit and that uses coal as a
24 feedstock, with all such coal having a high bituminous rank and
25 greater than 1.7 pounds of sulfur per million btu content.

26 "Commission" means the Illinois Commerce Commission.

1 "Costs incurred in connection with the development and
2 construction of a facility" means:

3 (1) the cost of acquisition of all real property and
4 improvements in connection therewith and equipment and
5 other property, rights, and easements acquired that are
6 deemed necessary for the operation and maintenance of the
7 facility;

8 (2) financing costs with respect to bonds, notes, and
9 other evidences of indebtedness of the Agency;

10 (3) all origination, commitment, utilization,
11 facility, placement, underwriting, syndication, credit
12 enhancement, and rating agency fees;

13 (4) engineering, design, procurement, consulting,
14 legal, accounting, title insurance, survey, appraisal,
15 escrow, trustee, collateral agency, interest rate hedging,
16 interest rate swap, capitalized interest and other
17 financing costs, and other expenses for professional
18 services; and

19 (5) the costs of plans, specifications, site study and
20 investigation, installation, surveys, other Agency costs
21 and estimates of costs, and other expenses necessary or
22 incidental to determining the feasibility of any project,
23 together with such other expenses as may be necessary or
24 incidental to the financing, insuring, acquisition, and
25 construction of a specific project and placing that project
26 in operation.

1 "Department" means the Department of Commerce and Economic
2 Opportunity.

3 "Director" means the Director of the Illinois Power Agency.

4 "Demand-response" means measures that decrease peak
5 electricity demand or shift demand from peak to off-peak
6 periods.

7 "Energy efficiency" means measures that reduce the amount
8 of electricity required to achieve a given end use.

9 "Electric utility" has the same definition as found in
10 Section 16-102 of the Public Utilities Act.

11 "Facility" means an electric generating unit or a
12 co-generating unit that produces electricity along with
13 related equipment necessary to connect the facility to an
14 electric transmission or distribution system.

15 "Governmental aggregator" means one or more units of local
16 government that individually or collectively procure
17 electricity to serve residential retail electrical loads
18 located within its or their jurisdiction.

19 "Local government" means a unit of local government as
20 defined in Article VII of Section 1 of the Illinois
21 Constitution.

22 "Municipality" means a city, village, or incorporated
23 town.

24 "Person" means any natural person, firm, partnership,
25 corporation, either domestic or foreign, company, association,
26 limited liability company, joint stock company, or association

1 and includes any trustee, receiver, assignee, or personal
2 representative thereof.

3 "Project" means the planning, bidding, and construction of
4 a facility.

5 "Public utility" has the same definition as found in
6 Section 3-105 of the Public Utilities Act.

7 "Real property" means any interest in land together with
8 all structures, fixtures, and improvements thereon, including
9 lands under water and riparian rights, any easements,
10 covenants, licenses, leases, rights-of-way, uses, and other
11 interests, together with any liens, judgments, mortgages, or
12 other claims or security interests related to real property.

13 "Renewable energy credit" means a tradable credit that
14 represents the environmental attributes of a certain amount of
15 energy produced from a renewable energy resource.

16 "Renewable energy resources" includes energy and its
17 associated renewable energy credit or renewable energy credits
18 from wind, solar thermal energy, photovoltaic cells and panels,
19 biodiesel, crops and untreated and unadulterated organic waste
20 biomass, trees and tree trimmings, hydropower that does not
21 involve new construction or significant expansion of
22 hydropower dams, and other alternative sources of
23 environmentally preferable energy. For purposes of this Act,
24 landfill gas produced in the State is considered a renewable
25 energy resource. "Renewable energy resources" does not include
26 the incineration, burning, or heating of tires, garbage,

1 general household, institutional, and commercial waste,
2 industrial lunchroom or office waste, landscape waste other
3 than trees and tree trimmings, railroad crossties, utility
4 poles, and construction or demolition debris, other than
5 untreated and unadulterated waste wood.

6 "Revenue bond" means any bond, note, or other evidence of
7 indebtedness issued by the Authority, the principal and
8 interest of which is payable solely from revenues or income
9 derived from any project or activity of the Agency.

10 "Sequester" means permanent storage of carbon dioxide by
11 injecting it into a saline aquifer, a depleted gas reservoir,
12 or an oil reservoir, directly or through an enhanced oil
13 recovery process that may involve intermediate storage in a
14 salt dome.

15 "Substitute natural gas" or "SNG" means a gas manufactured
16 by gasification of hydrocarbon feedstock, which is
17 substantially interchangeable in use and distribution with
18 conventional natural gas.

19 "Total resource cost test" or "TRC test" means a standard
20 that is met if, for an investment in energy efficiency or
21 demand-response measures, the benefit-cost ratio is greater
22 than one. The benefit-cost ratio is the ratio of the net
23 present value of the total benefits of the program to the net
24 present value of the total costs as calculated over the
25 lifetime of the measures. A total resource cost test compares
26 the sum of avoided electric utility costs, representing the

1 benefits that accrue to the system and the participant in the
2 delivery of those efficiency measures, to the sum of all
3 incremental costs of end-use measures that are implemented due
4 to the program (including both utility and participant
5 contributions), plus costs to administer, deliver, and
6 evaluate each demand-side program, to quantify the net savings
7 obtained by substituting the demand-side program for supply
8 resources. In calculating avoided costs of power and energy
9 that an electric utility would otherwise have had to acquire,
10 reasonable estimates shall be included of financial costs
11 likely to be imposed by future regulations and legislation on
12 emissions of greenhouse gases.

13 (Source: P.A. 95-481, eff. 8-28-07.)

14 (20 ILCS 3855/1-75)

15 Sec. 1-75. Planning and Procurement Bureau. The Planning
16 and Procurement Bureau has the following duties and
17 responsibilities:

18 (a) The Planning and Procurement Bureau shall each
19 year, beginning in 2008, develop plans for the procurement
20 of electricity supply, including electricity generated by
21 clean coal facilities and facilities that use renewable
22 resources. The Bureau shall ~~plans and~~ conduct competitive
23 procurement processes in accordance with the requirements
24 of Section 16-111.5 of the Public Utilities Act for the
25 eligible retail customers of electric utilities that on

1 December 31, 2005 provided electric service to at least
2 100,000 customers in Illinois. For the purposes of this
3 Section, the term "eligible retail customers" has the same
4 definition as found in Section 16-111.5(a) of the Public
5 Utilities Act.

6 (1) The Agency shall each year, beginning in 2008,
7 as needed, issue a request for qualifications for
8 experts or expert consulting firms to develop the
9 procurement plans in accordance with Section 16-111.5
10 of the Public Utilities Act. In order to qualify an
11 expert or expert consulting firm must have:

12 (A) direct previous experience assembling
13 large-scale power supply plans or portfolios for
14 end-use customers;

15 (B) an advanced degree in economics,
16 mathematics, engineering, risk management, or a
17 related area of study;

18 (C) 10 years of experience in the electricity
19 sector, including managing supply risk;

20 (D) expertise in wholesale electricity market
21 rules, including those established by the Federal
22 Energy Regulatory Commission and regional
23 transmission organizations;

24 (E) expertise in credit protocols and
25 familiarity with contract protocols;

26 (F) adequate resources to perform and fulfill

1 the required functions and responsibilities; and

2 (G) the absence of a conflict of interest and
3 inappropriate bias for or against potential
4 bidders or the affected electric utilities.

5 (2) The Agency shall each year, as needed, issue a
6 request for qualifications for a procurement
7 administrator to conduct the competitive procurement
8 processes in accordance with Section 16-111.5 of the
9 Public Utilities Act. In order to qualify an expert or
10 expert consulting firm must have:

11 (A) direct previous experience administering a
12 large-scale competitive procurement process;

13 (B) an advanced degree in economics,
14 mathematics, engineering, or a related area of
15 study;

16 (C) 10 years of experience in the electricity
17 sector, including risk management experience;

18 (D) expertise in wholesale electricity market
19 rules, including those established by the Federal
20 Energy Regulatory Commission and regional
21 transmission organizations;

22 (E) expertise in credit and contract
23 protocols;

24 (F) adequate resources to perform and fulfill
25 the required functions and responsibilities; and

26 (G) the absence of a conflict of interest and

1 inappropriate bias for or against potential
2 bidders or the affected electric utilities.

3 (3) The Agency shall provide affected utilities
4 and other interested parties with the lists of
5 qualified experts or expert consulting firms
6 identified through the request for qualifications
7 processes that are under consideration to develop the
8 procurement plans and to serve as the procurement
9 administrator. The Agency shall also provide each
10 qualified expert's or expert consulting firm's
11 response to the request for qualifications. All
12 information provided under this subparagraph shall
13 also be provided to the Commission. The Agency may
14 provide by rule for fees associated with supplying the
15 information to utilities and other interested parties.
16 These parties shall, within 5 business days, notify the
17 Agency in writing if they object to any experts or
18 expert consulting firms on the lists. Objections shall
19 be based on:

20 (A) failure to satisfy qualification criteria;

21 (B) identification of a conflict of interest;

22 or

23 (C) evidence of inappropriate bias for or
24 against potential bidders or the affected
25 utilities.

26 The Agency shall remove experts or expert

1 consulting firms from the lists within 10 days if there
2 is a reasonable basis for an objection and provide the
3 updated lists to the affected utilities and other
4 interested parties. If the Agency fails to remove an
5 expert or expert consulting firm from a list, an
6 objecting party may seek review by the Commission
7 within 5 days thereafter by filing a petition, and the
8 Commission shall render a ruling on the petition within
9 10 days. There is no right of appeal of the
10 Commission's ruling.

11 (4) The Agency shall issue requests for proposals
12 to the qualified experts or expert consulting firms to
13 develop a procurement plan for the affected utilities
14 and to serve as procurement administrator.

15 (5) The Agency shall select an expert or expert
16 consulting firm to develop procurement plans based on
17 the proposals submitted and shall award one-year
18 contracts to those selected with an option for the
19 Agency for a one-year renewal.

20 (6) The Agency shall select an expert or expert
21 consulting firm, with approval of the Commission, to
22 serve as procurement administrator based on the
23 proposals submitted. If the Commission rejects, within
24 5 days, the Agency's selection, the Agency shall submit
25 another recommendation within 3 days based on the
26 proposals submitted. The Agency shall award a one-year

1 contract to the expert or expert consulting firm so
2 selected with Commission approval with an option for
3 the Agency for a one-year renewal.

