



Sen. Don Harmon

Filed: 3/4/2009

09600SB2150sam001

LRB096 08714 MJR 23044 a

1 AMENDMENT TO SENATE BILL 2150

2 AMENDMENT NO. _____. Amend Senate Bill 2150 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Power Agency Act is amended by
5 changing Sections 1-10 and 1-75 and by adding Section 1-56 as
6 follows:

7 (20 ILCS 3855/1-10)

8 (Text of Section before amendment by P.A. 95-1027)

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

1 maintenance, insurance, and other matters in respect of the
2 project.

3 "Authority" means the Illinois Finance Authority.

4 "Commission" means the Illinois Commerce Commission.

5 "Costs incurred in connection with the development and
6 construction of a facility" means:

7 (1) the cost of acquisition of all real property and
8 improvements in connection therewith and equipment and
9 other property, rights, and easements acquired that are
10 deemed necessary for the operation and maintenance of the
11 facility;

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

14 (3) all origination, commitment, utilization,
15 facility, placement, underwriting, syndication, credit
16 enhancement, and rating agency fees;

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

23 (5) the costs of plans, specifications, site study and
24 investigation, installation, surveys, other Agency costs
25 and estimates of costs, and other expenses necessary or
26 incidental to determining the feasibility of any project,

1 together with such other expenses as may be necessary or
2 incidental to the financing, insuring, acquisition, and
3 construction of a specific project and placing that project
4 in operation.

5 "Department" means the Department of Commerce and Economic
6 Opportunity.

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

8 "Demand-response" means measures that decrease peak
9 electricity demand or shift demand from peak to off-peak
10 periods.

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

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

15 "Facility" means an electric generating unit or a
16 co-generating unit that produces electricity along with
17 related equipment necessary to connect the facility to an
18 electric transmission or distribution system.

19 "Governmental aggregator" means one or more units of local
20 government that individually or collectively procure
21 electricity to serve residential retail electrical loads
22 located within its or their jurisdiction.

23 "Local government" means a unit of local government as
24 defined in Article VII of Section 1 of the Illinois
25 Constitution.

26 "Municipality" means a city, village, or incorporated

1 town.

2 "Person" means any natural person, firm, partnership,
3 corporation, either domestic or foreign, company, association,
4 limited liability company, joint stock company, or association
5 and includes any trustee, receiver, assignee, or personal
6 representative thereof.

7 "Project" means the planning, bidding, and construction of
8 a facility.

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

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

17 "Renewable energy credit" means a tradable credit that
18 represents the environmental attributes of a certain amount of
19 energy produced from a renewable energy resource.

20 "Renewable energy resources" includes energy and its
21 associated renewable energy credit or renewable energy credits
22 from wind, solar thermal energy, photovoltaic cells and panels,
23 biodiesel, crops and untreated and unadulterated organic waste
24 biomass, ~~trees and tree waste trimmings~~, hydropower that does
25 not involve new construction or significant expansion of
26 hydropower dams, and other alternative sources of

1 environmentally preferable energy. For purposes of this Act,
2 landfill gas produced in the State is considered a renewable
3 energy resource. "Renewable energy resources" does not include
4 the incineration or burning of tires, garbage, general
5 household, institutional, and commercial waste, industrial
6 lunchroom or office waste, landscape waste other than ~~trees and~~
7 tree waste ~~trimmings~~, railroad crossties, utility poles, or
8 construction or demolition debris, other than untreated and
9 unadulterated waste wood.

10 "Revenue bond" means any bond, note, or other evidence of
11 indebtedness issued by the Authority, the principal and
12 interest of which is payable solely from revenues or income
13 derived from any project or activity of the Agency.

14 "Total resource cost test" or "TRC test" means a standard
15 that is met if, for an investment in energy efficiency or
16 demand-response measures, the benefit-cost ratio is greater
17 than one. The benefit-cost ratio is the ratio of the net
18 present value of the total benefits of the program to the net
19 present value of the total costs as calculated over the
20 lifetime of the measures. A total resource cost test compares
21 the sum of avoided electric utility costs, representing the
22 benefits that accrue to the system and the participant in the
23 delivery of those efficiency measures, to the sum of all
24 incremental costs of end-use measures that are implemented due
25 to the program (including both utility and participant
26 contributions), plus costs to administer, deliver, and

1 evaluate each demand-side program, to quantify the net savings
2 obtained by substituting the demand-side program for supply
3 resources. In calculating avoided costs of power and energy
4 that an electric utility would otherwise have had to acquire,
5 reasonable estimates shall be included of financial costs
6 likely to be imposed by future regulations and legislation on
7 emissions of greenhouse gases.

8 (Source: P.A. 95-481, eff. 8-28-07; 95-913, eff. 1-1-09.)

9 (Text of Section after amendment by P.A. 95-1027)

10 Sec. 1-10. Definitions.

11 "Agency" means the Illinois Power Agency.

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

20 "Authority" means the Illinois Finance Authority.

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

1 commences, the facility is scheduled to commence operation
2 before 2016, at least 70% of the total carbon emissions that
3 the facility would otherwise emit if, at the time construction
4 commences, the facility is scheduled to commence operation
5 during 2016 or 2017, and at least 90% of the total carbon
6 emissions that the facility would otherwise emit if, at the
7 time construction commences, the facility is scheduled to
8 commence operation after 2017. The power block of the clean
9 coal facility shall not exceed allowable emission rates for
10 sulfur dioxide, nitrogen oxides, carbon monoxide, particulates
11 and mercury for a natural gas-fired combined-cycle facility the
12 same size as and in the same location as the clean coal
13 facility at the time the clean coal facility obtains an
14 approved air permit. All coal used by a clean coal facility
15 shall have high volatile bituminous rank and greater than 1.7
16 pounds of sulfur per million btu content, unless the clean coal
17 facility does not use gasification technology and was operating
18 as a conventional coal-fired electric generating facility on
19 June 1, 2009 (the effective date of Public Act 95-1027) ~~this~~
20 ~~amendatory Act of the 95th General Assembly.~~

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

1 "Commission" means the Illinois Commerce Commission.

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

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

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

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

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

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

1 in operation.

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3 Opportunity.

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6 electricity demand or shift demand from peak to off-peak
7 periods.

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

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

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

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17 government that individually or collectively procure
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19 located within its or their jurisdiction.

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21 defined in Article VII of Section 1 of the Illinois
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24 town.

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26 corporation, either domestic or foreign, company, association,

1 limited liability company, joint stock company, or association
2 and includes any trustee, receiver, assignee, or personal
3 representative thereof.

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5 a facility.

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7 Section 3-105 of the Public Utilities Act.

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

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

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

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

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

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

16 "Servicing agreement" means (i) in the case of an electric
17 utility, an agreement between the owner of a clean coal
18 facility and such electric utility, which agreement shall have
19 terms and conditions meeting the requirements of paragraph (3)
20 of subsection (d) of Section 1-75, and (ii) in the case of an
21 alternative retail electric supplier, an agreement between the
22 owner of a clean coal facility and such alternative retail
23 electric supplier, which agreement shall have terms and
24 conditions meeting the requirements of Section 16-115(d) (5) of
25 the Public Utilities Act.

26 "Substitute natural gas" or "SNG" means a gas manufactured

1 by gasification of hydrocarbon feedstock, which is
2 substantially interchangeable in use and distribution with
3 conventional natural gas.

4 "Total resource cost test" or "TRC test" means a standard
5 that is met if, for an investment in energy efficiency or
6 demand-response measures, the benefit-cost ratio is greater
7 than one. The benefit-cost ratio is the ratio of the net
8 present value of the total benefits of the program to the net
9 present value of the total costs as calculated over the
10 lifetime of the measures. A total resource cost test compares
11 the sum of avoided electric utility costs, representing the
12 benefits that accrue to the system and the participant in the
13 delivery of those efficiency measures, to the sum of all
14 incremental costs of end-use measures that are implemented due
15 to the program (including both utility and participant
16 contributions), plus costs to administer, deliver, and
17 evaluate each demand-side program, to quantify the net savings
18 obtained by substituting the demand-side program for supply
19 resources. In calculating avoided costs of power and energy
20 that an electric utility would otherwise have had to acquire,
21 reasonable estimates shall be included of financial costs
22 likely to be imposed by future regulations and legislation on
23 emissions of greenhouse gases.

24 (Source: P.A. 95-481, eff. 8-28-07; 95-913, eff. 1-1-09;
25 95-1027, eff. 6-1-09; revised 1-14-09.)

1 (20 ILCS 3855/1-56 new)

2 Sec. 1-56. Illinois Power Agency Renewable Energy
3 Resources Fund.

4 (a) The Illinois Power Agency Renewable Energy Resources
5 Fund is created as a special fund in the State treasury.

6 (b) The Illinois Power Agency Renewable Energy Resources
7 Fund shall be administered by the Agency to procure renewable
8 energy resources. Prior to June 1, 2011, resources procured
9 pursuant to this Section shall be procured from facilities
10 located in Illinois, provided the resources are available from
11 those facilities. If resources are not available in Illinois,
12 then they shall be procured in states that adjoin Illinois. If
13 resources are not available in Illinois or in states that
14 adjoin Illinois, then they may be purchased elsewhere.
15 Beginning June 1, 2011, resources procured pursuant to this
16 Section shall be procured from facilities located in Illinois
17 or states that adjoin Illinois. If resources are not available
18 in Illinois or in states that adjoin Illinois, then they may be
19 procured elsewhere. To the extent available, at least 75% of
20 these renewable energy resources shall come from wind
21 generation and, starting June 1, 2015, at least 6% of the
22 renewable energy resources used to meet these standards shall
23 come from solar photovoltaics.

24 (c) The Agency shall procure renewable energy resources at
25 least once each year in conjunction with a procurement event
26 for electric utilities required to comply with Section 1-75 of

1 the Act and shall, whenever possible, enter into long-term
2 contracts.

3 (d) The price paid to procure renewable energy credits
4 using monies from the Illinois Power Agency Renewable Energy
5 Resources Fund shall not exceed the winning bid prices paid for
6 like resources procured for electric utilities required to
7 comply with Section 1-75 of this Act.

8 (e) All renewable energy credits procured using monies from
9 the Illinois Power Agency Renewable Energy Resources Fund shall
10 be permanently retired.

11 (f) The procurement process described in this Section is
12 exempt from the requirements of the Illinois Procurement Code,
13 pursuant to Section 20-10 of that Code.

14 (g) All disbursements from the Illinois Power Agency
15 Renewable Energy Resources Fund shall be made only upon
16 warrants of the Comptroller drawn upon the Treasurer as
17 custodian of the Fund upon vouchers signed by the Director or
18 by the person or persons designated by the Director for that
19 purpose. The Comptroller is authorized to draw the warrant upon
20 vouchers so signed. The Treasurer shall accept all warrants so
21 signed and shall be released from liability for all payments
22 made on those warrants.