4 (b) The experts or expert consulting firms retained by
5 the Agency shall, as appropriate, prepare procurement
6 plans, and conduct a competitive procurement process as
7 prescribed in Section 16-111.5 of the Public Utilities Act,
8 to ensure adequate, reliable, affordable, efficient, and
9 environmentally sustainable electric service at the lowest
10 total cost over time, taking into account any benefits of
11 price stability, for eligible retail customers of electric
12 utilities that on December 31, 2005 provided electric
13 service to at least 100,000 customers in the State of
14 Illinois.

15 (c) Renewable portfolio standard.

16 (1) The procurement plans shall include
17 cost-effective renewable energy resources. A minimum
18 percentage of each utility's total supply to serve the
19 load of eligible retail customers, as defined in
20 Section 16-111.5(a) of the Public Utilities Act,
21 procured for each of the following years shall be
22 generated from cost-effective renewable energy
23 resources: at least 2% by June 1, 2008; at least 4% by
24 June 1, 2009; at least 5% by June 1, 2010; at least 6%
25 by June 1, 2011; at least 7% by June 1, 2012; at least
26 8% by June 1, 2013; at least 9% by June 1, 2014; at

1 least 10% by June 1, 2015; and increasing by at least
2 1.5% each year thereafter to at least 25% by June 1,
3 2025. To the extent that it is available, at least 75%
4 of the renewable energy resources used to meet these
5 standards shall come from wind generation. For
6 purposes of this Section, "cost-effective" means that
7 the costs of procuring renewable energy resources do
8 not cause the limit stated in paragraph (2) of this
9 subsection (c) to be exceeded and do not exceed
10 benchmarks based on market prices for renewable
11 resources in the region, which shall be developed by
12 the procurement administrator, in consultation with
13 the Commission staff, Agency staff, and the
14 procurement monitor and shall be subject to Commission
15 review and approval.

16 (2) For purposes of this subsection (c), the
17 required procurement of cost-effective renewable
18 energy resources for a particular year shall be
19 measured as a percentage of the actual amount of
20 electricity (megawatt-hours) supplied by the electric
21 utility to eligible retail customers in the planning
22 year ending immediately prior to the procurement. For
23 purposes of this subsection (c), the amount per
24 kilowatthour means the total amount paid for electric
25 service expressed on a per kilowatthour basis. For
26 purposes of this subsection (c), the total amount paid

1 for electric service includes without limitation
2 amounts paid for supply, transmission, distribution,
3 surcharges, and add-on taxes.

4 Notwithstanding the requirements of this
5 subsection (c), the total of renewable energy
6 resources procured pursuant to the procurement plan
7 for any single year shall be reduced by an amount
8 necessary to limit the annual estimated average net
9 increase due to the costs of these resources included
10 in the amounts paid by eligible retail customers in
11 connection with electric service to:

12 (A) in 2008, no more than 0.5% of the amount
13 paid per kilowatthour by those customers during
14 the year ending May 31, 2007;

15 (B) in 2009, the greater of an additional 0.5%
16 of the amount paid per kilowatthour by those
17 customers during the year ending May 31, 2008 or 1%
18 of the amount paid per kilowatthour by those
19 customers during the year ending May 31, 2007;

20 (C) in 2010, the greater of an additional 0.5%
21 of the amount paid per kilowatthour by those
22 customers during the year ending May 31, 2009 or
23 1.5% of the amount paid per kilowatthour by those
24 customers during the year ending May 31, 2007;

25 (D) in 2011, the greater of an additional 0.5%
26 of the amount paid per kilowatthour by those

1 customers during the year ending May 31, 2010 or 2%
2 of the amount paid per kilowatthour by those
3 customers during the year ending May 31, 2007; and

4 (E) thereafter, the amount of renewable energy
5 resources procured pursuant to the procurement
6 plan for any single year shall be reduced by an
7 amount necessary to limit the estimated average
8 net increase due to the cost of these resources
9 included in the amounts paid by eligible retail
10 customers in connection with electric service to
11 no more than the greater of 2.015% of the amount
12 paid per kilowatthour by those customers during
13 the year ending May 31, 2007 or the incremental
14 amount per kilowatthour paid for these resources
15 in 2011.

16 No later than June 30, 2011, the Commission shall
17 review the limitation on the amount of renewable energy
18 resources procured pursuant to this subsection (c) and
19 report to the General Assembly its findings as to
20 whether that limitation unduly constrains the
21 procurement of cost-effective renewable energy
22 resources.

23 (3) Through June 1, 2011, renewable energy
24 resources shall be counted for the purpose of meeting
25 the renewable energy standards set forth in paragraph
26 (1) of this subsection (c) only if they are generated

1 from facilities located in the State, provided that
2 cost-effective renewable energy resources are
3 available from those facilities. If those
4 cost-effective resources are not available in
5 Illinois, they shall be procured in states that adjoin
6 Illinois and may be counted towards compliance. If
7 those cost-effective resources are not available in
8 Illinois or in states that adjoin Illinois, they shall
9 be purchased elsewhere and shall be counted towards
10 compliance. After June 1, 2011, cost-effective
11 renewable energy resources located in Illinois and in
12 states that adjoin Illinois may be counted towards
13 compliance with the standards set forth in paragraph
14 (1) of this subsection (c). If those cost-effective
15 resources are not available in Illinois or in states
16 that adjoin Illinois, they shall be purchased
17 elsewhere and shall be counted towards compliance.

18 (4) The electric utility shall retire all
19 renewable energy credits used to comply with the
20 standard.

21 (d) Clean coal portfolio standard.

22 (1) The procurement plans shall include electricity
23 generated by cost-effective clean coal facilities. At
24 least 5% of each utility's total supply to serve the load
25 of eligible retail customers in 2015 and each year
26 thereafter shall be generated by the initial clean coal

1 facility, subject to the limits specified in paragraph (2)
2 of this subsection (d). It is the goal of the State that by
3 January 1, 2025, 25% of the electricity used in the State
4 shall be generated by cost-effective clean coal
5 facilities. For purposes of this Section, "cost-effective"
6 means that the costs of procuring electricity generated by
7 cost-effective clean coal facilities do not cause the limit
8 stated in paragraph (2) of this subsection (d) to be
9 exceeded and do not exceed cost-based benchmarks, which
10 shall be developed to assess all purchases of electricity
11 generated by clean coal facilities, other than the initial
12 clean coal facility, by the procurement administrator, in
13 consultation with the Commission staff, Agency staff, and
14 the procurement monitor and shall be subject to Commission
15 review and approval. For purposes of meeting the
16 requirements of this Section:

17 (A) A utility need not actually deliver
18 electricity purchased to comply with this Section to
19 eligible retail customers, provided that if the
20 utility claims credit for such purpose, subsequent
21 purchasers shall not receive any emission credits in
22 connection with the purchase of such electricity.
23 Utilities shall maintain adequate records documenting
24 the contractual disposition of all electricity
25 purchased to comply with this Section and shall file an
26 accounting with the load forecast that must be filed

1 with the Agency by July 15 of each year, in accordance
2 with subsection (d) of Section 16-111.5 of the Public
3 Utilities Act.

4 (B) A utility shall be deemed to have complied with
5 this item (1) of the clean coal portfolio standard if,
6 in any given year, the utility solicits bids for
7 electricity generated by clean coal facilities but
8 does not receive acceptable bids for the quantity that
9 is needed, in combination with any existing contracts,
10 to comply with the portfolio standard for that year.

11 (2) For purposes of this subsection (d), the required
12 procurement of electricity generated by cost-effective
13 clean coal facilities for a particular year shall be
14 measured as a percentage of the actual amount of
15 electricity (megawatt-hours) supplied by the electric
16 utility to eligible retail customers in the planning year
17 ending immediately prior to the procurement. For purposes
18 of this subsection (d) the amount per kilowatt-hour means
19 the total amount paid for electric service expressed on a
20 per kilowatt-hour basis. For purposes of this subsection
21 (d), the total amount paid for electric service includes
22 without limitation amounts paid for supply, transmission,
23 distribution, surcharges and add-on taxes.

24 Notwithstanding the requirements of this subsection
25 (d), the total amount of electricity generated by clean
26 coal facilities procured pursuant to the procurement plan

1 for any given year shall be reduced by an amount necessary
2 to limit the annual estimated average net increase due to
3 the costs of these resources included in the amounts paid
4 by eligible retail customers in connection with electric
5 service to:

6 (i) in 2010, no more than 0.5% of the amount
7 paid per kilowatthour by those customers during
8 the year ending May 31, 2009;

9 (ii) in 2011, the greater of an additional 0.5%
10 of the amount paid per kilowatthour by those
11 customers during the year ending May 31, 2010 or 1%
12 of the amount paid per kilowatthour by those
13 customers during the year ending May 31, 2009;

14 (iii) in 2012, the greater of an additional
15 0.5% of the amount paid per kilowatthour by those
16 customers during the year ending May 31, 2011 or
17 1.5% of the amount paid per kilowatthour by those
18 customers during the year ending May 31, 2009;

19 (iv) in 2013, the greater of an additional 0.5%
20 of the amount paid per kilowatthour by those
21 customers during the year ending May 31, 2012 or 2%
22 of the amount paid per kilowatthour by those
23 customers during the year ending May 31, 2009; and

24 (v) thereafter, the amount of electricity
25 generated by clean coal facilities procured
26 pursuant to the procurement plan for any single

1 year shall be reduced by an amount necessary to
2 limit the estimated average net increase due to the
3 cost of these resources included in the amounts
4 paid by eligible retail customers in connection
5 with electric service to no more than the greater
6 of (i) 2.015% of the amount paid per kilowatthour
7 by those customers during the year ending May 31,
8 2009 or (ii) 0.5% of the amount paid per
9 kilowatt-hour by those customers during the year
10 ending on the last day of May of the prior year.
11 These requirements may be altered only as provided
12 by statute. No later than June 30, 2015, the
13 Commission shall review the limitation on the
14 amount of electricity generated by clean coal
15 facilities procured pursuant to this subsection
16 (d) and report to the General Assembly its findings
17 as to whether that limitation unduly constrains
18 the procurement of cost-effective clean coal
19 facilities.