23 (h) The Illinois Power Agency Renewable Energy Resources
24 Fund shall not be subject to sweeps, administrative charges, or
25 chargebacks, including, but not limited to, those authorized
26 under Section 8h of the State Finance Act, that would in any

1 way result in the transfer of any funds from this Fund to any
2 other fund of this State or in having any such funds utilized
3 for any purpose other than the express purposes set forth in
4 this Section.

5 (20 ILCS 3855/1-75)

6 (Text of Section before amendment by P.A. 95-1027)

7 Sec. 1-75. Planning and Procurement Bureau. The Planning
8 and Procurement Bureau has the following duties and
9 responsibilities:

10 (a) The Planning and Procurement Bureau shall each
11 year, beginning in 2008, develop procurement plans and
12 conduct competitive procurement processes in accordance
13 with the requirements of Section 16-111.5 of the Public
14 Utilities Act for the eligible retail customers of electric
15 utilities that on December 31, 2005 provided electric
16 service to at least 100,000 customers in Illinois. For the
17 purposes of this Section, the term "eligible retail
18 customers" has the same definition as found in Section
19 16-111.5(a) of the Public Utilities Act.

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

1 (A) direct previous experience assembling
2 large-scale power supply plans or portfolios for
3 end-use customers;

4 (B) an advanced degree in economics,
5 mathematics, engineering, risk management, or a
6 related area of study;

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

9 (D) expertise in wholesale electricity market
10 rules, including those established by the Federal
11 Energy Regulatory Commission and regional
12 transmission organizations;

13 (E) expertise in credit protocols and
14 familiarity with contract protocols;

15 (F) adequate resources to perform and fulfill
16 the required functions and responsibilities; and

17 (G) the absence of a conflict of interest and
18 inappropriate bias for or against potential
19 bidders or the affected electric utilities.

20 (2) The Agency shall each year, as needed, issue a
21 request for qualifications for a procurement
22 administrator to conduct the competitive procurement
23 processes in accordance with Section 16-111.5 of the
24 Public Utilities Act. In order to qualify an expert or
25 expert consulting firm must have:

26 (A) direct previous experience administering a

1 large-scale competitive procurement process;

2 (B) an advanced degree in economics,
3 mathematics, engineering, or a related area of
4 study;

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

7 (D) expertise in wholesale electricity market
8 rules, including those established by the Federal
9 Energy Regulatory Commission and regional
10 transmission organizations;

11 (E) expertise in credit and contract
12 protocols;

13 (F) adequate resources to perform and fulfill
14 the required functions and responsibilities; and

15 (G) the absence of a conflict of interest and
16 inappropriate bias for or against potential
17 bidders or the affected electric utilities.

18 (3) The Agency shall provide affected utilities
19 and other interested parties with the lists of
20 qualified experts or expert consulting firms
21 identified through the request for qualifications
22 processes that are under consideration to develop the
23 procurement plans and to serve as the procurement
24 administrator. The Agency shall also provide each
25 qualified expert's or expert consulting firm's
26 response to the request for qualifications. All

1 information provided under this subparagraph shall
2 also be provided to the Commission. The Agency may
3 provide by rule for fees associated with supplying the
4 information to utilities and other interested parties.
5 These parties shall, within 5 business days, notify the
6 Agency in writing if they object to any experts or
7 expert consulting firms on the lists. Objections shall
8 be based on:

9 (A) failure to satisfy qualification criteria;

10 (B) identification of a conflict of interest;

11 or

12 (C) evidence of inappropriate bias for or
13 against potential bidders or the affected
14 utilities.

15 The Agency shall remove experts or expert
16 consulting firms from the lists within 10 days if there
17 is a reasonable basis for an objection and provide the
18 updated lists to the affected utilities and other
19 interested parties. If the Agency fails to remove an
20 expert or expert consulting firm from a list, an
21 objecting party may seek review by the Commission
22 within 5 days thereafter by filing a petition, and the
23 Commission shall render a ruling on the petition within
24 10 days. There is no right of appeal of the
25 Commission's ruling.

26 (4) The Agency shall issue requests for proposals

1 to the qualified experts or expert consulting firms to
2 develop a procurement plan for the affected utilities
3 and to serve as procurement administrator.

4 (5) The Agency shall select an expert or expert
5 consulting firm to develop procurement plans based on
6 the proposals submitted and shall award one-year
7 contracts to those selected with an option for the
8 Agency for a one-year renewal.

9 (6) The Agency shall select an expert or expert
10 consulting firm, with approval of the Commission, to
11 serve as procurement administrator based on the
12 proposals submitted. If the Commission rejects, within
13 5 days, the Agency's selection, the Agency shall submit
14 another recommendation within 3 days based on the
15 proposals submitted. The Agency shall award a one-year
16 contract to the expert or expert consulting firm so
17 selected with Commission approval with an option for
18 the Agency for a one-year renewal.

19 (b) The experts or expert consulting firms retained by
20 the Agency shall, as appropriate, prepare procurement
21 plans, and conduct a competitive procurement process as
22 prescribed in Section 16-111.5 of the Public Utilities Act,
23 to ensure adequate, reliable, affordable, efficient, and
24 environmentally sustainable electric service at the lowest
25 total cost over time, taking into account any benefits of
26 price stability, for eligible retail customers of electric

1 utilities that on December 31, 2005 provided electric
2 service to at least 100,000 customers in the State of
3 Illinois.

4 (c) Renewable portfolio standard.

5 (1) The procurement plans shall include
6 cost-effective renewable energy resources. A minimum
7 percentage of each utility's total supply to serve the
8 load of eligible retail customers, as defined in
9 Section 16-111.5(a) of the Public Utilities Act,
10 procured for each of the following years shall be
11 generated from cost-effective renewable energy
12 resources: at least 2% by June 1, 2008; at least 4% by
13 June 1, 2009; at least 5% by June 1, 2010; at least 6%
14 by June 1, 2011; at least 7% by June 1, 2012; at least
15 8% by June 1, 2013; at least 9% by June 1, 2014; at
16 least 10% by June 1, 2015; and increasing by at least
17 1.5% each year thereafter to at least 25% by June 1,
18 2025. To the extent that it is available, at least 75%
19 of the renewable energy resources used to meet these
20 standards shall come from wind generation and,
21 beginning on June 1, 2015, at least 6% of the renewable
22 energy resources used to meet these standards shall
23 come from photovoltaics. For purposes of this Section,
24 "cost-effective" means that the costs of procuring
25 renewable energy resources do not cause the limit
26 stated in paragraph (2) of this subsection (c) to be

1 exceeded.

2 (2) For purposes of this subsection (c), the
3 required procurement of cost-effective renewable
4 energy resources for a particular year shall be
5 measured as a percentage of the actual amount of
6 electricity (megawatt-hours) supplied by the electric
7 utility to eligible retail customers in the planning
8 year ending immediately prior to the procurement. For
9 purposes of this subsection (c), the amount per
10 kilowatthour means the total amount paid for electric
11 service expressed on a per kilowatthour basis. For
12 purposes of this subsection (c), the total amount paid
13 for electric service includes without limitation
14 amounts paid for supply, transmission, distribution,
15 surcharges, and add-on taxes.

16 Notwithstanding the requirements of this
17 subsection (c), the total of renewable energy
18 resources procured pursuant to the procurement plan
19 for any single year shall be reduced by an amount
20 necessary to limit the annual estimated average net
21 increase due to the costs of these resources included
22 in the amounts paid by eligible retail customers in
23 connection with electric service to:

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

1 (B) in 2009, the greater of an additional 0.5%
2 of the amount paid per kilowatthour by those
3 customers during the year ending May 31, 2008 or 1%
4 of the amount paid per kilowatthour by those
5 customers during the year ending May 31, 2007;

6 (C) in 2010, the greater of an additional 0.5%
7 of the amount paid per kilowatthour by those
8 customers during the year ending May 31, 2009 or
9 1.5% of the amount paid per kilowatthour by those
10 customers during the year ending May 31, 2007;

11 (D) in 2011, the greater of an additional 0.5%
12 of the amount paid per kilowatthour by those
13 customers during the year ending May 31, 2010 or 2%
14 of the amount paid per kilowatthour by those
15 customers during the year ending May 31, 2007; and

16 (E) thereafter, the amount of renewable energy
17 resources procured pursuant to the procurement
18 plan for any single year shall be reduced by an
19 amount necessary to limit the estimated average
20 net increase due to the cost of these resources
21 included in the amounts paid by eligible retail
22 customers in connection with electric service to
23 no more than the greater of 2.015% of the amount
24 paid per kilowatthour by those customers during
25 the year ending May 31, 2007 or the incremental
26 amount per kilowatthour paid for these resources

1 in 2011.

2 No later than June 30, 2011, the Commission shall
3 review the limitation on the amount of renewable energy
4 resources procured pursuant to this subsection (c) and
5 report to the General Assembly its findings as to
6 whether that limitation unduly constrains the
7 procurement of cost-effective renewable energy
8 resources.

9 (3) Through June 1, 2011, renewable energy
10 resources shall be counted for the purpose of meeting
11 the renewable energy standards set forth in paragraph
12 (1) of this subsection (c) only if they are generated
13 from facilities located in the State, provided that
14 cost-effective renewable energy resources are
15 available from those facilities. If those
16 cost-effective resources are not available in
17 Illinois, they shall be procured in states that adjoin
18 Illinois and may be counted towards compliance. If
19 those cost-effective resources are not available in
20 Illinois or in states that adjoin Illinois, they shall
21 be purchased elsewhere and shall be counted towards
22 compliance. After June 1, 2011, cost-effective
23 renewable energy resources located in Illinois and in
24 states that adjoin Illinois may be counted towards
25 compliance with the standards set forth in paragraph
26 (1) of this subsection (c). If those cost-effective

1 resources are not available in Illinois or in states
2 that adjoin Illinois, they shall be purchased
3 elsewhere and shall be counted towards compliance.

4 (4) The electric utility shall retire all
5 renewable energy credits used to comply with the
6 standard.

7 (5) Beginning with the year commencing June 1,
8 2010, an electric utility subject to this subsection
9 (c) shall apply the lesser of the maximum alternative
10 compliance payment rate or the most recent estimated
11 alternative compliance payment rate for its service
12 territory for the corresponding compliance period,
13 established pursuant to subsection (d) of Section
14 16-115D of the Public Utilities Act to its retail
15 customers that take service pursuant to the electric
16 utility's hourly pricing tariff or tariffs. The
17 electric utility shall retain all amounts collected as
18 a result of the application of the alternative
19 compliance payment rate or rates to such customers,
20 and, beginning in 2011, the utility shall include in
21 the information provided under item (1) of subsection
22 (d) of Section 16-111.5 of the Public Utilities Act the
23 amounts collected under the alternative compliance
24 payment rate or rates for the prior year ending May 31.
25 Notwithstanding any limitation on the procurement of
26 renewable energy resources imposed by item (2) of this

1 subsection (c), the Agency shall increase its spending
2 on the purchase of renewable energy resources to be
3 procured by the electric utility for the next plan year
4 by an amount equal to the amounts collected by the
5 utility under the alternative compliance payment rate
6 or rates in the prior year ending May 31.