20 (3) Initial clean coal facility. In order to promote
21 development of clean coal facilities in Illinois, each
22 electric utility subject to this Section shall execute a
23 power purchase agreement to purchase electricity from a
24 proposed clean coal facility in Illinois (the "initial
25 clean coal facility") that will have a nameplate capacity
26 of at least 500 MW when commercial operation commences,

1 that has a final Clean Air Act permit on the effective date
2 of this amendatory Act of the 95th General Assembly, and
3 that will meet the definition of clean coal facility in
4 Section 1-10 of this Act when commercial operation
5 commences. The power purchase agreements with this initial
6 clean coal facility shall be executed within 60 days after
7 the later of the effective date of this amendatory Act of
8 the 95th General Assembly or approval of the agreement by
9 the Federal Energy Regulatory Commission and shall be
10 considered pre-existing contracts in the utilities'
11 procurement plans for eligible retail customers. The
12 Agency and the Commission shall have authority to inspect
13 all books and records associated with the initial clean
14 coal facility during the term of such a power purchase
15 agreement. A utility's power purchase agreement for the
16 sale of energy and capacity produced by the initial clean
17 coal facility shall:

18 (i) provide for a formula rate, approved
19 pursuant to paragraph (4) of this subsection (d),
20 which shall be determined using a cost of service
21 methodology employing either a level or deferred
22 capital recovery component, based on a capital
23 structure consisting of 45% equity and 55% debt,
24 and a return on equity as may be approved by the
25 Federal Energy Regulatory Commission, but in any
26 case not to exceed the lower of 11.5% or the rate

1 of return approved by the General Assembly
2 pursuant to paragraph (4) of this subsection (d);

3 (ii) provide that all miscellaneous net
4 revenue, including but not limited to net revenue
5 from the sale of emission allowances, if any,
6 substitute natural gas, if any, grants or other
7 support provided by the State of Illinois or the
8 United States Government, firm transmission
9 rights, if any, by-products produced by the
10 facility, energy or capacity derived from the
11 facility and not purchased pursuant to paragraph
12 (3) of this subsection (d) or item (5) of
13 subsection (d) of Section 16-115 of the Public
14 Utilities Act, whether generated from the
15 synthesis gas derived from coal, from substitute
16 natural gas, or from natural gas, shall be credited
17 against the revenue requirement for this initial
18 clean coal facility;

19 (iii) establish a plant availability target of
20 85% starting in the third year of commercial
21 operation and an incentive structure based on this
22 target, under which the penalty in any given year
23 shall not exceed 15% of the amount of return on
24 equity approved pursuant to paragraph (4) of this
25 subsection (d) and the bonus shall not exceed 10%
26 of the amount of return on equity approved pursuant

1 to paragraph (4) of this subsection (d);

2 (iv) require delivery of electricity to the
3 initial clean coal facility busbar, which shall be
4 interconnected with transmission facilities
5 operated by the Midwest Independent System
6 Operator, the PJM Interconnection or their
7 successors;

8 (v) specify a term of no more than 30 years,
9 commencing on the commercial operation date of the
10 facility;

11 (vi) require a utility subject to this Section
12 to buy from the initial clean coal facility in each
13 hour an amount of energy equal to all clean coal
14 energy made available from the initial clean coal
15 facility during such hour times a fraction, the
16 numerator of which is such utility's market share
17 of electricity sold in the utility's service
18 territory (expressed in kilowatt-hours sold)
19 during the prior calendar month and the
20 denominator of which is the total market shares
21 during the prior month of all utilities and
22 alternative retail electric suppliers that are
23 party to a power purchase agreement with the
24 initial clean coal facility, provided that the
25 amount purchased by the utility in any year will be
26 limited by item (2) of this subsection (d);

1 (vii) append documentation showing that the
2 formula rate and contract have been approved by the
3 Federal Energy Regulatory Commission pursuant to
4 Section 205 of the Federal Power Act;

5 (viii) provide that all costs associated with
6 the initial clean coal project will be
7 periodically reported to the Federal Energy
8 Regulatory Commission and to purchasers in
9 accordance with applicable laws governing
10 cost-based wholesale power contracts;

11 (ix) provide that any changes to the terms of
12 the contract are subject to review under the public
13 interest standard applied by the Federal Energy
14 Regulatory Commission pursuant to Sections 205 and
15 206 of the Federal Power Act;

16 (x) conform with customary lender requirements
17 in power purchase agreements used as the basis for
18 financing non-utility generators;

19 (xi) permit the Illinois Power Agency to
20 assume ownership of the initial clean coal
21 facility, without monetary consideration and
22 otherwise on reasonable terms acceptable to the
23 Agency, if the Agency so requests no less than 3
24 years prior to the end of the stated contract term;

25 (xii) require the owner of the initial clean
26 coal facility to provide documentation to the

1 Commission each year, starting in the facility's
2 third year of commercial operation, accurately
3 reporting the quantity of carbon emissions from
4 the facility that have been captured and
5 sequestered and report any quantities of carbon
6 released from the site or sites at which carbon
7 emissions were sequestered in prior years, based
8 on continuous monitoring of such sites. If, in any
9 year after the third year of commercial operation,
10 the owner of the facility fails to demonstrate that
11 the initial clean coal facility captured and
12 sequestered at least 50% of the total carbon
13 emissions that the facility would otherwise emit
14 or that sequestration of emissions from prior
15 years has failed, resulting in the release of
16 carbon dioxide into the atmosphere, the owner of
17 the facility must offset excess emissions. Any
18 such carbon offsets must be permanent, additional,
19 verifiable, real, located within the state of
20 Illinois, and legally and practicably enforceable.
21 The cost of such offsets for the facility that are
22 not recoverable shall not exceed \$15 million in any
23 given year. No costs of any such purchases of
24 carbon offsets may be recovered from a utility or
25 its customers. All carbon offsets purchased for
26 this purpose and any carbon emission credits

1 associated with sequestration of carbon from the
2 facility must be permanently retired. The initial
3 clean coal facility shall not forfeit its
4 designation as a clean coal facility if the
5 facility fails to fully comply with the applicable
6 carbon sequestration requirements in any given
7 year, provided the requisite offsets are
8 purchased. However, the Attorney General, on
9 behalf of the People of the State of Illinois, may
10 specifically enforce the facility's sequestration
11 requirement and the other terms of this contract
12 provision;

13 (xiii) include limits on, and accordingly
14 provide for modification of, the amount of energy
15 the utility is required to purchase under the
16 contract consistent with item (2) of this
17 subsection (d);

18 (xiv) limit the utility's obligation to such
19 amount as the utility is allowed to recover through
20 tariffs filed with the Commission, provided that
21 neither the clean coal facility nor the utility
22 waives any right to assert federal pre-emption or
23 any other argument in response to a purported
24 disallowance of recovery costs;

25 (xv) limit the purchaser's obligation to incur
26 any liability until such time as the facility is

1 generating power and energy and such power and
2 energy is being delivered to the facility busbar.

3 (4) Effective date of power purchase agreements for the
4 initial clean coal facility. Power purchase agreements
5 with the initial clean coal facility shall not become
6 effective unless authorizing legislation is enacted to
7 approve the projected price, stated in cents per
8 kilowatt-hour, to be charged for electricity generated by
9 the initial clean coal facility; the projected impact on
10 residential and small business customers' bills over the
11 life of the power purchase agreement; and allowable return
12 on equity for the project, based on a front end engineering
13 and design study, a facility cost report, and an operating
14 and maintenance cost quote for the facility, which shall be
15 prepared as follows:

16 (A) The facility cost report shall be prepared by
17 duly licensed engineering and construction firms
18 detailing the estimated capital costs payable to one or
19 more contractors or suppliers for the engineering,
20 procurement and construction of the components
21 comprising the initial clean coal facility and the
22 estimated costs of operation and maintenance of the
23 facility. The facility cost report shall include:

24 (i) an estimate of the capital cost of the core
25 plant based on one or more front end engineering
26 and design studies for the gasification island and

1 related facilities. The core plant shall include
2 all civil, structural, mechanical, electrical,
3 control, and safety systems.

4 (ii) an estimate of the capital cost of the
5 balance of the plant, including any capital costs
6 associated with sequestration of carbon dioxide
7 emissions and all interconnects and interfaces
8 required to operate the facility, such as
9 transmission of electricity, construction or
10 backfeed power supply, pipelines to transport
11 substitute natural gas or carbon dioxide, potable
12 water supply, natural gas supply, water supply,
13 water discharge, landfill, access roads, and coal
14 delivery.

15 The quoted construction costs shall be expressed
16 in nominal dollars as of the date that the quote is
17 prepared and shall include (1) capitalized financing
18 costs during construction, (2) taxes, insurance, and
19 other owners costs, and (3) an assumed escalation in
20 materials and labor beyond the date as of which the
21 construction cost quote is expressed.

22 (B) The front end engineering and design study for
23 the gasification island and the cost study for the
24 balance of plant shall include sufficient design work
25 to permit quantification of major categories of
26 materials, commodities and labor hours, and receipt of

1 quotes from vendors of major equipment required to
2 construct and operate the clean coal facility.

3 (C) The facility cost report shall also include an
4 operating and maintenance cost quote that will provide
5 the estimated cost of delivered fuel, personnel,
6 maintenance contracts, chemicals, catalysts,
7 consumables, spares, and other fixed and variable
8 operations and maintenance costs.

9 (a) The delivered fuel cost estimate will be
10 provided by a recognized third party expert or
11 experts in the fuel and transportation industries.

12 (b) The balance of the operating and
13 maintenance cost quote, excluding delivered fuel
14 costs will be developed based on the inputs
15 provided by duly licensed engineering and
16 construction firms performing the construction
17 cost quote, potential vendors under long-term
18 service agreements and plant operating agreements,
19 or recognized third party plant operator or
20 operators.

21 The operating and maintenance cost quote
22 (including the cost of the front end engineering
23 and design study) shall be expressed in nominal
24 dollars as of the date that the quote is prepared
25 and shall include (1) taxes, insurance, and other
26 owner's costs, and (2) an assumed escalation in

1 materials and labor beyond the date as of which the
2 operating and maintenance cost quote is expressed.

3 (D) Amounts paid to third parties unrelated to the
4 owner or owners of the initial clean coal facility to
5 prepare the core plant construction cost quote,
6 including the front end engineering and design study,
7 and the operating and maintenance cost quote will be
8 reimbursed through Coal Development Bonds.

9 (5) Re-powering and retrofitting coal-fired power
10 plants previously owned by Illinois utilities to qualify as
11 clean coal facilities. During the 2009 procurement
12 planning process and thereafter, the Agency and the
13 Commission shall consider contracts to purchase
14 electricity generated by power plants that were previously
15 owned by Illinois utilities and that have been or will be
16 converted into clean coal facilities, as defined by Section
17 1-10 of this Act. The owners of such facilities may propose
18 long-term power purchase agreements to sell electricity on
19 a cost of service basis, to utilities and Alternative
20 Retail Electric Suppliers required, under subsection (d)
21 of this Section and item (5) of subsection (d) of Section
22 16-115 of the Public Utilities Act to comply with the clean
23 coal portfolio standard. The Agency and the Commission may
24 approve any such utility contracts that do not exceed
25 cost-based benchmarks developed by the procurement
26 administrator, in consultation with the Commission staff,

1 Agency staff and the procurement monitor, subject to
2 Commission review and approval. The Commission shall have
3 authority to inspect all books and records associated with
4 these clean coal facilities during the term of any such
5 contract.

6 (6) Costs incurred under this subsection (d) or
7 pursuant to a contract entered into under this subsection
8 (d) shall be deemed prudently incurred and reasonable in
9 amount and the electric utility shall be entitled to full
10 cost recovery pursuant to the tariffs filed with the
11 Commission.

12 (e) ~~(d)~~ The draft procurement plans are subject to
13 public comment, as required by Section 16-111.5 of the
14 Public Utilities Act.

15 (f) ~~(e)~~ The Agency shall submit the final procurement
16 plan to the Commission. The Agency shall revise a
17 procurement plan if the Commission determines that it does
18 not meet the standards set forth in Section 16-111.5 of the
19 Public Utilities Act.

20 (g) ~~(f)~~ The Agency shall assess fees to each affected
21 utility to recover the costs incurred in preparation of the
22 annual procurement plan for the utility.

23 (h) ~~(g)~~ The Agency shall assess fees to each bidder to
24 recover the costs incurred in connection with a competitive
25 procurement process.

26 (Source: P.A. 95-481, eff. 8-28-07.)

1 (20 ILCS 3855/1-80)

2 Sec. 1-80. Resource Development Bureau. The Resource
3 Development Bureau has the following duties and
4 responsibilities:

5 (a) At the Agency's discretion, conduct feasibility
6 studies on the construction of any facility. Funding for a
7 study shall come from either:

8 (i) fees assessed by the Agency on municipal
9 electric systems, governmental aggregators, unit or
10 units of local government, or rural electric
11 cooperatives requesting the feasibility study; or

12 (ii) an appropriation from the General Assembly.

13 (b) If the Agency undertakes the construction of a
14 facility, moneys generated from the sale of revenue bonds
15 by the Authority for the facility shall be used to
16 reimburse the source of the money used for the facility's
17 feasibility study.

18 (c) The Agency may develop, finance, construct, or
19 operate electric generation and co-generation facilities
20 that use indigenous coal or renewable resources, or both,
21 financed with bonds issued by the Authority on behalf of
22 the Agency. Any such facility that uses coal must be a
23 clean coal facility and must be constructed in a location
24 ~~Preference shall be given to technologies that enable~~
25 ~~carbon capture and sites in locations~~ where the geology is

1 suitable for carbon sequestration. The Agency may also
2 develop, finance, construct, or operate a carbon
3 sequestration facility.

4 (1) The Agency may enter into contractual
5 arrangements with private and public entities,
6 including but not limited to municipal electric
7 systems, governmental aggregators, and rural electric
8 cooperatives, to plan, site, construct, improve,
9 rehabilitate, and operate those electric generation
10 and co-generation facilities. No contract shall be
11 entered into by the Agency that would jeopardize the
12 tax-exempt status of any bond issued in connection with
13 a project for which the Agency entered into the
14 contract.

15 (2) The Agency shall hold at least one public
16 hearing before entering into any such contractual
17 arrangements. At least 30-days' notice of the hearing
18 shall be given by publication once in each week during
19 that period in 6 newspapers within the State, at least
20 one of which has a circulation area that includes the
21 location of the proposed facility.

22 (3) The first facility that the Agency develops,
23 finances, or constructs shall be a facility that uses
24 coal produced in Illinois. The Agency may, however,
25 also develop, finance, or construct renewable energy
26 facilities after work on the first facility has

1 commenced.

2 (4) The Agency may not develop, finance, or
3 construct a nuclear power plant.

4 (5) The Agency shall assess fees to applicants
5 seeking to partner with the Agency on projects.

6 (d) Use of electricity generated by the Agency's
7 facilities. The Agency may supply electricity produced by
8 the Agency's facilities to municipal electric systems,
9 governmental aggregators, or rural electric cooperatives
10 in Illinois. The electricity shall be supplied at cost.

11 (1) Contracts to supply power and energy from the
12 Agency's facilities shall provide for the effectuation
13 of the policies set forth in this Act.

14 (2) The contracts shall also provide that,
15 notwithstanding any provision in the Public Utilities
16 Act, entities supplied with power and energy from an
17 Agency facility shall supply the power and energy to
18 retail customers at the same price paid to purchase
19 power and energy from the Agency.

20 (e) Electric utilities shall not be required to purchase
21 electricity directly or indirectly from facilities developed
22 or sponsored by the Agency.

23 (f) The Agency may sell excess capacity and excess energy
24 into the wholesale electric market at prevailing market rates;
25 provided, however, the Agency may not sell excess capacity or
26 excess energy through the procurement process described in

1 Section 16-111.5 of the Public Utilities Act.

2 (g) The Agency shall not directly sell electric power and
3 energy to retail customers. Nothing in this paragraph shall be
4 construed to prohibit sales to municipal electric systems,
5 governmental aggregators, or rural electric cooperatives.

6 (Source: P.A. 95-481, eff. 8-28-07.)

7 Section 1-10. The Public Utilities Act is amended by
8 changing Sections 9-220, 16-101A, and 16-115 as follows:

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

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

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

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

1 requirement used to set base rates in its most recent general
2 rate proceeding. Cost shall be based upon uniformly applied
3 accounting principles. Annually, the Commission shall initiate
4 public hearings to determine whether the clauses reflect actual
5 costs of fuel, gas, power, or coal transportation purchased to
6 determine whether such purchases were prudent, and to reconcile
7 any amounts collected with the actual costs of fuel, power,
8 gas, or coal transportation prudently purchased. In each such
9 proceeding, the burden of proof shall be upon the utility to
10 establish the prudence of its cost of fuel, power, gas, or coal
11 transportation purchases and costs. The Commission shall issue
12 its final order in each such annual proceeding for an electric
13 utility by December 31 of the year immediately following the
14 year to which the proceeding pertains, provided, that the
15 Commission shall issue its final order with respect to such
16 annual proceeding for the years 1996 and earlier by December
17 31, 1998.

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

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

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

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

22 (d) A public utility providing electric service, or a
23 public utility providing gas service may file with the
24 Commission proposed tariff sheets that eliminate the public
25 utility's fuel or purchased gas adjustment clause and adjust
26 the public utility's base rate tariffs to provide for recovery

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

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

24 (e) Notwithstanding any contrary or inconsistent
25 provisions in Section 9-201 of this Act, in subsection (a) of
26 this Section, or in any rules promulgated by the Commission

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

1 Commission for, reinstatement of the fuel adjustment clause
2 prior to January 1, 2007.

3 (f) Notwithstanding any contrary or inconsistent
4 provisions in Section 9-201 of this Act, in subsection (a) of
5 this Section, or in any rules or regulations promulgated by the
6 Commission pursuant to subsection (g) of this Section, a public
7 utility providing electric service to more than 500,000
8 customers but fewer than 1,000,000 customers in this State may,
9 within the first 6 months after the effective date of this
10 amendatory Act of 1997, file with the Commission proposed
11 tariff sheets that eliminate, effective January 1, 1997, the
12 public utility's fuel adjustment clause and adjust its base
13 rates by the amount necessary for the base fuel component of
14 the base rates to recover 91% of the public utility's average
15 fuel and power supply costs for the 2 most recent years for
16 which the Commission, as of January 1, 1997, has issued final
17 orders in annual proceedings pursuant to subsection (a), where
18 the average fuel and power supply costs per kilowatt-hour shall
19 be calculated as the sum of the public utility's prudent and
20 allowable fuel and power supply costs as found by the
21 Commission in the 2 proceedings divided by the public utility's
22 actual jurisdictional kilowatt-hour sales for those 2 years,
23 provided, that such tariff sheets shall be effective upon
24 filing. To the extent the application of the fuel adjustment
25 clause had resulted in net charges to customers after January
26 1, 1997, the utility shall also file a tariff sheet that

1 provides for a refund stated on a per kilowatt-hour basis of
2 such charges over a period not to exceed 6 months. Provided
3 however, that such refund shall not include the proportional
4 amounts of taxes paid under the Use Tax Act, Service Use Tax
5 Act, Service Occupation Tax Act, and Retailers' Occupation Tax
6 Act on fuel used in generation. The Commission shall issue an
7 order within 45 days after the date of the public utility's
8 filing approving or approving as modified such tariff sheet. If
9 the fuel adjustment clause is eliminated pursuant to this
10 subsection, the Commission shall not conduct the annual
11 hearings specified in the last 3 sentences of subsection (a) of
12 this Section for the utility for any period after December 31,
13 1996 and prior to any reinstatement of such clause. A public
14 utility whose fuel adjustment clause has been eliminated
15 pursuant to this subsection shall not file a proposed tariff
16 sheet seeking, or otherwise petition the Commission for,
17 reinstatement of the fuel adjustment clause prior to January 1,
18 2007.