7 (d) The draft procurement plans are subject to public
8 comment, as required by Section 16-111.5 of the Public
9 Utilities Act.

10 (e) The Agency shall submit the final procurement plan
11 to the Commission. The Agency shall revise a procurement
12 plan if the Commission determines that it does not meet the
13 standards set forth in Section 16-111.5 of the Public
14 Utilities Act.

15 (f) The Agency shall assess fees to each affected
16 utility to recover the costs incurred in preparation of the
17 annual procurement plan for the utility.

18 (g) The Agency shall assess fees to each bidder to
19 recover the costs incurred in connection with a competitive
20 procurement process.

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

22 (Text of Section after amendment by P.A. 95-1027)

23 Sec. 1-75. Planning and Procurement Bureau. The Planning
24 and Procurement Bureau has the following duties and
25 responsibilities:

1 (a) The Planning and Procurement Bureau shall each
2 year, beginning in 2008, develop procurement plans and
3 conduct competitive procurement processes in accordance
4 with the requirements of Section 16-111.5 of the Public
5 Utilities Act for the eligible retail customers of electric
6 utilities that on December 31, 2005 provided electric
7 service to at least 100,000 customers in Illinois. For the
8 purposes of this Section, the term "eligible retail
9 customers" has the same definition as found in Section
10 16-111.5(a) of the Public Utilities Act.

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

17 (A) direct previous experience assembling
18 large-scale power supply plans or portfolios for
19 end-use customers;

20 (B) an advanced degree in economics,
21 mathematics, engineering, risk management, or a
22 related area of study;

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

25 (D) expertise in wholesale electricity market
26 rules, including those established by the Federal

1 Energy Regulatory Commission and regional
2 transmission organizations;

3 (E) expertise in credit protocols and
4 familiarity with contract protocols;

5 (F) adequate resources to perform and fulfill
6 the required functions and responsibilities; and

7 (G) the absence of a conflict of interest and
8 inappropriate bias for or against potential
9 bidders or the affected electric utilities.

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

16 (A) direct previous experience administering a
17 large-scale competitive procurement process;

18 (B) an advanced degree in economics,
19 mathematics, engineering, or a related area of
20 study;

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

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

1 (E) expertise in credit and contract
2 protocols;

3 (F) adequate resources to perform and fulfill
4 the required functions and responsibilities; and

5 (G) the absence of a conflict of interest and
6 inappropriate bias for or against potential
7 bidders or the affected electric utilities.

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

25 (A) failure to satisfy qualification criteria;

26 (B) identification of a conflict of interest;

1 or

2 (C) evidence of inappropriate bias for or
3 against potential bidders or the affected
4 utilities.

5 The Agency shall remove experts or expert
6 consulting firms from the lists within 10 days if there
7 is a reasonable basis for an objection and provide the
8 updated lists to the affected utilities and other
9 interested parties. If the Agency fails to remove an
10 expert or expert consulting firm from a list, an
11 objecting party may seek review by the Commission
12 within 5 days thereafter by filing a petition, and the
13 Commission shall render a ruling on the petition within
14 10 days. There is no right of appeal of the
15 Commission's ruling.

16 (4) The Agency shall issue requests for proposals
17 to the qualified experts or expert consulting firms to
18 develop a procurement plan for the affected utilities
19 and to serve as procurement administrator.

20 (5) The Agency shall select an expert or expert
21 consulting firm to develop procurement plans based on
22 the proposals submitted and shall award one-year
23 contracts to those selected with an option for the
24 Agency for a one-year renewal.

25 (6) The Agency shall select an expert or expert
26 consulting firm, with approval of the Commission, to

1 serve as procurement administrator based on the
2 proposals submitted. If the Commission rejects, within
3 5 days, the Agency's selection, the Agency shall submit
4 another recommendation within 3 days based on the
5 proposals submitted. The Agency shall award a one-year
6 contract to the expert or expert consulting firm so
7 selected with Commission approval with an option for
8 the Agency for a one-year renewal.

9 (b) The experts or expert consulting firms retained by
10 the Agency shall, as appropriate, prepare procurement
11 plans, and conduct a competitive procurement process as
12 prescribed in Section 16-111.5 of the Public Utilities Act,
13 to ensure 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 eligible retail customers of electric
17 utilities that on December 31, 2005 provided electric
18 service to at least 100,000 customers in the State of
19 Illinois.

20 (c) Renewable portfolio standard.

21 (1) The procurement plans shall include
22 cost-effective renewable energy resources. A minimum
23 percentage of each utility's total supply to serve the
24 load of eligible retail customers, as defined in
25 Section 16-111.5(a) of the Public Utilities Act,
26 procured for each of the following years shall be

1 generated from cost-effective renewable energy
2 resources: at least 2% by June 1, 2008; at least 4% by
3 June 1, 2009; at least 5% by June 1, 2010; at least 6%
4 by June 1, 2011; at least 7% by June 1, 2012; at least
5 8% by June 1, 2013; at least 9% by June 1, 2014; at
6 least 10% by June 1, 2015; and increasing by at least
7 1.5% each year thereafter to at least 25% by June 1,
8 2025. To the extent that it is available, at least 75%
9 of the renewable energy resources used to meet these
10 standards shall come from wind generation and,
11 beginning on June 1, 2015, at least 6% of the renewable
12 energy resources used to meet these standards shall
13 come from photovoltaics. For purposes of this
14 subsection (c), "cost-effective" means that the costs
15 of procuring renewable energy resources do not cause
16 the limit stated in paragraph (2) of this subsection
17 (c) to be exceeded and do not exceed benchmarks based
18 on market prices for renewable energy resources in the
19 region, which shall be developed by the procurement
20 administrator, in consultation with the Commission
21 staff, Agency staff, and the procurement monitor and
22 shall be subject to Commission review and approval.

23 (2) For purposes of this subsection (c), the
24 required procurement of cost-effective renewable
25 energy resources for a particular year shall be
26 measured as a percentage of the actual amount of

1 electricity (megawatt-hours) supplied by the electric
2 utility to eligible retail customers in the planning
3 year ending immediately prior to the procurement. For
4 purposes of this subsection (c), the amount paid per
5 kilowatthour means the total amount paid for electric
6 service expressed on a per kilowatthour basis. For
7 purposes of this subsection (c), the total amount paid
8 for electric service includes without limitation
9 amounts paid for supply, transmission, distribution,
10 surcharges, and add-on taxes.

11 Notwithstanding the requirements of this
12 subsection (c), the total of renewable energy
13 resources procured pursuant to the procurement plan
14 for any single year shall be reduced by an amount
15 necessary to limit the annual estimated average net
16 increase due to the costs of these resources included
17 in the amounts paid by eligible retail customers in
18 connection with electric service to:

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

22 (B) in 2009, the greater of an additional 0.5%
23 of the amount paid per kilowatthour by those
24 customers during the year ending May 31, 2008 or 1%
25 of the amount paid per kilowatthour by those
26 customers during the year ending May 31, 2007;

1 (C) in 2010, the greater of an additional 0.5%
2 of the amount paid per kilowatthour by those
3 customers during the year ending May 31, 2009 or
4 1.5% of the amount paid per kilowatthour by those
5 customers during the year ending May 31, 2007;

6 (D) in 2011, the greater of an additional 0.5%
7 of the amount paid per kilowatthour by those
8 customers during the year ending May 31, 2010 or 2%
9 of the amount paid per kilowatthour by those
10 customers during the year ending May 31, 2007; and

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

23 No later than June 30, 2011, the Commission shall
24 review the limitation on the amount of renewable energy
25 resources procured pursuant to this subsection (c) and
26 report to the General Assembly its findings as to

1 whether that limitation unduly constrains the
2 procurement of cost-effective renewable energy
3 resources.

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

25 (4) The electric utility shall retire all
26 renewable energy credits used to comply with the

1 standard.

2 (5) Beginning with the year commencing June 1,
3 2010, an electric utility subject to this subsection
4 (c) shall apply the lesser of the maximum alternative
5 compliance payment rate or the most recent estimated
6 alternative compliance payment rate for its service
7 territory for the corresponding compliance period,
8 established pursuant to subsection (d) of Section
9 16-115D of the Public Utilities Act to its retail
10 customers that take service pursuant to the electric
11 utility's hourly pricing tariff or tariffs. The
12 electric utility shall retain all amounts collected as
13 a result of the application of the alternative
14 compliance payment rate or rates to such customers,
15 and, beginning in 2011, the utility shall include in
16 the information provided under item (1) of subsection
17 (d) of Section 16-111.5 of the Public Utilities Act the
18 amounts collected under the alternative compliance
19 payment rate or rates for the prior year ending May 31.
20 Notwithstanding any limitation on the procurement of
21 renewable energy resources imposed by item (2) of this
22 subsection (c), the Agency shall increase its spending
23 on the purchase of renewable energy resources to be
24 procured by the electric utility for the next plan year
25 by an amount equal to the amounts collected by the
26 utility under the alternative compliance payment rate

1 or rates in the prior year ending May 31.

2 (d) Clean coal portfolio standard.

3 (1) The procurement plans shall include electricity
4 generated using clean coal. Each utility shall enter into
5 one or more sourcing agreements with the initial clean coal
6 facility, as provided in paragraph (3) of this subsection
7 (d), covering electricity generated by the initial clean
8 coal facility representing at least 5% of each utility's
9 total supply to serve the load of eligible retail customers
10 in 2015 and each year thereafter, as described in paragraph
11 (3) of this subsection (d), subject to the limits specified
12 in paragraph (2) of this subsection (d). It is the goal of
13 the State that by January 1, 2025, 25% of the electricity
14 used in the State shall be generated by cost-effective
15 clean coal facilities. For purposes of this subsection (d),
16 "cost-effective" means that the expenditures pursuant to
17 such sourcing agreements do not cause the limit stated in
18 paragraph (2) of this subsection (d) to be exceeded and do
19 not exceed cost-based benchmarks, which shall be developed
20 to assess all expenditures pursuant to such sourcing
21 agreements covering electricity generated by clean coal
22 facilities, other than the initial clean coal facility, by
23 the procurement administrator, in consultation with the
24 Commission staff, Agency staff, and the procurement
25 monitor and shall be subject to Commission review and
26 approval.

1 (A) A utility party to a sourcing agreement shall
2 immediately retire any emission credits that it
3 receives in connection with the electricity covered by
4 such agreement.

5 (B) Utilities shall maintain adequate records
6 documenting the purchases under the sourcing agreement
7 to comply with this subsection (d) and shall file an
8 accounting with the load forecast that must be filed
9 with the Agency by July 15 of each year, in accordance
10 with subsection (d) of Section 16-111.5 of the Public
11 Utilities Act.