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

21 (h) Any gas utility may enter into a contract for up to 20
22 years of supply with any company for the purchase of substitute
23 natural gas (SNG) produced from coal through the gasification
24 process if the company has commenced construction of a coal
25 gasification facility by July 1, 2010. The cost for the SNG is
26 reasonable and prudent and recoverable through the purchased

1 gas adjustment clause for years one through 10 of the contract
2 if: (i) the only coal used in the gasification process has high
3 volatile bituminous rank and greater than 1.7 pounds of sulfur
4 per million Btu content; (ii) at the time the contract term
5 commences, the price per million Btu does not exceed \$7.95 in
6 2008 dollars, adjusted annually based on the change in the
7 Annual Consumer Price Index for All Urban Consumers for the
8 Midwest Region as published in April by the United States
9 Department of Labor, Bureau of Labor Statistics (or a suitable
10 Consumer Price Index calculation if this Consumer Price Index
11 is not available) for the previous calendar year; provided that
12 the price per million Btu shall not exceed \$8.95 at any time
13 during the contract; (iii) the utility's aggregate long-term
14 supply contracts for the purchase of SNG does not exceed 25% of
15 the annual system supply requirements of the utility at the
16 time the contract is entered into and the quantity of SNG
17 supplied to a utility by any one producer may not exceed 20
18 billion cubic feet per year; and (iv) the contract is entered
19 into within 120 days after the effective date of this
20 amendatory Act of the 95th General Assembly and terminates no
21 more than 20 years after the commencement of the commercial
22 production of synthetic natural gas at the facility. Contracts
23 greater than 10 years shall provide that if, at any time during
24 supply years 11 through 20 of the contract, the Commission
25 determines that the cost for the synthetic natural gas
26 purchased under the contract during supply years 11 through 20

1 is not reasonable and prudent, then the company shall reimburse
2 the utility for the difference between the cost deemed
3 reasonable and prudent by the Commission and the cost imposed
4 under the contract. All such contracts, regardless of duration,
5 shall require the owner of any facility supplying SNG under the
6 contract to provide documentation to the Commission each year,
7 starting in the facility's third year of commercial operation,
8 accurately reporting the quantity of carbon dioxide emissions
9 from the facility that have been captured and sequestered and
10 reporting any quantities of carbon dioxide released from the
11 site or sites at which carbon dioxide emissions were
12 sequestered in prior years, based on continuous monitoring of
13 those sites. If, in any year, the owner of the facility fails
14 to demonstrate that the SNG facility captured and sequestered
15 at least 90% of the total carbon dioxide emissions that the
16 facility would otherwise emit or that sequestration of
17 emissions from prior years has failed, resulting in the release
18 of carbon dioxide into the atmosphere, the owner of the
19 facility must offset excess emissions. Any such carbon dioxide
20 offsets must be permanent, additional, verifiable, real,
21 located within the State of Illinois, and legally and
22 practicably enforceable. The costs of such offsets that are not
23 recoverable shall not exceed \$30 million in any given year. No
24 costs of any such purchases of carbon offsets may be recovered
25 from a utility or its customers. All carbon offsets purchased
26 for this purpose must be permanently retired. In addition, 50%

1 of the carbon dioxide emission credits associated with the
2 required sequestration of carbon dioxide from the facility must
3 be permanently retired. An SNG facility operating pursuant to
4 this subsection (h) shall not forfeit its designation as a
5 clean coal SNG facility if the facility fails to fully comply
6 with the applicable carbon sequestration requirements in any
7 given year, provided the requisite offsets are purchased.
8 However, the Attorney General, on behalf of the People of the
9 State of Illinois, may specifically enforce the facility's
10 sequestration requirements. ~~Any gas utility may enter into a~~
11 ~~20-year supply contract with any company for synthetic natural~~
12 ~~gas produced from coal through the gasification process if the~~
13 ~~company has commenced construction of a coal gasification~~
14 ~~facility by July 1, 2008. The cost for the synthetic natural~~
15 ~~gas is reasonable and prudent and recoverable through the~~
16 ~~purchased gas adjustment clause for years one through 10 of the~~
17 ~~contract if: (i) the only coal used in the gasification process~~
18 ~~has high volatile bituminous rank and greater than 1.7 pounds~~
19 ~~of sulfur per million Btu content; (ii) at the time the~~
20 ~~contract term commences, the price per million Btu does not~~
21 ~~exceed \$5 in 2004 dollars, adjusted annually based on the~~
22 ~~change in the Annual Consumer Price Index for All Urban~~
23 ~~Consumers for the Midwest Region as published in April by the~~
24 ~~United States Department of Labor, Bureau of Labor Statistics~~
25 ~~(or a suitable Consumer Price Index calculation if this~~
26 ~~Consumer Price Index is not available) for the previous~~

1 ~~calendar year; provided that the price per million Btu shall~~
2 ~~not exceed \$5.50 at any time during the contract; (iii) the~~
3 ~~utility's aggregate long-term supply contracts for the~~
4 ~~purchase of synthetic natural gas produced from coal through~~
5 ~~the gasification process does not exceed 25% of the annual~~
6 ~~system supply requirements of the utility at the time the~~
7 ~~contract is entered into; and (iv) the contract is entered into~~
8 ~~within one year after the effective date of this amendatory Act~~
9 ~~of the 94th General Assembly and terminates 20 years after the~~
10 ~~commencement of the production of synthetic natural gas. The~~
11 ~~contract shall provide that if, at any time during years 11~~
12 ~~through 20 of the contract, the Commission determines that the~~
13 ~~cost for the synthetic natural gas under the contract is not~~
14 ~~reasonable and prudent, then the company shall reimburse the~~
15 ~~utility for the difference between the cost deemed reasonable~~
16 ~~and prudent by the Commission and the cost imposed under the~~
17 ~~contract.~~

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

21 (Source: P.A. 94-63, eff. 6-21-05.)

22 (220 ILCS 5/16-101A)

23 Sec. 16-101A. Legislative findings.

24 (a) The citizens and businesses of the State of Illinois
25 have been well-served by a comprehensive electrical utility

1 system which has provided safe, reliable, and affordable
2 service. The electrical utility system in the State of Illinois
3 has historically been subject to State and federal regulation,
4 aimed at assuring the citizens and businesses of the State of
5 safe, reliable, and affordable service, while at the same time
6 assuring the utility system of a return on its investment.

7 (b) Competitive forces are affecting the market for
8 electricity as a result of recent federal regulatory and
9 statutory changes and the activities of other states.
10 Competition in the electric services market may create
11 opportunities for new products and services for customers and
12 lower costs for users of electricity. Long-standing regulatory
13 relationships need to be altered to accommodate the competition
14 that could fundamentally alter the structure of the electric
15 services market.

16 (c) With the advent of increasing competition in this
17 industry, the State has a continued interest in assuring that
18 the safety, reliability, and affordability of electrical power
19 is not sacrificed to competitive pressures, and to that end,
20 intends to implement safeguards to assure that the industry
21 continues to operate the electrical system in a manner that
22 will serve the public's interest. Under the existing regulatory
23 framework, the industry has been encouraged to undertake
24 certain investments in its physical plant and personnel to
25 enhance its efficient operation, the cost of which it has been
26 permitted to pass on to consumers. The State has an interest in

1 providing the existing utilities a reasonable opportunity to
2 obtain a return on certain investments on which they depended
3 in undertaking those commitments in the first instance while,
4 at the same time, not permitting new entrants into the industry
5 to take unreasonable advantage of the investments made by the
6 formerly regulated industry.

7 (d) A competitive wholesale and retail market must benefit
8 all Illinois citizens. The Illinois Commerce Commission should
9 act to promote the development of an effectively competitive
10 electricity market that operates efficiently and is equitable
11 to all consumers. Consumer protections must be in place to
12 ensure that all customers continue to receive safe, reliable,
13 affordable, and environmentally safe electric service.

14 (e) All consumers must benefit in an equitable and timely
15 fashion from the lower costs for electricity that result from
16 retail and wholesale competition and receive sufficient
17 information to make informed choices among suppliers and
18 services. The use of renewable resources and energy efficiency
19 resources should be encouraged in competitive markets.

20 (f) The efficiency of electric markets depends both upon
21 the competitiveness of supply and upon the
22 price-responsiveness of the demand for service. Therefore, to
23 ensure the lowest total cost of service and to enhance the
24 reliability of service, all classes of the electricity
25 customers of electric utilities should have access to and be
26 able to voluntarily use real-time pricing and other

1 price-response and demand-response mechanisms.

2 (g) Including cost-effective renewable resources in a
3 diverse electricity supply portfolio will reduce long-term
4 direct and indirect costs to consumers by decreasing
5 environmental impacts and by avoiding or delaying the need for
6 new generation, transmission, and distribution infrastructure.
7 It serves the public interest to allow electric utilities to
8 recover costs for reasonably and prudently incurred expenses
9 for electricity generated by renewable resources.

10 (h) Including electricity generated by clean coal
11 facilities, as defined under Section 1-10 of the Illinois Power
12 Agency Act, in a diverse electricity procurement portfolio will
13 reduce the need to purchase, directly or indirectly, carbon
14 dioxide emission credits and will decrease environmental
15 impacts. It serves the public interest to allow electric
16 utilities to recover costs for reasonably and prudently
17 incurred expenses for electricity generated by clean coal
18 facilities.

19 (Source: P.A. 94-977, eff. 6-30-06; 95-481, eff. 8-28-07.)

20 (220 ILCS 5/16-115)

21 Sec. 16-115. Certification of alternative retail electric
22 suppliers.

23 (a) Any alternative retail electric supplier must obtain a
24 certificate of service authority from the Commission in
25 accordance with this Section before serving any retail customer

1 or other user located in this State. An alternative retail
2 electric supplier may request, and the Commission may grant, a
3 certificate of service authority for the entire State or for a
4 specified geographic area of the State.

5 (b) An alternative retail electric supplier seeking a
6 certificate of service authority shall file with the Commission
7 a verified application containing information showing that the
8 applicant meets the requirements of this Section. The
9 alternative retail electric supplier shall publish notice of
10 its application in the official State newspaper within 10 days
11 following the date of its filing. No later than 45 days after
12 the application is properly filed with the Commission, and such
13 notice is published, the Commission shall issue its order
14 granting or denying the application.

15 (c) An application for a certificate of service authority
16 shall identify the area or areas in which the applicant intends
17 to offer service and the types of services it intends to offer.
18 Applicants that seek to serve residential or small commercial
19 retail customers within a geographic area that is smaller than
20 an electric utility's service area shall submit evidence
21 demonstrating that the designation of this smaller area does
22 not violate Section 16-115A. An applicant that seeks to serve
23 residential or small commercial retail customers may state in
24 its application for certification any limitations that will be
25 imposed on the number of customers or maximum load to be
26 served.

1 (d) The Commission shall grant the application for a
2 certificate of service authority if it makes the findings set
3 forth in this subsection based on the verified application and
4 such other information as the applicant may submit:

5 (1) That the applicant possesses sufficient technical,
6 financial and managerial resources and abilities to
7 provide the service for which it seeks a certificate of
8 service authority. In determining the level of technical,
9 financial and managerial resources and abilities which the
10 applicant must demonstrate, the Commission shall consider
11 (i) the characteristics, including the size and financial
12 sophistication, of the customers that the applicant seeks
13 to serve, and (ii) whether the applicant seeks to provide
14 electric power and energy using property, plant and
15 equipment which it owns, controls or operates;

16 (2) That the applicant will comply with all applicable
17 federal, State, regional and industry rules, policies,
18 practices and procedures for the use, operation, and
19 maintenance of the safety, integrity and reliability, of
20 the interconnected electric transmission system;

21 (3) That the applicant will only provide service to
22 retail customers in an electric utility's service area that
23 are eligible to take delivery services under this Act;

24 (4) That the applicant will comply with such
25 informational or reporting requirements as the Commission
26 may by rule establish and provide the information required

1 by Section 16-112. Any data related to contracts for the
2 purchase and sale of electric power and energy shall be
3 made available for review by the Staff of the Commission on
4 a confidential and proprietary basis and only to the extent
5 and for the purposes which the Commission determines are
6 reasonably necessary in order to carry out the purposes of
7 this Act;

8 (5) That the applicant will supply electricity
9 generated by renewable energy resources and clean coal
10 facilities, as defined in Section 1-10 of the Illinois
11 Power Agency Act, to all of the applicant's Illinois
12 customers in amounts at least equal to the percentages set
13 forth in subsections (c) and (d) of Section 1-72 of the
14 Illinois Power Agency Act. For purposes of this Section:

15 (i) The required procurement of electricity
16 generated by renewable energy resources and clean coal
17 facilities shall be measured as a percentage of the
18 actual amount of electricity (megawatt-hours) supplied
19 by the alternative retail electric supplier in the
20 prior calendar year, as reported for that year to the
21 Commission. This purchase obligation applies to all
22 electricity sold pursuant to retail contracts
23 executed, extended, or otherwise revised after the
24 effective date of this amendatory Act, provided the
25 alternative retail electric supplier submits all
26 documentation needed by the Commission to determine

1 the actual amount of electricity supplied under
2 contracts that may be excluded under this limitation.

3 (ii) An alternative retail electric supplier need
4 not actually deliver electricity purchased to comply
5 with this Section to its customers, provided that if
6 the alternative retail electric supplier claims credit
7 for such purpose, subsequent purchasers shall not
8 receive any emission credits or renewable energy
9 credits in connection with the purchase of such
10 electricity. Alternative retail electric suppliers
11 shall maintain adequate records documenting the
12 contractual disposition of all electricity purchased
13 to comply with this Section and shall file an
14 accounting in the report which must be filed with the
15 Commission on August 1 of each year, starting in 2009,
16 in accordance with subsection (e) of this Section.

17 (iii) The required procurement of electricity
18 generated by renewable resources and clean coal
19 facilities, other than the initial clean coal
20 facility, shall be limited to the amount of electricity
21 that can be purchased at a price at or below the
22 benchmarks approved by the Commission each year in
23 accordance with item (1) of subsection (c) and items
24 (1) and (5) of subsection (d) of Section 1-75 of the
25 Illinois Power Agency Act.

26 (iv) all alternative retail electric suppliers

1 shall execute a power purchase agreement to purchase
2 electricity from the initial clean coal facility, on
3 the terms set forth in items (3) and (4) of subsection
4 (d) of Section 1-75 of the Illinois Power Agency Act,
5 except that in lieu of the requirements in items
6 (3) (vi), (xiii), and (xiv) of that subsection (d), the
7 applicant shall contract to purchase in each hour an
8 amount of electricity equal to all clean coal energy
9 made available from the initial clean coal facility to
10 all alternative retail electric suppliers, multiplied
11 by a fraction, the numerator of which is the
12 alternative electricity retail electric supplier's
13 Illinois market share, expressed in kilowatt-hours
14 sold during the prior month and the denominator of
15 which is the total market shares during the prior month
16 of all alternative retail electric suppliers that are
17 party to power purchase agreements with the initial
18 clean coal facility.

19 (v) if, in any year after the third year of
20 commercial operation, the owner of the clean coal
21 facility fails to demonstrate to the Commission that
22 the initial clean coal facility captured and
23 sequestered at least 50% of the total carbon emissions
24 that the facility would otherwise emit or that
25 sequestration of emissions from prior years has
26 failed, resulting in the release of carbon into the

1 atmosphere, the owner of the facility must offset
2 excess emissions. Any such carbon offsets must be
3 permanent, additional, verifiable, real, located
4 within the State of Illinois, and legally and
5 practicably enforceable. The costs of any such offsets
6 that are not recoverable shall not exceed \$15 million
7 in any given year. No costs of any such purchases of
8 carbon offsets may be recovered from an alternative
9 retail electric supplier or its customers. All carbon
10 offsets purchased for this purpose and any carbon
11 emission credits associated with sequestration of
12 carbon from the facility must be permanently retired.
13 The initial clean coal facility shall not forfeit its
14 designation as a clean coal facility if the facility
15 fails to fully comply with the applicable carbon
16 sequestration requirements in any given year, provided
17 the requisite offsets are purchased. However, the
18 Attorney General, on behalf of the People of the State
19 of Illinois, may specifically enforce the facility's
20 sequestration requirement and the other terms of this
21 contract provision ~~(Blank)~~;

22 (6) With respect to an applicant that seeks to serve
23 residential or small commercial retail customers, that the
24 area to be served by the applicant and any limitations it
25 proposes on the number of customers or maximum amount of
26 load to be served meet the provisions of Section 16-115A,

1 provided, that the Commission can extend the time for
2 considering such a certificate request by up to 90 days,
3 and can schedule hearings on such a request;

4 (7) That the applicant meets the requirements of
5 subsection (a) of Section 16-128; and

6 (8) That the applicant will comply with all other
7 applicable laws and regulations.

8 (d-5) The Commission shall revoke the certification of any
9 alternative retail electric supplier that fails to execute a
10 power purchase agreement to purchase electricity from the
11 initial clean coal facility, as required by item (5) of
12 subsection (d) of this Section, within 60 days after the later
13 of the effective date of this amendatory Act or approval of the
14 agreement by the Federal Energy Regulatory Commission, and
15 that, on August 1, 2009 and each year thereafter, fails to
16 demonstrate that the electricity provided to the alternative
17 retail electricity supplier's Illinois customers during the
18 previous year was generated by renewable energy resources and
19 clean coal facilities in amounts at least equal to the
20 percentages set forth in subsections (c) and (d) of Section
21 1-75 of the Illinois Power Agency Act, as limited by subsection
22 (d) (5) (iii) of this Section. The Commission shall not accept an
23 application for certification from an alternative retail
24 electric supplier that has lost certification under this
25 subsection (d-5), or any corporate affiliate thereof, for at
26 least one year from the date of revocation.

1 (e) A retail customer that owns a cogeneration or
2 self-generation facility and that seeks certification only to
3 provide electric power and energy from such facility to retail
4 customers at separate locations which customers are both (i)
5 owned by, or a subsidiary or other corporate affiliate of, such
6 applicant and (ii) eligible for delivery services, shall be
7 granted a certificate of service authority upon filing an
8 application and notifying the Commission that it has entered
9 into an agreement with the relevant electric utilities pursuant
10 to Section 16-118. Provided, however, that if the retail
11 customer owning such cogeneration or self-generation facility
12 would not be charged a transition charge due to the exemption
13 provided under subsection (f) of Section 16-108 prior to the
14 certification, and the retail customers at separate locations
15 are taking delivery services in conjunction with purchasing
16 power and energy from the facility, the retail customer on
17 whose premises the facility is located shall not thereafter be
18 required to pay transition charges on the power and energy that
19 such retail customer takes from the facility.

20 (f) The Commission shall have the authority to promulgate
21 rules and regulations to carry out the provisions of this
22 Section. On or before May 1, 1999, the Commission shall adopt a
23 rule or rules applicable to the certification of those
24 alternative retail electric suppliers that seek to serve only
25 nonresidential retail customers with maximum electrical
26 demands of one megawatt or more which shall provide for (i)

1 expedited and streamlined procedures for certification of such
2 alternative retail electric suppliers and (ii) specific
3 criteria which, if met by any such alternative retail electric
4 supplier, shall constitute the demonstration of technical,
5 financial and managerial resources and abilities to provide
6 service required by subsection (d) (1) of this Section, such as
7 a requirement to post a bond or letter of credit, from a
8 responsible surety or financial institution, of sufficient
9 size for the nature and scope of the services to be provided;
10 demonstration of adequate insurance for the scope and nature of
11 the services to be provided; and experience in providing
12 similar services in other jurisdictions.

13 (Source: P.A. 95-130, eff. 1-1-08.)

14 ARTICLE 5

15 Section 5-5. The Public Utilities Act is amended by
16 changing Section 2-203 as follows:

17 (220 ILCS 5/2-203)

18 (Section scheduled to be repealed on January 1, 2009)

19 Sec. 2-203. Public Utility Fund base maintenance
20 contribution. Each ~~For each of the years 2003 through 2008,~~
21 ~~each~~ electric utility as defined in Section 16-102 of this Act
22 providing service to more than 12,500 customers in this State
23 on January 1, 1995 shall contribute annually a pro rata share

1 of a total amount of \$5,500,000 based upon the number of
2 kilowatt-hours delivered to retail customers within this State
3 by each such electric utility in the 12 months preceding the
4 year of contribution. On or before May 1 of each year, the
5 Illinois Commerce Commission shall determine and notify the
6 Illinois Department of Revenue of the pro rata share owed by
7 each electric utility based upon information supplied annually
8 to the Commission. On or before June 1 of each year, the
9 Department of Revenue shall send written notification to each
10 electric utility of the amount of pro rata share they owe.
11 These contributions shall be remitted to the Department of
12 Revenue no earlier than July 1 and no later than July 31 of
13 each year the contribution is due on a return prescribed and
14 furnished by the Department of Revenue showing such information
15 as the Department of Revenue may reasonably require. The
16 Department of Revenue shall place the funds remitted under this
17 Section in the Public Utility Fund in the State treasury. The
18 funds received pursuant to this Section shall be subject to
19 appropriation by the General Assembly. If an electric utility
20 does not remit its pro rata share to the Department of Revenue,
21 the Department of Revenue must inform the Illinois Commerce
22 Commission of such failure. The Illinois Commerce Commission
23 may then revoke the certification of that electric utility.
24 This Section is repealed on January 1, 2014 ~~2009~~.

25 (Source: P.A. 92-600, eff. 6-28-02.)

1 ARTICLE 10.

2 Section 10-5. The Public Utilities Act is amended by
3 changing Section 16-125 as follows:

4 (220 ILCS 5/16-125)

5 Sec. 16-125. Transmission and distribution reliability
6 requirements.

7 (a) To assure the reliable delivery of electricity to all
8 customers in this State and the effective implementation of the
9 provisions of this Article, the Commission shall, within 180
10 days of the effective date of this Article, adopt rules and
11 regulations for assessing and assuring the reliability of the
12 transmission and distribution systems and facilities that are
13 under the Commission's jurisdiction.