12 (C) A utility shall be deemed to have complied with
13 the clean coal portfolio standard specified in this
14 subsection (d) if the utility enters into a sourcing
15 agreement as required by this subsection (d).

16 (2) For purposes of this subsection (d), the required
17 execution of sourcing agreements with the initial clean
18 coal facility for a particular year shall be measured as a
19 percentage of the actual amount of electricity
20 (megawatt-hours) supplied by the electric utility to
21 eligible retail customers in the planning year ending
22 immediately prior to the agreement's execution. For
23 purposes of this subsection (d), the amount paid per
24 kilowatthour means the total amount paid for electric
25 service expressed on a per kilowatthour basis. For purposes
26 of this subsection (d), the total amount paid for electric

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

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

12 (A) in 2010, no more than 0.5% of the amount
13 paid per kilowatthour by those customers during
14 the year ending May 31, 2009;

15 (B) in 2011, the greater of an additional 0.5%
16 of the amount paid per kilowatthour by those
17 customers during the year ending May 31, 2010 or 1%
18 of the amount paid per kilowatthour by those
19 customers during the year ending May 31, 2009;

20 (C) in 2012, the greater of an additional 0.5%
21 of the amount paid per kilowatthour by those
22 customers during the year ending May 31, 2011 or
23 1.5% of the amount paid per kilowatthour by those
24 customers during the year ending May 31, 2009;

25 (D) in 2013, the greater of an additional 0.5%
26 of the amount paid per kilowatthour by those

1 customers during the year ending May 31, 2012 or 2%
2 of the amount paid per kilowatthour by those
3 customers during the year ending May 31, 2009; and

4 (E) thereafter, the total amount paid under
5 sourcing agreements with clean coal facilities
6 pursuant to the procurement plan for any single
7 year shall be reduced by an amount necessary to
8 limit the estimated average net increase due to the
9 cost of these resources included in the amounts
10 paid by eligible retail customers in connection
11 with electric service to no more than the greater
12 of (i) 2.015% of the amount paid per kilowatthour
13 by those customers during the year ending May 31,
14 2009 or (ii) the incremental amount per
15 kilowatthour paid for these resources in 2013.
16 These requirements may be altered only as provided
17 by statute. No later than June 30, 2015, the
18 Commission shall review the limitation on the
19 total amount paid under sourcing agreements, if
20 any, with clean coal facilities pursuant to this
21 subsection (d) and report to the General Assembly
22 its findings as to whether that limitation unduly
23 constrains the amount of electricity generated by
24 cost-effective clean coal facilities that is
25 covered by sourcing agreements.

26 (3) Initial clean coal facility. In order to promote

1 development of clean coal facilities in Illinois, each
2 electric utility subject to this Section shall execute a
3 sourcing agreement to source electricity from a proposed
4 clean coal facility in Illinois (the "initial clean coal
5 facility") that will have a nameplate capacity of at least
6 500 MW when commercial operation commences, that has a
7 final Clean Air Act permit on the effective date of this
8 amendatory Act of the 95th General Assembly, and that will
9 meet the definition of clean coal facility in Section 1-10
10 of this Act when commercial operation commences. The
11 sourcing agreements with this initial clean coal facility
12 shall be subject to both approval of the initial clean coal
13 facility by the General Assembly and satisfaction of the
14 requirements of paragraph (4) of this subsection (d) and
15 shall be executed within 90 days after any such approval by
16 the General Assembly. The Agency and the Commission shall
17 have authority to inspect all books and records associated
18 with the initial clean coal facility during the term of
19 such a sourcing agreement. A utility's sourcing agreement
20 for electricity produced by the initial clean coal facility
21 shall include:

22 (A) a formula contractual price (the "contract
23 price") approved pursuant to paragraph (4) of this
24 subsection (d), which shall:

25 (i) be determined using a cost of service
26 methodology employing either a level or deferred

1 capital recovery component, based on a capital
2 structure consisting of 45% equity and 55% debt,
3 and a return on equity as may be approved by the
4 Federal Energy Regulatory Commission, which in any
5 case may not exceed the lower of 11.5% or the rate
6 of return approved by the General Assembly
7 pursuant to paragraph (4) of this subsection (d);
8 and

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

24 (B) power purchase provisions, which shall:

25 (i) provide that the utility party to such
26 sourcing agreement shall pay the contract price

1 for electricity delivered under such sourcing
2 agreement;

3 (ii) require delivery of electricity to the
4 regional transmission organization market of the
5 utility that is party to such sourcing agreement;

6 (iii) require the utility party to such
7 sourcing agreement to buy from the initial clean
8 coal facility in each hour an amount of energy
9 equal to all clean coal energy made available from
10 the initial clean coal facility during such hour
11 times a fraction, the numerator of which is such
12 utility's retail market sales of electricity
13 (expressed in kilowatthours sold) in the State
14 during the prior calendar month and the
15 denominator of which is the total retail market
16 sales of electricity (expressed in kilowatthours
17 sold) in the State by utilities during such prior
18 month and the sales of electricity (expressed in
19 kilowatthours sold) in the State by alternative
20 retail electric suppliers during such prior month
21 that are subject to the requirements of this
22 subsection (d) and paragraph (5) of subsection (d)
23 of Section 16-115 of the Public Utilities Act,
24 provided that the amount purchased by the utility
25 in any year will be limited by paragraph (2) of
26 this subsection (d); and

1 (iv) be considered pre-existing contracts in
2 such utility's procurement plans for eligible
3 retail customers;

4 (C) contract for differences provisions, which
5 shall:

6 (i) require the utility party to such sourcing
7 agreement to contract with the initial clean coal
8 facility in each hour with respect to an amount of
9 energy equal to all clean coal energy made
10 available from the initial clean coal facility
11 during such hour times a fraction, the numerator of
12 which is such utility's retail market sales of
13 electricity (expressed in kilowatthours sold) in
14 the utility's service territory in the State
15 during the prior calendar month and the
16 denominator of which is the total retail market
17 sales of electricity (expressed in kilowatthours
18 sold) in the State by utilities during such prior
19 month and the sales of electricity (expressed in
20 kilowatthours sold) in the State by alternative
21 retail electric suppliers during such prior month
22 that are subject to the requirements of this
23 subsection (d) and paragraph (5) of subsection (d)
24 of Section 16-115 of the Public Utilities Act,
25 provided that the amount paid by the utility in any
26 year will be limited by paragraph (2) of this

1 subsection (d);

2 (ii) provide that the utility's payment
3 obligation in respect of the quantity of
4 electricity determined pursuant to the preceding
5 clause (i) shall be limited to an amount equal to
6 (1) the difference between the contract price
7 determined pursuant to subparagraph (A) of
8 paragraph (3) of this subsection (d) and the
9 day-ahead price for electricity delivered to the
10 regional transmission organization market of the
11 utility that is party to such sourcing agreement
12 (or any successor delivery point at which such
13 utility's supply obligations are financially
14 settled on an hourly basis) (the "reference
15 price") on the day preceding the day on which the
16 electricity is delivered to the initial clean coal
17 facility busbar, multiplied by (2) the quantity of
18 electricity determined pursuant to the preceding
19 clause (i); and

20 (iii) not require the utility to take physical
21 delivery of the electricity produced by the
22 facility;

23 (D) general provisions, which shall:

24 (i) specify a term of no more than 30 years,
25 commencing on the commercial operation date of the
26 facility;

1 (ii) provide that utilities shall maintain
2 adequate records documenting purchases under the
3 sourcing agreements entered into to comply with
4 this subsection (d) and shall file an accounting
5 with the load forecast that must be filed with the
6 Agency by July 15 of each year, in accordance with
7 subsection (d) of Section 16-111.5 of the Public
8 Utilities Act.

9 (iii) provide that all costs associated with
10 the initial clean coal facility will be
11 periodically reported to the Federal Energy
12 Regulatory Commission and to purchasers in
13 accordance with applicable laws governing
14 cost-based wholesale power contracts;

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

21 (v) require the owner of the initial clean coal
22 facility to provide documentation to the
23 Commission each year, starting in the facility's
24 first year of commercial operation, accurately
25 reporting the quantity of carbon emissions from
26 the facility that have been captured and

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

1 facility fails to fully comply with the applicable
2 carbon sequestration requirements in any given
3 year, provided the requisite offsets are
4 purchased. However, the Attorney General, on
5 behalf of the People of the State of Illinois, may
6 specifically enforce the facility's sequestration
7 requirement and the other terms of this contract
8 provision. Compliance with the sequestration
9 requirements and offset purchase requirements
10 specified in paragraph (3) of this subsection (d)
11 shall be reviewed annually by an independent
12 expert retained by the owner of the initial clean
13 coal facility, with the advance written approval
14 of the Attorney General. The Commission may, in the
15 course of the review specified in item (vii),
16 reduce the allowable return on equity for the
17 facility if the facility wilfully fails to comply
18 with the carbon capture and sequestration
19 requirements set forth in this item (v);

20 (vi) include limits on, and accordingly
21 provide for modification of, the amount the
22 utility is required to source under the sourcing
23 agreement consistent with paragraph (2) of this
24 subsection (d);

25 (vii) require Commission review: (1) to
26 determine the justness, reasonableness, and

1 prudence of the inputs to the formula referenced in
2 subparagraphs (A) (i) through (A) (iii) of paragraph
3 (3) of this subsection (d), prior to an adjustment
4 in those inputs including, without limitation, the
5 capital structure and return on equity, fuel
6 costs, and other operations and maintenance costs
7 and (2) to approve the costs to be passed through
8 to customers under the sourcing agreement by which
9 the utility satisfies its statutory obligations.
10 Commission review shall occur no less than every 3
11 years, regardless of whether any adjustments have
12 been proposed, and shall be completed within 9
13 months;

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

21 (ix) limit the utility's or alternative retail
22 electric supplier's obligation to incur any
23 liability until such time as the facility is in
24 commercial operation and generating power and
25 energy and such power and energy is being delivered
26 to the facility busbar;

1 (x) provide that the owner or owners of the
2 initial clean coal facility, which is the
3 counterparty to such sourcing agreement, shall
4 have the right from time to time to elect whether
5 the obligations of the utility party thereto shall
6 be governed by the power purchase provisions or the
7 contract for differences provisions;

8 (xi) append documentation showing that the
9 formula rate and contract, insofar as they relate
10 to the power purchase provisions, have been
11 approved by the Federal Energy Regulatory
12 Commission pursuant to Section 205 of the Federal
13 Power Act;

14 (xii) provide that any changes to the terms of
15 the contract, insofar as such changes relate to the
16 power purchase provisions, are subject to review
17 under the public interest standard applied by the
18 Federal Energy Regulatory Commission pursuant to
19 Sections 205 and 206 of the Federal Power Act; and

20 (xiii) conform with customary lender
21 requirements in power purchase agreements used as
22 the basis for financing non-utility generators.

23 (4) Effective date of sourcing agreements with the
24 initial clean coal facility. Any proposed sourcing
25 agreement with the initial clean coal facility shall not
26 become effective unless the following reports are prepared

1 and submitted and authorizations and approvals obtained:

2 (i) Facility cost report. The owner of the
3 initial clean coal facility shall submit to the
4 Commission, the Agency, and the General Assembly a
5 front-end engineering and design study, a facility
6 cost report, method of financing (including but
7 not limited to structure and associated costs),
8 and an operating and maintenance cost quote for the
9 facility (collectively "facility cost report"),
10 which shall be prepared in accordance with the
11 requirements of this paragraph (4) of subsection
12 (d) of this Section, and shall provide the
13 Commission and the Agency access to the work
14 papers, relied upon documents, and any other
15 backup documentation related to the facility cost
16 report.

17 (ii) Commission report. Within 6 months
18 following receipt of the facility cost report, the
19 Commission, in consultation with the Agency, shall
20 submit a report to the General Assembly setting
21 forth its analysis of the facility cost report.
22 Such report shall include, but not be limited to, a
23 comparison of the costs associated with
24 electricity generated by the initial clean coal
25 facility to the costs associated with electricity
26 generated by other types of generation facilities,

1 an analysis of the rate impacts on residential and
2 small business customers over the life of the
3 sourcing agreements, and an analysis of the
4 likelihood that the initial clean coal facility
5 will commence commercial operation by and be
6 delivering power to the facility's busbar by 2016.
7 To assist in the preparation of its report, the
8 Commission, in consultation with the Agency, may
9 hire one or more experts or consultants, the costs
10 of which shall be paid for by the owner of the
11 initial clean coal facility. The Commission and
12 Agency may begin the process of selecting such
13 experts or consultants prior to receipt of the
14 facility cost report.

15 (iii) General Assembly approval. The proposed
16 sourcing agreements shall not take effect unless,
17 based on the facility cost report and the
18 Commission's report, the General Assembly enacts
19 authorizing legislation approving (A) the
20 projected price, stated in cents per kilowatthour,
21 to be charged for electricity generated by the
22 initial clean coal facility, (B) the projected
23 impact on residential and small business
24 customers' bills over the life of the sourcing
25 agreements, and (C) the maximum allowable return
26 on equity for the project; and

1 (iv) Commission review. If the General
2 Assembly enacts authorizing legislation pursuant
3 to subparagraph (iii) approving a sourcing
4 agreement, the Commission shall, within 90 days of
5 such enactment, complete a review of such sourcing
6 agreement. During such time period, the Commission
7 shall implement any directive of the General
8 Assembly, resolve any disputes between the parties
9 to the sourcing agreement concerning the terms of
10 such agreement, approve the form of such
11 agreement, and issue an order finding that the
12 sourcing agreement is prudent and reasonable.

13 The facility cost report shall be prepared as follows:

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

22 (i) an estimate of the capital cost of the core
23 plant based on one or more front end engineering
24 and design studies for the gasification island and
25 related facilities. The core plant shall include
26 all civil, structural, mechanical, electrical,

1 control, and safety systems.

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

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

20 (B) The front end engineering and design study for
21 the gasification island and the cost study for the
22 balance of plant shall include sufficient design work
23 to permit quantification of major categories of
24 materials, commodities and labor hours, and receipt of
25 quotes from vendors of major equipment required to
26 construct and operate the clean coal facility.

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

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

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

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

1 (D) The facility cost report shall also include (i)
2 an analysis of the initial clean coal facility's
3 ability to deliver power and energy into the applicable
4 regional transmission organization markets and (ii) an
5 analysis of the expected capacity factor for the
6 initial clean coal facility.

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

13 (5) Re-powering and retrofitting coal-fired power
14 plants previously owned by Illinois utilities to qualify as
15 clean coal facilities. During the 2009 procurement
16 planning process and thereafter, the Agency and the
17 Commission shall consider sourcing agreements covering
18 electricity generated by power plants that were previously
19 owned by Illinois utilities and that have been or will be
20 converted into clean coal facilities, as defined by Section
21 1-10 of this Act. Pursuant to such procurement planning
22 process, the owners of such facilities may propose to the
23 Agency sourcing agreements with utilities and alternative
24 retail electric suppliers required to comply with
25 subsection (d) of this Section and item (5) of subsection
26 (d) of Section 16-115 of the Public Utilities Act, covering

1 electricity generated by such facilities. In the case of
2 sourcing agreements that are power purchase agreements,
3 the contract price for electricity sales shall be
4 established on a cost of service basis. In the case of
5 sourcing agreements that are contracts for differences,
6 the contract price from which the reference price is
7 subtracted shall be established on a cost of service basis.
8 The Agency and the Commission may approve any such utility
9 sourcing agreements that do not exceed cost-based
10 benchmarks developed by the procurement administrator, in
11 consultation with the Commission staff, Agency staff and
12 the procurement monitor, subject to Commission review and
13 approval. The Commission shall have authority to inspect
14 all books and records associated with these clean coal
15 facilities during the term of any such contract.

16 (6) Costs incurred under this subsection (d) or
17 pursuant to a contract entered into under this subsection
18 (d) shall be deemed prudently incurred and reasonable in
19 amount and the electric utility shall be entitled to full
20 cost recovery pursuant to the tariffs filed with the
21 Commission.

22 (e) The draft procurement plans are subject to public
23 comment, as required by Section 16-111.5 of the Public
24 Utilities Act.

25 (f) The Agency shall submit the final procurement plan
26 to the Commission. The Agency shall revise a procurement

1 plan if the Commission determines that it does not meet the
2 standards set forth in Section 16-111.5 of the Public
3 Utilities Act.

4 (g) The Agency shall assess fees to each affected
5 utility to recover the costs incurred in preparation of the
6 annual procurement plan for the utility.

7 (h) The Agency shall assess fees to each bidder to
8 recover the costs incurred in connection with a competitive
9 procurement process.

10 (Source: P.A. 95-481, eff. 8-28-07; 95-1027, eff. 6-1-09.)

11 Section 10. The State Finance Act is amended by adding
12 Section 5.719 as follows:

13 (30 ILCS 105/5.719 new)

14 Sec. 5.719. The Illinois Power Agency Renewable Energy
15 Resources Fund.

16 Section 15. The Illinois Procurement Code is amended by
17 changing Section 20-10 as follows:

18 (30 ILCS 500/20-10)

19 Sec. 20-10. Competitive sealed bidding.

20 (a) Conditions for use. All contracts shall be awarded by
21 competitive sealed bidding except as otherwise provided in
22 Section 20-5.

1 (b) Invitation for bids. An invitation for bids shall be
2 issued and shall include a purchase description and the
3 material contractual terms and conditions applicable to the
4 procurement.

5 (c) Public notice. Public notice of the invitation for bids
6 shall be published in the Illinois Procurement Bulletin at
7 least 14 days before the date set in the invitation for the
8 opening of bids.

9 (d) Bid opening. Bids shall be opened publicly in the
10 presence of one or more witnesses at the time and place
11 designated in the invitation for bids. The name of each bidder,
12 the amount of each bid, and other relevant information as may
13 be specified by rule shall be recorded. After the award of the
14 contract, the winning bid and the record of each unsuccessful
15 bid shall be open to public inspection.

16 (e) Bid acceptance and bid evaluation. Bids shall be
17 unconditionally accepted without alteration or correction,
18 except as authorized in this Code. Bids shall be evaluated
19 based on the requirements set forth in the invitation for bids,
20 which may include criteria to determine acceptability such as
21 inspection, testing, quality, workmanship, delivery, and
22 suitability for a particular purpose. Those criteria that will
23 affect the bid price and be considered in evaluation for award,
24 such as discounts, transportation costs, and total or life
25 cycle costs, shall be objectively measurable. The invitation
26 for bids shall set forth the evaluation criteria to be used.

1 (f) Correction or withdrawal of bids. Correction or
2 withdrawal of inadvertently erroneous bids before or after
3 award, or cancellation of awards of contracts based on bid
4 mistakes, shall be permitted in accordance with rules. After
5 bid opening, no changes in bid prices or other provisions of
6 bids prejudicial to the interest of the State or fair
7 competition shall be permitted. All decisions to permit the
8 correction or withdrawal of bids based on bid mistakes shall be
9 supported by written determination made by a State purchasing
10 officer.

11 (g) Award. The contract shall be awarded with reasonable
12 promptness by written notice to the lowest responsible and
13 responsive bidder whose bid meets the requirements and criteria
14 set forth in the invitation for bids, except when a State
15 purchasing officer determines it is not in the best interest of
16 the State and by written explanation determines another bidder
17 shall receive the award. The explanation shall appear in the
18 appropriate volume of the Illinois Procurement Bulletin.

19 (h) Multi-step sealed bidding. When it is considered
20 impracticable to initially prepare a purchase description to
21 support an award based on price, an invitation for bids may be
22 issued requesting the submission of unpriced offers to be
23 followed by an invitation for bids limited to those bidders
24 whose offers have been qualified under the criteria set forth
25 in the first solicitation.

26 (i) Alternative procedures. Notwithstanding any other

1 provision of this Act to the contrary, the Director of the
2 Illinois Power Agency may create alternative bidding
3 procedures to be used in procuring professional services under
4 Section 1-75(a) of the Illinois Power Agency Act and Section
5 16-111.5(c) of the Public Utilities Act and to procure
6 renewable energy resources under Section 1-56 of the Illinois
7 Power Agency Act. These alternative procedures shall be set
8 forth together with the other criteria contained in the
9 invitation for bids, and shall appear in the appropriate volume
10 of the Illinois Procurement Bulletin.

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

12 Section 20. The Public Utilities Act is amended by changing
13 Sections 8-103 and 16-115 and by adding Section 16-115D as
14 follows:

15 (220 ILCS 5/8-103)

16 Sec. 8-103. Energy efficiency and demand-response
17 measures.

18 (a) It is the policy of the State that electric utilities
19 are required to use cost-effective energy efficiency and
20 demand-response measures to reduce delivery load. Requiring
21 investment in cost-effective energy efficiency and
22 demand-response measures will reduce direct and indirect costs
23 to consumers by decreasing environmental impacts and by
24 avoiding or delaying the need for new generation, transmission,

1 and distribution infrastructure. It serves the public interest
2 to allow electric utilities to recover costs for reasonably and
3 prudently incurred expenses for energy efficiency and
4 demand-response measures. As used in this Section,
5 "cost-effective" means that the measures satisfy the total
6 resource cost test. The low-income measures described in
7 subsection (f) (4) of this Section shall not be required to meet
8 the total resource cost test. For purposes of this Section, the
9 terms "energy-efficiency", "demand-response", "electric
10 utility", and "total resource cost test" shall have the
11 meanings set forth in the Illinois Power Agency Act. For
12 purposes of this Section, the amount per kilowatthour means the
13 total amount paid for electric service expressed on a per
14 kilowatthour basis. For purposes of this Section, the total
15 amount paid for electric service includes without limitation
16 estimated amounts paid for supply, transmission, distribution,
17 surcharges, and add-on-taxes.