14 (b) These rules and regulations shall require each electric
15 utility or alternative retail electric supplier owning,
16 controlling, or operating transmission and distribution
17 facilities and equipment subject to the Commission's
18 jurisdiction, referred to in this Section as "jurisdictional
19 entities", to adopt and implement procedures for restoring
20 transmission and distribution services to customers after
21 transmission or distribution outages on a nondiscriminatory
22 basis without regard to whether a customer has chosen the
23 electric utility, an affiliate of the electric utility, or
24 another entity as its provider of electric power and energy.

1 These rules and regulations shall also, at a minimum,
2 specifically require each jurisdictional entity to submit
3 annually to the Commission.

4 (1) the number and duration of planned and unplanned
5 outages during the prior year and their impacts on
6 customers;

7 (2) outages that were controllable and outages that
8 were exacerbated in scope or duration by the condition of
9 facilities, equipment or premises or by the actions or
10 inactions of operating personnel or agents;

11 (3) customer service interruptions that were due
12 solely to the actions or inactions of an alternative retail
13 electric supplier or a public utility in supplying power or
14 energy;

15 (4) a detailed report of the age, current condition,
16 reliability and performance of the jurisdictional entity's
17 existing transmission and distribution facilities, which
18 shall include, without limitation, the following data:

19 (i) a summary of the jurisdictional entity's
20 outages and voltage variances reportable under the
21 Commission's rules;

22 (ii) the jurisdictional entity's expenditures for
23 transmission construction and maintenance, the ratio
24 of those expenditures to the jurisdictional entity's
25 transmission investment, and the average remaining
26 depreciation lives of the entity's transmission

1 facilities, expressed as a percentage of total
2 depreciation lives;

3 (iii) the jurisdictional entity's expenditures for
4 distribution construction and maintenance, the ratio
5 of those expenditures to the jurisdictional entity's
6 distribution investment, and the average remaining
7 depreciation lives of the entity's distribution
8 facilities, expressed as a percentage of total
9 depreciation lives;

10 (iv) a customer satisfaction survey covering,
11 among other areas identified in Commission rules,
12 reliability, customer service, and understandability
13 of the jurisdictional entity's services and prices;
14 and

15 (v) the corresponding information, in the same
16 format, for the previous 3 years, if available;

17 (5) a plan for future investment and reliability
18 improvements for the jurisdictional entity's transmission
19 and distribution facilities that will ensure continued
20 reliable delivery of energy to customers and provide the
21 delivery reliability needed for fair and open competition;
22 and

23 (6) a report of the jurisdictional entity's
24 implementation of its plan filed pursuant to subparagraph
25 (5) for the previous reporting period.

26 (c) The Commission rules shall set forth the criteria that

1 will be used to assess each jurisdictional entity's annual
2 report and evaluate its reliability performance. Such criteria
3 must take into account, at a minimum: the items required to be
4 reported in subsection (b); the relevant characteristics of the
5 area served; the age and condition of the system's equipment
6 and facilities; good engineering practices; the costs of
7 potential actions; and the benefits of avoiding the risks of
8 service disruption.

9 (d) At least every 3 years, beginning in the year the
10 Commission issues the rules required by subsection (a) or the
11 following year if the rules are issued after June 1, the
12 Commission shall assess the annual report of each
13 jurisdictional entity and evaluate its reliability
14 performance. The Commission's evaluation shall include
15 specific identification of, and recommendations concerning,
16 any potential reliability problems that it has identified as a
17 result of its evaluation.

18 (e) In the event that more than either (i) 30,000 (or some
19 other number, but only as provided by statute) of the total
20 customers or (ii) 0.8% (or some other percentage, but only as
21 provided by statute) of the total customers, whichever is less,
22 of an electric utility are subjected to a continuous power
23 interruption of 4 hours or more that results in the
24 transmission of power at less than 50% of the standard voltage,
25 or that results in the total loss of power transmission, the
26 utility shall be responsible for compensating customers

1 affected by that interruption for 4 hours or more for all
2 actual damages, which shall not include consequential damages,
3 suffered as a result of the power interruption. The utility
4 shall also reimburse the affected municipality, county, or
5 other unit of local government in which the power interruption
6 has taken place for all emergency and contingency expenses
7 incurred by the unit of local government as a result of the
8 interruption. A waiver of the requirements of this subsection
9 may be granted by the Commission in instances in which the
10 utility can show that the power interruption was a result of
11 any one or more of the following causes:

12 (1) Unpreventable damage due to weather events or
13 conditions.

14 (2) Customer tampering.

15 (3) Unpreventable damage due to civil or international
16 unrest or animals.

17 (4) Damage to utility equipment or other actions by a
18 party other than the utility, its employees, agents, or
19 contractors.

20 Loss of revenue and expenses incurred in complying with this
21 subsection may not be recovered from ratepayers.

22 (f) In the event of a power surge or other fluctuation that
23 causes damage and affects more than either (i) 30,000 (or some
24 other number, but only as provided by statute) of the total
25 customers or (ii) 0.8% (or some other percentage, but only as
26 provided by statute) of the total customers, whichever is less,

1 the electric utility shall pay to affected customers the
2 replacement value of all goods damaged as a result of the power
3 surge or other fluctuation unless the utility can show that the
4 power surge or other fluctuation was due to one or more of the
5 following causes:

6 (1) Unpreventable damage due to weather events or
7 conditions.

8 (2) Customer tampering.

9 (3) Unpreventable damage due to civil or international
10 unrest or animals.

11 (4) Damage to utility equipment or other actions by a
12 party other than the utility, its employees, agents, or
13 contractors.

14 Loss of revenue and expenses incurred in complying with this
15 subsection may not be recovered from ratepayers. Customers with
16 respect to whom a waiver has been granted by the Commission
17 pursuant to subparagraphs (1)-(4) of subsections (e) and (f)
18 shall not count toward the either (i) 30,000 (or some other
19 number, but only as provided by statute) of the total customers
20 or (ii) 0.8% (or some other percentage, but only as provided by
21 statute) of the total customers required therein.

22 (g) Whenever an electric utility must perform planned or
23 routine maintenance or repairs on its equipment that will
24 result in transmission of power at less than 50% of the
25 standard voltage, loss of power, or power fluctuation (as
26 defined in subsection (f)), the utility shall make reasonable

1 efforts to notify potentially affected customers no less than
2 24 hours in advance of performance of the repairs or
3 maintenance.

4 (h) Remedies provided for under this Section may be sought
5 exclusively through the Illinois Commerce Commission as
6 provided under Section 10-109 of this Act. Damages awarded
7 under this Section for a power interruption shall be limited to
8 actual damages, which shall not include consequential damages,
9 and litigation costs. A utility's request for a waiver of this
10 Section shall be timely if filed no later than 30 days after
11 the date on which a claim is filed with the Commission seeking
12 damages or expense reimbursement under this Section. No utility
13 shall be liable under this Section while a request for waiver
14 is pending. Damage awards may not be paid out of utility rate
15 funds.

16 (i) The provisions of this Section shall not in any way
17 diminish or replace other civil or administrative remedies
18 available to a customer or a class of customers.

19 (j) The Commission shall by rule require an electric
20 utility to maintain service records detailing information on
21 each instance of transmission of power at less than 50% of the
22 standard voltage, loss of power, or power fluctuation (as
23 defined in subsection (f)), that affects 10 or more customers.
24 Occurrences that are momentary shall not be required to be
25 recorded or reported. The service record shall include, for
26 each occurrence, the following information:

- 1 (1) The date.
- 2 (2) The time of occurrence.
- 3 (3) The duration of the incident.
- 4 (4) The number of customers affected.
- 5 (5) A description of the cause.
- 6 (6) The geographic area affected.
- 7 (7) The specific equipment involved in the fluctuation
- 8 or interruption.
- 9 (8) A description of measures taken to restore service.
- 10 (9) A description of measures taken to remedy the cause
- 11 of the power interruption or fluctuation.
- 12 (10) A description of measures taken to prevent future
- 13 occurrence.
- 14 (11) The amount of remuneration, if any, paid to
- 15 affected customers.
- 16 (12) A statement of whether the fixed charge was waived
- 17 for affected customers.
- 18 Copies of the records containing this information shall be
- 19 available for public inspection at the utility's offices, and
- 20 copies thereof may be obtained upon payment of a fee not
- 21 exceeding the reasonable cost of reproduction. A copy of each
- 22 record shall be filed with the Commission and shall be
- 23 available for public inspection. Copies of the records may be
- 24 obtained upon payment of a fee not exceeding the reasonable
- 25 cost of reproduction.
- 26 (k) The requirements of subsections (e) through (j) of this

1 Section shall apply only to an electric public utility having
2 100,000 ~~1,000,000~~ or more customers.

3 (Source: P.A. 90-561, eff. 12-16-97.)

4 ARTICLE 15

5 Section 15-5. The Public Utilities Act is amended by
6 changing Section 2-202 as follows:

7 (220 ILCS 5/2-202) (from Ch. 111 2/3, par. 2-202)

8 Sec. 2-202. Policy; Public Utility Fund; tax.

9 (a) It is declared to be the public policy of this State
10 that in order to maintain and foster the effective regulation
11 of public utilities under this Act in the interests of the
12 People of the State of Illinois and the public utilities as
13 well, the public utilities subject to regulation under this Act
14 and which enjoy the privilege of operating as public utilities
15 in this State, shall bear the expense of administering this Act
16 by means of a tax on such privilege measured by the annual
17 gross revenue of such public utilities in the manner provided
18 in this Section. For purposes of this Section, "expense of
19 administering this Act" includes any costs incident to studies,
20 whether made by the Commission or under contract entered into
21 by the Commission, concerning environmental pollution problems
22 caused or contributed to by public utilities and the means for
23 eliminating or abating those problems. Such proceeds shall be

1 deposited in the Public Utility Fund in the State treasury.

2 (b) All of the ordinary and contingent expenses of the
3 Commission incident to the administration of this Act shall be
4 paid out of the Public Utility Fund except the compensation of
5 the members of the Commission which shall be paid from the
6 General Revenue Fund. Notwithstanding other provisions of this
7 Act to the contrary, the ordinary and contingent expenses of
8 the Commission incident to the administration of the Illinois
9 Commercial Transportation Law may be paid from appropriations
10 from the Public Utility Fund through the end of fiscal year
11 1986.

12 (c) A tax is imposed upon each public utility subject to
13 the provisions of this Act equal to .08% of its gross revenue
14 for each calendar year commencing with the calendar year
15 beginning January 1, 1982, except that the Commission may, by
16 rule, establish a different rate no greater than 0.1%. For
17 purposes of this Section, "gross revenue" shall not include
18 revenue from the production, transmission, distribution, sale,
19 delivery, or furnishing of electricity. "Gross revenue" shall
20 not include amounts paid by telecommunications retailers under
21 the Telecommunications Infrastructure Maintenance Fee Act.