18 (b) Electric utilities shall implement cost-effective
19 energy efficiency measures to meet the following incremental
20 annual energy savings goals:

21 (1) 0.2% of energy delivered in the year commencing
22 June 1, 2008;

23 (2) 0.4% of energy delivered in the year commencing
24 June 1, 2009;

25 (3) 0.6% of energy delivered in the year commencing
26 June 1, 2010;

1 (4) 0.8% of energy delivered in the year commencing
2 June 1, 2011;

3 (5) 1% of energy delivered in the year commencing June
4 1, 2012;

5 (6) 1.4% of energy delivered in the year commencing
6 June 1, 2013;

7 (7) 1.8% of energy delivered in the year commencing
8 June 1, 2014; and

9 (8) 2% of energy delivered in the year commencing June
10 1, 2015 and each year thereafter.

11 (c) Electric utilities shall implement cost-effective
12 demand-response measures to reduce peak demand by 0.1% over the
13 prior year for eligible retail customers, as defined in Section
14 16-111.5 of this Act, and for customers that elect hourly
15 service from the utility pursuant to Section 16-107 of this
16 Act, provided those customers have not been declared
17 competitive. This requirement commences June 1, 2008 and
18 continues for 10 years.

19 (d) Notwithstanding the requirements of subsections (b)
20 and (c) of this Section, an electric utility shall reduce the
21 amount of energy efficiency and demand-response measures
22 implemented in any single year by an amount necessary to limit
23 the estimated average increase in the amounts paid by retail
24 customers in connection with electric service due to the cost
25 of those measures to:

26 (1) in 2008, no more than 0.5% of the amount paid per

1 kilowatthour by those customers during the year ending May
2 31, 2007;

3 (2) in 2009, the greater of an additional 0.5% of the
4 amount paid per kilowatthour by those customers during the
5 year ending May 31, 2008 or 1% of the amount paid per
6 kilowatthour by those customers during the year ending May
7 31, 2007;

8 (3) in 2010, the greater of an additional 0.5% of the
9 amount paid per kilowatthour by those customers during the
10 year ending May 31, 2009 or 1.5% of the amount paid per
11 kilowatthour by those customers during the year ending May
12 31, 2007;

13 (4) in 2011, the greater of an additional 0.5% of the
14 amount paid per kilowatthour by those customers during the
15 year ending May 31, 2010 or 2% of the amount paid per
16 kilowatthour by those customers during the year ending May
17 31, 2007; and

18 (5) thereafter, the amount of energy efficiency and
19 demand-response measures implemented for any single year
20 shall be reduced by an amount necessary to limit the
21 estimated average net increase due to the cost of these
22 measures included in the amounts paid by eligible retail
23 customers in connection with electric service to no more
24 than the greater of 2.015% of the amount paid per
25 kilowatthour by those customers during the year ending May
26 31, 2007 or the incremental amount per kilowatthour paid

1 for these measures in 2011.

2 No later than June 30, 2011, the Commission shall review
3 the limitation on the amount of energy efficiency and
4 demand-response measures implemented pursuant to this Section
5 and report to the General Assembly its findings as to whether
6 that limitation unduly constrains the procurement of energy
7 efficiency and demand-response measures.

8 (e) Electric utilities shall be responsible for overseeing
9 the design, development, and filing of energy efficiency and
10 demand-response plans with the Commission. Electric utilities
11 shall implement 100% of the demand-response measures in the
12 plans. Electric utilities shall implement 75% of the energy
13 efficiency measures approved by the Commission, and may, as
14 part of that implementation, outsource various aspects of
15 program development and implementation. The remaining 25% of
16 those energy efficiency measures approved by the Commission
17 shall be implemented by the Department of Commerce and Economic
18 Opportunity, and must be designed in conjunction with the
19 utility and the filing process. The Department may outsource
20 development and implementation of energy efficiency measures.
21 A minimum of 10% of the entire portfolio of cost-effective
22 energy efficiency measures shall be procured from units of
23 local government, municipal corporations, school districts,
24 and community college districts. The Department shall
25 coordinate the implementation of these measures.

26 The apportionment of the dollars to cover the costs to

1 implement the Department's share of the portfolio of energy
2 efficiency measures shall be made to the Department once the
3 Department has executed grants or contracts for energy
4 efficiency measures and provided supporting documentation for
5 those grants and the contracts to the utility.

6 The details of the measures implemented by the Department
7 shall be submitted by the Department to the Commission in
8 connection with the utility's filing regarding the energy
9 efficiency and demand-response measures that the utility
10 implements.

11 A utility providing approved energy efficiency and
12 demand-response measures in the State shall be permitted to
13 recover costs of those measures through an automatic adjustment
14 clause tariff filed with and approved by the Commission. The
15 tariff shall be established outside the context of a general
16 rate case. Each year the Commission shall initiate a review to
17 reconcile any amounts collected with the actual costs and to
18 determine the required adjustment to the annual tariff factor
19 to match annual expenditures.

20 Each utility shall include, in its recovery of costs, the
21 costs estimated for both the utility's and the Department's
22 implementation of energy efficiency and demand-response
23 measures. Costs collected by the utility for measures
24 implemented by the Department shall be submitted to the
25 Department pursuant to Section 605-323 of the Civil
26 Administrative Code of Illinois and shall be used by the

1 Department solely for the purpose of implementing these
2 measures. A utility shall not be required to advance any moneys
3 to the Department but only to forward such funds as it has
4 collected. The Department shall report to the Commission on an
5 annual basis regarding the costs actually incurred by the
6 Department in the implementation of the measures. Any changes
7 to the costs of energy efficiency measures as a result of plan
8 modifications shall be appropriately reflected in amounts
9 recovered by the utility and turned over to the Department.

10 The portfolio of measures, administered by both the
11 utilities and the Department, shall, in combination, be
12 designed to achieve the annual savings targets described in
13 subsections (b) and (c) of this Section, as modified by
14 subsection (d) of this Section.

15 The utility and the Department shall agree upon a
16 reasonable portfolio of measures and determine the measurable
17 corresponding percentage of the savings goals associated with
18 measures implemented by the utility or Department.

19 No utility shall be assessed a penalty under subsection (f)
20 of this Section for failure to make a timely filing if that
21 failure is the result of a lack of agreement with the
22 Department with respect to the allocation of responsibilities
23 or related costs or target assignments. In that case, the
24 Department and the utility shall file their respective plans
25 with the Commission and the Commission shall determine an
26 appropriate division of measures and programs that meets the

1 requirements of this Section.

2 If the Department is unable to meet incremental annual
3 performance goals for the portion of the portfolio implemented
4 by the Department, then the utility and the Department shall
5 jointly submit a modified filing to the Commission explaining
6 the performance shortfall and recommending an appropriate
7 course going forward, including any program modifications that
8 may be appropriate in light of the evaluations conducted under
9 item (7) of subsection (f) of this Section. In this case, the
10 utility obligation to collect the Department's costs and turn
11 over those funds to the Department under this subsection (e)
12 shall continue only if the Commission approves the
13 modifications to the plan proposed by the Department.

14 (f) No later than November 15, 2007, each electric utility
15 shall file an energy efficiency and demand-response plan with
16 the Commission to meet the energy efficiency and
17 demand-response standards for 2008 through 2010. Every 3 years
18 thereafter, each electric utility shall file an energy
19 efficiency and demand-response plan with the Commission. If a
20 utility does not file such a plan, it shall face a penalty of
21 \$100,000 per day until the plan is filed. Each utility's plan
22 shall set forth the utility's proposals to meet the utility's
23 portion of the energy efficiency standards identified in
24 subsection (b) and the demand-response standards identified in
25 subsection (c) of this Section as modified by subsections (d)
26 and (e), taking into account the unique circumstances of the

1 utility's service territory. The Commission shall seek public
2 comment on the utility's plan and shall issue an order
3 approving or disapproving each plan within 3 months after its
4 submission. If the Commission disapproves a plan, the
5 Commission shall, within 30 days, describe in detail the
6 reasons for the disapproval and describe a path by which the
7 utility may file a revised draft of the plan to address the
8 Commission's concerns satisfactorily. If the utility does not
9 refile with the Commission within 60 days, the utility shall be
10 subject to penalties at a rate of \$100,000 per day until the
11 plan is filed. This process shall continue, and penalties shall
12 accrue, until the utility has successfully filed a portfolio of
13 energy efficiency and demand-response measures. Penalties
14 shall be deposited into the Energy Efficiency Trust Fund. In
15 submitting proposed energy efficiency and demand-response
16 plans and funding levels to meet the savings goals adopted by
17 this Act the utility shall:

18 (1) Demonstrate that its proposed energy efficiency
19 and demand-response measures will achieve the requirements
20 that are identified in subsections (b) and (c) of this
21 Section, as modified by subsections (d) and (e).

22 (2) Present specific proposals to implement new
23 building and appliance standards that have been placed into
24 effect.

25 (3) Present estimates of the total amount paid for
26 electric service expressed on a per kilowatthour basis

1 associated with the proposed portfolio of measures
2 designed to meet the requirements that are identified in
3 subsections (b) and (c) of this Section, as modified by
4 subsections (d) and (e).

5 (4) Coordinate with the Department ~~and the Department~~
6 ~~of Healthcare and Family Services~~ to present a portfolio of
7 energy efficiency measures ~~targeted to households at or~~
8 ~~below 150% of the poverty level at a level~~ proportionate to
9 the ~~those households~~' share of total annual utility
10 revenues in Illinois from households at or below 150% of
11 the poverty level. The energy efficiency programs shall be
12 targeted to households with incomes at or below 80% of area
13 median income.

14 (5) Demonstrate that its overall portfolio of energy
15 efficiency and demand-response measures, not including
16 programs covered by item (4) of this subsection (f), are
17 cost-effective using the total resource cost test and
18 represent a diverse cross-section of opportunities for
19 customers of all rate classes to participate in the
20 programs.

21 (6) Include a proposed cost-recovery tariff mechanism
22 to fund the proposed energy efficiency and demand-response
23 measures and to ensure the recovery of the prudently and
24 reasonably incurred costs of Commission-approved programs.

25 (7) Provide for an annual independent evaluation of the
26 performance of the cost-effectiveness of the utility's

1 portfolio of measures and the Department's portfolio of
2 measures, as well as a full review of the 3-year results of
3 the broader net program impacts and, to the extent
4 practical, for adjustment of the measures on a
5 going-forward basis as a result of the evaluations. The
6 resources dedicated to evaluation shall not exceed 3% of
7 portfolio resources in any given year.

8 (g) No more than 3% of energy efficiency and
9 demand-response program revenue may be allocated for
10 demonstration of breakthrough equipment and devices.