22 (d) Annual gross revenue returns shall be filed in
23 accordance with paragraph (1) or (2) of this subsection (d).

24 (1) Except as provided in paragraph (2) of this
25 subsection (d), on or before January 10 of each year each
26 public utility subject to the provisions of this Act shall

1 file with the Commission an estimated annual gross revenue
2 return containing an estimate of the amount of its gross
3 revenue for the calendar year commencing January 1 of said
4 year and a statement of the amount of tax due for said
5 calendar year on the basis of that estimate. Public
6 utilities may also file revised returns containing updated
7 estimates and updated amounts of tax due during the
8 calendar year. These revised returns, if filed, shall form
9 the basis for quarterly payments due during the remainder
10 of the calendar year. In addition, on or before March 31 of
11 each year, each public utility shall file an amended return
12 showing the actual amount of gross revenues shown by the
13 company's books and records as of December 31 of the
14 previous year. Forms and instructions for such estimated,
15 revised, and amended returns shall be devised and supplied
16 by the Commission.

17 (2) Beginning with returns due after January 1, 2002,
18 the requirements of paragraph (1) of this subsection (d)
19 shall not apply to any public utility in any calendar year
20 for which the total tax the public utility owes under this
21 Section is less than \$10,000. For such public utilities
22 with respect to such years, the public utility shall file
23 with the Commission, on or before March 31 of the following
24 year, an annual gross revenue return for the year and a
25 statement of the amount of tax due for that year on the
26 basis of such a return. Forms and instructions for such

1 returns and corrected returns shall be devised and supplied
2 by the Commission.

3 (e) All returns submitted to the Commission by a public
4 utility as provided in this subsection (e) or subsection (d) of
5 this Section shall contain or be verified by a written
6 declaration by an appropriate officer of the public utility
7 that the return is made under the penalties of perjury. The
8 Commission may audit each such return submitted and may, under
9 the provisions of Section 5-101 of this Act, take such measures
10 as are necessary to ascertain the correctness of the returns
11 submitted. The Commission has the power to direct the filing of
12 a corrected return by any utility which has filed an incorrect
13 return and to direct the filing of a return by any utility
14 which has failed to submit a return. A taxpayer's signing a
15 fraudulent return under this Section is perjury, as defined in
16 Section 32-2 of the Criminal Code of 1961.

17 (f) (1) For all public utilities subject to paragraph (1)
18 of subsection (d), at least one quarter of the annual amount of
19 tax due under subsection (c) shall be paid to the Commission on
20 or before the tenth day of January, April, July, and October of
21 the calendar year subject to tax. In the event that an
22 adjustment in the amount of tax due should be necessary as a
23 result of the filing of an amended or corrected return under
24 subsection (d) or subsection (e) of this Section, the amount of
25 any deficiency shall be paid by the public utility together
26 with the amended or corrected return and the amount of any

1 excess shall, after the filing of a claim for credit by the
2 public utility, be returned to the public utility in the form
3 of a credit memorandum in the amount of such excess or be
4 refunded to the public utility in accordance with the
5 provisions of subsection (k) of this Section. However, if such
6 deficiency or excess is less than \$1, then the public utility
7 need not pay the deficiency and may not claim a credit.

8 (2) Any public utility subject to paragraph (2) of
9 subsection (d) shall pay the amount of tax due under subsection
10 (c) on or before March 31 next following the end of the
11 calendar year subject to tax. In the event that an adjustment
12 in the amount of tax due should be necessary as a result of the
13 filing of a corrected return under subsection (e), the amount
14 of any deficiency shall be paid by the public utility at the
15 time the corrected return is filed. Any excess tax payment by
16 the public utility shall be returned to it after the filing of
17 a claim for credit, in the form of a credit memorandum in the
18 amount of the excess. However, if such deficiency or excess is
19 less than \$1, the public utility need not pay the deficiency
20 and may not claim a credit.

21 (g) Each installment or required payment of the tax imposed
22 by subsection (c) becomes delinquent at midnight of the date
23 that it is due. Failure to make a payment as required by this
24 Section shall result in the imposition of a late payment
25 penalty, an underestimation penalty, or both, as provided by
26 this subsection. The late payment penalty shall be the greater

1 of:

2 (1) \$25 for each month or portion of a month that the
3 installment or required payment is unpaid or

4 (2) an amount equal to the difference between what
5 should have been paid on the due date, based upon the most
6 recently filed estimated, annual, or amended return, and
7 what was actually paid, times 1%, for each month or portion
8 of a month that the installment or required payment goes
9 unpaid. This penalty may be assessed as soon as the
10 installment or required payment becomes delinquent.

11 The underestimation penalty shall apply to those public
12 utilities subject to paragraph (1) of subsection (d) and shall
13 be calculated after the filing of the amended return. It shall
14 be imposed if the amount actually paid on any of the dates
15 specified in subsection (f) is not equal to at least one-fourth
16 of the amount actually due for the year, and shall equal the
17 greater of:

18 (1) \$25 for each month or portion of a month that the
19 amount due is unpaid or

20 (2) an amount equal to the difference between what
21 should have been paid, based on the amended return, and
22 what was actually paid as of the date specified in
23 subsection (f), times a percentage equal to 1/12 of the sum
24 of 10% and the percentage most recently established by the
25 Commission for interest to be paid on customer deposits
26 under 83 Ill. Adm. Code 280.70(e)(1), for each month or

1 portion of a month that the amount due goes unpaid, except
2 that no underestimation penalty shall be assessed if the
3 amount actually paid on or before each of the dates
4 specified in subsection (f) was based on an estimate of
5 gross revenues at least equal to the actual gross revenues
6 for the previous year. The Commission may enforce the
7 collection of any delinquent installment or payment, or
8 portion thereof by legal action or in any other manner by
9 which the collection of debts due the State of Illinois may
10 be enforced under the laws of this State. The executive
11 director or his designee may excuse the payment of an
12 assessed penalty or a portion of an assessed penalty if he
13 determines that enforced collection of the penalty as
14 assessed would be unjust.

15 (h) All sums collected by the Commission under the
16 provisions of this Section shall be paid promptly after the
17 receipt of the same, accompanied by a detailed statement
18 thereof, into the Public Utility Fund in the State treasury.

19 (i) During the month of October of each odd-numbered year
20 the Commission shall:

21 (1) determine the amount of all moneys deposited in the
22 Public Utility Fund during the preceding fiscal biennium
23 plus the balance, if any, in that fund at the beginning of
24 that biennium;

25 (2) determine the sum total of the following items: (A)
26 all moneys expended or obligated against appropriations

1 made from the Public Utility Fund during the preceding
2 fiscal biennium, plus (B) the sum of the credit memoranda
3 then outstanding against the Public Utility Fund, if any;
4 and

5 (3) determine the amount, if any, by which the sum
6 determined as provided in item (1) exceeds the amount
7 determined as provided in item (2).

8 If the amount determined as provided in item (3) of this
9 subsection exceeds 50% of the previous fiscal year's
10 appropriation level ~~\$5,000,000~~, the Commission shall then
11 compute the proportionate amount, if any, which (x) the tax
12 paid hereunder by each utility during the preceding biennium,
13 and (y) the amount paid into the Public Utility Fund during the
14 preceding biennium by the Department of Revenue pursuant to
15 Sections 2-9 and 2-11 of the Electricity Excise Tax Law, bears
16 to the difference between the amount determined as provided in
17 item (3) of this subsection (i) and 50% of the previous fiscal
18 year's appropriation level ~~\$5,000,000~~. The Commission shall
19 cause the proportionate amount determined with respect to
20 payments made under the Electricity Excise Tax Law to be
21 transferred into the General Revenue Fund in the State
22 Treasury, and notify each public utility that it may file
23 during the 3 month period after the date of notification a
24 claim for credit for the proportionate amount determined with
25 respect to payments made hereunder by the public utility. If
26 the proportionate amount is less than \$10, no notification will

1 be sent by the Commission, and no right to a claim exists as to
2 that amount. Upon the filing of a claim for credit within the
3 period provided, the Commission shall issue a credit memorandum
4 in such amount to such public utility. Any claim for credit
5 filed after the period provided for in this Section is void.

6 (j) Credit memoranda issued pursuant to subsection (f) and
7 credit memoranda issued after notification and filing pursuant
8 to subsection (i) may be applied for the 2 year period from the
9 date of issuance, against the payment of any amount due during
10 that period under the tax imposed by subsection (c), or,
11 subject to reasonable rule of the Commission including
12 requirement of notification, may be assigned to any other
13 public utility subject to regulation under this Act. Any
14 application of credit memoranda after the period provided for
15 in this Section is void.

16 (k) The chairman or executive director may make refund of
17 fees, taxes or other charges whenever he shall determine that
18 the person or public utility will not be liable for payment of
19 such fees, taxes or charges during the next 24 months and he
20 determines that the issuance of a credit memorandum would be
21 unjust.

22 (Source: P.A. 92-11, eff. 6-11-01; 92-22, eff. 6-30-01; 92-526,
23 eff. 1-1-03.)

24 Section 15-10. The Illinois Vehicle Code is amended by
25 changing Section 18c-1503 as follows:

1 (625 ILCS 5/18c-1503) (from Ch. 95 1/2, par. 18c-1503)

2 Sec. 18c-1503. Legislative Intent. It is the intent of the
3 Legislature that the exercise of powers under Sections 18c-1501
4 and 18c-1502 of this Chapter shall not diminish revenues to the
5 Commission, and that any surplus or deficit of revenues in the
6 Transportation Regulatory Fund, together with any projected
7 changes in the cost of administering and enforcing this
8 Chapter, should be considered in establishing or adjusting fees
9 and taxes in succeeding years. The Commission shall administer
10 fees and taxes under this Chapter in such a manner as to insure
11 that any surplus generated or accumulated in the Transportation
12 Regulatory Fund does not exceed 50% of the previous fiscal
13 year's appropriation ~~the surplus accumulated in the Motor~~
14 ~~Vehicle Fund during fiscal year 1984,~~ and shall adjust the
15 level of such fees and taxes to insure compliance with this
16 provision.

17 (Source: P.A. 84-796.)

18 ARTICLE 99

19 Section 99-97. Severability. The provisions of this Act are
20 severable under Section 1.31 of the Statute on Statutes.

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