11 (h) This Section does not apply to an electric utility that
12 on December 31, 2005 provided electric service to fewer than
13 100,000 customers in Illinois.

14 (i) If, after 2 years, an electric utility fails to meet
15 the efficiency standard specified in subsection (b) of this
16 Section, as modified by subsections (d) and (e), it shall make
17 a contribution to the Low-Income Home Energy Assistance
18 Program. The combined total liability for failure to meet the
19 goal shall be \$1,000,000, which shall be assessed as follows: a
20 large electric utility shall pay \$665,000, and a medium
21 electric utility shall pay \$335,000. If, after 3 years, an
22 electric utility fails to meet the efficiency standard
23 specified in subsection (b) of this Section, as modified by
24 subsections (d) and (e), it shall make a contribution to the
25 Low-Income Home Energy Assistance Program. The combined total
26 liability for failure to meet the goal shall be \$1,000,000,

1 which shall be assessed as follows: a large electric utility
2 shall pay \$665,000, and a medium electric utility shall pay
3 \$335,000. In addition, the responsibility for implementing the
4 energy efficiency measures of the utility making the payment
5 shall be transferred to the Illinois Power Agency if, after 3
6 years, or in any subsequent 3-year period, the utility fails to
7 meet the efficiency standard specified in subsection (b) of
8 this Section, as modified by subsections (d) and (e). The
9 Agency shall implement a competitive procurement program to
10 procure resources necessary to meet the standards specified in
11 this Section as modified by subsections (d) and (e), with costs
12 for those resources to be recovered in the same manner as
13 products purchased through the procurement plan as provided in
14 Section 16-111.5. The Director shall implement this
15 requirement in connection with the procurement plan as provided
16 in Section 16-111.5.

17 For purposes of this Section, (i) a "large electric
18 utility" is an electric utility that, on December 31, 2005,
19 served more than 2,000,000 electric customers in Illinois; (ii)
20 a "medium electric utility" is an electric utility that, on
21 December 31, 2005, served 2,000,000 or fewer but more than
22 100,000 electric customers in Illinois; and (iii) Illinois
23 electric utilities that are affiliated by virtue of a common
24 parent company are considered a single electric utility.

25 (j) If, after 3 years, or any subsequent 3-year period, the
26 Department fails to implement the Department's share of energy

1 efficiency measures required by the standards in subsection
2 (b), then the Illinois Power Agency may assume responsibility
3 for and control of the Department's share of the required
4 energy efficiency measures. The Agency shall implement a
5 competitive procurement program to procure resources necessary
6 to meet the standards specified in this Section, with the costs
7 of these resources to be recovered in the same manner as
8 provided for the Department in this Section.

9 (k) No electric utility shall be deemed to have failed to
10 meet the energy efficiency standards to the extent any such
11 failure is due to a failure of the Department or the Agency.

12 (Source: P.A. 95-481, eff. 8-28-07; 95-876, eff. 8-21-08.)

13 (220 ILCS 5/16-115)

14 (Text of Section before amendment by P.A. 95-1027)

15 Sec. 16-115. Certification of alternative retail electric
16 suppliers.

17 (a) Any alternative retail electric supplier must obtain a
18 certificate of service authority from the Commission in
19 accordance with this Section before serving any retail customer
20 or other user located in this State. An alternative retail
21 electric supplier may request, and the Commission may grant, a
22 certificate of service authority for the entire State or for a
23 specified geographic area of the State.

24 (b) An alternative retail electric supplier seeking a
25 certificate of service authority shall file with the Commission

1 a verified application containing information showing that the
2 applicant meets the requirements of this Section. The
3 alternative retail electric supplier shall publish notice of
4 its application in the official State newspaper within 10 days
5 following the date of its filing. No later than 45 days after
6 the application is properly filed with the Commission, and such
7 notice is published, the Commission shall issue its order
8 granting or denying the application.

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

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

25 (1) That the applicant possesses sufficient technical,
26 financial and managerial resources and abilities to

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

10 (2) That the applicant will comply with all applicable
11 federal, State, regional and industry rules, policies,
12 practices and procedures for the use, operation, and
13 maintenance of the safety, integrity and reliability, of
14 the interconnected electric transmission system;

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

18 (4) That the applicant will comply with such
19 informational or reporting requirements as the Commission
20 may by rule establish and provide the information required
21 by Section 16-112. Any data related to contracts for the
22 purchase and sale of electric power and energy shall be
23 made available for review by the Staff of the Commission on
24 a confidential and proprietary basis and only to the extent
25 and for the purposes which the Commission determines are
26 reasonably necessary in order to carry out the purposes of

1 this Act;

2 (5) That the applicant will procure renewable energy
3 resources in accordance with Section 16-115D of this Act,
4 and will source electricity from clean coal facilities, as
5 defined in Section 1-10 of the Illinois Power Agency Act,
6 in amounts at least equal to the percentages set forth in
7 subsections (c) and (d) of Section 1-75 of the Illinois
8 Power Agency Act. For purposes of this Section:

9 (i) (Blank);

10 (ii) (Blank);

11 (iii) the required sourcing of electricity
12 generated by clean coal facilities, other than the
13 initial clean coal facility, shall be limited to the
14 amount of electricity that can be procured or sourced
15 at a price at or below the benchmarks approved by the
16 Commission each year in accordance with item (1) of
17 subsection (c) and items (1) and (5) of subsection (d)
18 of Section 1-75 of the Illinois Power Agency Act;

19 (iv) all alternative retail electric suppliers
20 shall execute a sourcing agreement to source
21 electricity from the initial clean coal facility, on
22 the terms set forth in paragraphs (3) and (4) of
23 subsection (d) of Section 1-75 of the Illinois Power
24 Agency Act, except that in lieu of the requirements in
25 subparagraphs (A) (v), (B) (i), (C) (v), and (C) (vi) of
26 paragraph (3) of that subsection (d), the applicant

1 shall execute one or more of the following:

2 (1) if the sourcing agreement is a power
3 purchase agreement, a contract with the initial
4 clean coal facility to purchase in each hour an
5 amount of electricity equal to all clean coal
6 energy made available from the initial clean coal
7 facility during such hour, which the utilities are
8 not required to procure under the terms of
9 subsection (d) of Section 1-75 of the Illinois
10 Power Agency Act, multiplied by a fraction, the
11 numerator of which is the alternative retail
12 electric supplier's retail market sales of
13 electricity (expressed in kilowatt-hours sold) in
14 the State during the prior calendar month and the
15 denominator of which is the total sales of
16 electricity (expressed in kilowatt-hours sold) in
17 the State by alternative retail electric suppliers
18 during such prior month that are subject to the
19 requirements of this paragraph (5) of subsection
20 (d) of this Section and subsection (d) of Section
21 1-75 of the Illinois Power Agency Act plus the
22 total sales of electricity (expressed in
23 kilowatt-hours sold) by utilities outside of their
24 service areas during such prior month, pursuant to
25 subsection (c) of Section 16-116 of this Act; or

26 (2) if the sourcing agreement is a contract for

1 differences, a contract with the initial clean
2 coal facility in each hour with respect to an
3 amount of electricity equal to all clean coal
4 energy made available from the initial clean coal
5 facility during such hour, which the utilities are
6 not required to procure under the terms of
7 subsection (d) of Section 1-75 of the Illinois
8 Power Agency Act, multiplied by a fraction, the
9 numerator of which is the alternative retail
10 electric supplier's retail market sales of
11 electricity (expressed in kilowatt-hours sold) in
12 the State during the prior calendar month and the
13 denominator of which is the total sales of
14 electricity (expressed in kilowatt-hours sold) in
15 the State by alternative retail electric suppliers
16 during such prior month that are subject to the
17 requirements of this paragraph (5) of subsection
18 (d) of this Section and subsection (d) of Section
19 1-75 of the Illinois Power Agency Act plus the
20 total sales of electricity (expressed in
21 kilowatt-hours sold) by utilities outside of their
22 service areas during such prior month, pursuant to
23 subsection (c) of Section 16-116 of this Act;
24 (v) if, in any year after the first year of
25 commercial operation, the owner of the clean coal
26 facility fails to demonstrate to the Commission that

1 the initial clean coal facility captured and
2 sequestered at least 50% of the total carbon emissions
3 that the facility would otherwise emit or that
4 sequestration of emissions from prior years has
5 failed, resulting in the release of carbon into the
6 atmosphere, the owner of the facility must offset
7 excess emissions. Any such carbon offsets must be
8 permanent, additional, verifiable, real, located
9 within the State of Illinois, and legally and
10 practicably enforceable. The costs of any such offsets
11 that are not recoverable shall not exceed \$15 million
12 in any given year. No costs of any such purchases of
13 carbon offsets may be recovered from an alternative
14 retail electric supplier or its customers. All carbon
15 offsets purchased for this purpose and any carbon
16 emission credits associated with sequestration of
17 carbon from the facility must be permanently retired.
18 The initial clean coal facility shall not forfeit its
19 designation as a clean coal facility if the facility
20 fails to fully comply with the applicable carbon
21 sequestration requirements in any given year, provided
22 the requisite offsets are purchased. However, the
23 Attorney General, on behalf of the People of the State
24 of Illinois, may specifically enforce the facility's
25 sequestration requirement and the other terms of this
26 contract provision. Compliance with the sequestration

1 requirements and offset purchase requirements that
2 apply to the initial clean coal facility shall be
3 reviewed annually by an independent expert retained by
4 the owner of the initial clean coal facility, with the
5 advance written approval of the Attorney General;

6 (vi) The Commission shall, after notice and
7 hearing, revoke the certification of any alternative
8 retail electric supplier that fails to execute a
9 sourcing agreement with the initial clean coal
10 facility as required by item (5) of subsection (d) of
11 this Section. The sourcing agreements with this
12 initial clean coal facility shall be subject to both
13 approval of the initial clean coal facility by the
14 General Assembly and satisfaction of the requirements
15 of item (4) of subsection (d) of Section 1-75 of the
16 Illinois Power Agency Act, and shall be executed within
17 90 days after any such approval by the General
18 Assembly. The Commission shall not accept an
19 application for certification from an alternative
20 retail electric supplier that has lost certification
21 under this subsection (d), or any corporate affiliate
22 thereof, for at least one year from the date of
23 revocation;

24 (6) With respect to an applicant that seeks to serve
25 residential or small commercial retail customers, that the
26 area to be served by the applicant and any limitations it

1 proposes on the number of customers or maximum amount of
2 load to be served meet the provisions of Section 16-115A,
3 provided, that the Commission can extend the time for
4 considering such a certificate request by up to 90 days,
5 and can schedule hearings on such a request;

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

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

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

1 required to pay transition charges on the power and energy that
2 such retail customer takes from the facility.

3 (f) The Commission shall have the authority to promulgate
4 rules and regulations to carry out the provisions of this
5 Section. On or before May 1, 1999, the Commission shall adopt a
6 rule or rules applicable to the certification of those
7 alternative retail electric suppliers that seek to serve only
8 nonresidential retail customers with maximum electrical
9 demands of one megawatt or more which shall provide for (i)
10 expedited and streamlined procedures for certification of such
11 alternative retail electric suppliers and (ii) specific
12 criteria which, if met by any such alternative retail electric
13 supplier, shall constitute the demonstration of technical,
14 financial and managerial resources and abilities to provide
15 service required by subsection (d) (1) of this Section, such as
16 a requirement to post a bond or letter of credit, from a
17 responsible surety or financial institution, of sufficient
18 size for the nature and scope of the services to be provided;
19 demonstration of adequate insurance for the scope and nature of
20 the services to be provided; and experience in providing
21 similar services in other jurisdictions.

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

23 (Text of Section after amendment by P.A. 95-1027)

24 Sec. 16-115. Certification of alternative retail electric
25 suppliers.

1 (a) Any alternative retail electric supplier must obtain a
2 certificate of service authority from the Commission in
3 accordance with this Section before serving any retail customer
4 or other user located in this State. An alternative retail
5 electric supplier may request, and the Commission may grant, a
6 certificate of service authority for the entire State or for a
7 specified geographic area of the State.

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

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

1 its application for certification any limitations that will be
2 imposed on the number of customers or maximum load to be
3 served.

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

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

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

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

1 (4) That the applicant will comply with such
2 informational or reporting requirements as the Commission
3 may by rule establish and provide the information required
4 by Section 16-112. Any data related to contracts for the
5 purchase and sale of electric power and energy shall be
6 made available for review by the Staff of the Commission on
7 a confidential and proprietary basis and only to the extent
8 and for the purposes which the Commission determines are
9 reasonably necessary in order to carry out the purposes of
10 this Act;

11 (5) That the applicant will procure renewable energy
12 resources in accordance with Section 16-115D of this Act,
13 and will source electricity from clean coal facilities, as
14 defined in Section 1-10 of the Illinois Power Agency Act,
15 in amounts at least equal to the percentages set forth in
16 subsections (c) and (d) of Section 1-75 of the Illinois
17 Power Agency Act. For purposes of this Section:

18 (i) (Blank); ~~the required procurement of renewable~~
19 ~~energy resources shall be measured as a percentage of~~
20 ~~the actual amount of electricity (megawatt hours)~~
21 ~~supplied by the alternative retail electric supplier~~
22 ~~in the prior calendar year, as reported for that year~~
23 ~~to the Commission. This obligation applies to all~~
24 ~~electricity supplied pursuant to retail contracts~~
25 ~~executed, extended, or otherwise revised after the~~
26 ~~effective date of this amendatory Act, provided the~~

1 ~~alternative retail electric supplier submits all~~
2 ~~documentation needed by the Commission to determine~~
3 ~~the actual amount of electricity supplied under~~
4 ~~contracts that may be excluded under this limitation;~~

5 (ii) (Blank); ~~an alternative retail electric~~
6 ~~supplier need not actually deliver electricity to its~~
7 ~~customers to comply with this Section, provided that if~~
8 ~~the alternative retail electric supplier claims credit~~
9 ~~for such purpose, subsequent purchasers shall not~~
10 ~~receive any emission credits or renewable energy~~
11 ~~credits in connection with the purchase of such~~
12 ~~electricity. Alternative retail electric suppliers~~
13 ~~shall maintain adequate records documenting the~~
14 ~~contractual disposition of all electricity procured to~~
15 ~~comply with this Section and shall file an accounting~~
16 ~~in the report which must be filed with the Commission~~
17 ~~on April 1 of each year, starting in 2010, in~~
18 ~~accordance with subsection (d 5) of this Section;~~

19 (iii) ~~the required procurement of renewable energy~~
20 ~~resources and~~ sourcing of electricity generated by
21 clean coal facilities, other than the initial clean
22 coal facility, shall be limited to the amount of
23 electricity that can be procured or sourced at a price
24 at or below the benchmarks approved by the Commission
25 each year in accordance with item (1) of subsection (c)
26 and items (1) and (5) of subsection (d) of Section 1-75

1 of the Illinois Power Agency Act;

2 (iv) all alternative retail electric suppliers
3 shall execute a sourcing agreement to source
4 electricity from the initial clean coal facility, on
5 the terms set forth in paragraphs (3) and (4) of
6 subsection (d) of Section 1-75 of the Illinois Power
7 Agency Act, except that in lieu of the requirements in
8 subparagraphs (A)(v), (B)(i), (C)(v), and (C)(vi) of
9 paragraph (3) of that subsection (d), the applicant
10 shall execute one or more of the following:

11 (1) if the sourcing agreement is a power
12 purchase agreement, a contract with the initial
13 clean coal facility to purchase in each hour an
14 amount of electricity equal to all clean coal
15 energy made available from the initial clean coal
16 facility during such hour, which the utilities are
17 not required to procure under the terms of
18 subsection (d) of Section 1-75 of the Illinois
19 Power Agency Act, multiplied by a fraction, the
20 numerator of which is the alternative retail
21 electric supplier's retail market sales of
22 electricity (expressed in kilowatthours sold) in
23 the State during the prior calendar month and the
24 denominator of which is the total sales of
25 electricity (expressed in kilowatthours sold) in
26 the State by alternative retail electric suppliers

1 during such prior month that are subject to the
2 requirements of this paragraph (5) of subsection
3 (d) of this Section and subsection (d) of Section
4 1-75 of the Illinois Power Agency Act plus the
5 total sales of electricity (expressed in
6 kilowatthours sold) by utilities outside of their
7 service areas during such prior month, pursuant to
8 subsection (c) of Section 16-116 of this Act; or

9 (2) if the sourcing agreement is a contract for
10 differences, a contract with the initial clean
11 coal facility in each hour with respect to an
12 amount of electricity equal to all clean coal
13 energy made available from the initial clean coal
14 facility during such hour, which the utilities are
15 not required to procure under the terms of
16 subsection (d) of Section 1-75 of the Illinois
17 Power Agency Act, multiplied by a fraction, the
18 numerator of which is the alternative retail
19 electric supplier's retail market sales of
20 electricity (expressed in kilowatthours sold) in
21 the State during the prior calendar month and the
22 denominator of which is the total sales of
23 electricity (expressed in kilowatthours sold) in
24 the State by alternative retail electric suppliers
25 during such prior month that are subject to the
26 requirements of this paragraph (5) of subsection

1 (d) of this Section and subsection (d) of Section
2 1-75 of the Illinois Power Agency Act plus the
3 total sales of electricity (expressed in
4 kilowatthours sold) by utilities outside of their
5 service areas during such prior month, pursuant to
6 subsection (c) of Section 16-116 of this Act;

7 (v) if, in any year after the first year of
8 commercial operation, the owner of the clean coal
9 facility fails to demonstrate to the Commission that
10 the initial clean coal facility captured and
11 sequestered at least 50% of the total carbon emissions
12 that the facility would otherwise emit or that
13 sequestration of emissions from prior years has
14 failed, resulting in the release of carbon into the
15 atmosphere, the owner of the facility must offset
16 excess emissions. Any such carbon offsets must be
17 permanent, additional, verifiable, real, located
18 within the State of Illinois, and legally and
19 practicably enforceable. The costs of any such offsets
20 that are not recoverable shall not exceed \$15 million
21 in any given year. No costs of any such purchases of
22 carbon offsets may be recovered from an alternative
23 retail electric supplier or its customers. All carbon
24 offsets purchased for this purpose and any carbon
25 emission credits associated with sequestration of
26 carbon from the facility must be permanently retired.

1 The initial clean coal facility shall not forfeit its
2 designation as a clean coal facility if the facility
3 fails to fully comply with the applicable carbon
4 sequestration requirements in any given year, provided
5 the requisite offsets are purchased. However, the
6 Attorney General, on behalf of the People of the State
7 of Illinois, may specifically enforce the facility's
8 sequestration requirement and the other terms of this
9 contract provision. Compliance with the sequestration
10 requirements and offset purchase requirements that
11 apply to the initial clean coal facility shall be
12 reviewed annually by an independent expert retained by
13 the owner of the initial clean coal facility, with the
14 advance written approval of the Attorney General;

15 (vi) The Commission shall, after notice and
16 hearing, revoke the certification of any alternative
17 retail electric supplier that fails to execute a
18 sourcing agreement with the initial clean coal
19 facility as required by item (5) of subsection (d) of
20 this Section. The sourcing agreements with this
21 initial clean coal facility shall be subject to both
22 approval of the initial clean coal facility by the
23 General Assembly and satisfaction of the requirements
24 of item (4) of subsection (d) of Section 1-75 of the
25 Illinois Power Agency Act, and shall be executed within
26 90 days after any such approval by the General

1 Assembly. The Commission shall not accept an
2 application for certification from an alternative
3 retail electric supplier that has lost certification
4 under this subsection (d), or any corporate affiliate
5 thereof, for at least one year from the date of
6 revocation;

7 (6) With respect to an applicant that seeks to serve
8 residential or small commercial retail customers, that the
9 area to be served by the applicant and any limitations it
10 proposes on the number of customers or maximum amount of
11 load to be served meet the provisions of Section 16-115A,
12 provided, that the Commission can extend the time for
13 considering such a certificate request by up to 90 days,
14 and can schedule hearings on such a request;

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

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

19 (d-5) (Blank). ~~The Commission shall, after notice and~~
20 ~~hearing, revoke the certification of any alternative retail~~
21 ~~electric supplier that fails to execute a sourcing agreement~~
22 ~~with the initial clean coal facility, as required by item (5)~~
23 ~~of subsection (d) of this Section. The sourcing agreements with~~
24 ~~this initial clean coal facility shall be subject to both~~
25 ~~approval of the initial clean coal facility by the General~~
26 ~~Assembly and satisfaction of the requirements of paragraph (4)~~

1 ~~of subsection (d) of Section 1-75 of the Illinois Power Agency~~
2 ~~Act, and shall be executed within 90 days after any such~~
3 ~~approval by the General Assembly. The Commission shall also~~
4 ~~revoke the certification of any alternative retail electric~~
5 ~~supplier that, on April 1, 2010 or on April 1 of any year~~
6 ~~thereafter, fails to demonstrate that the electricity provided~~
7 ~~to the alternative retail electricity supplier's Illinois~~
8 ~~customers during the previous year was generated by renewable~~
9 ~~energy resources and clean coal facilities in amounts at least~~
10 ~~equal to the percentages set forth in subsections (c) and (d)~~
11 ~~of Section 1-75 of the Illinois Power Agency Act, as limited by~~
12 ~~subsection (d) (5) (iii) of this Section. The Commission shall~~
13 ~~not accept an application for certification from an alternative~~
14 ~~retail electric supplier that has lost certification under this~~
15 ~~subsection (d) (5), or any corporate affiliate thereof, for at~~
16 ~~least one year from the date of revocation.~~

17 (e) A retail customer that owns a cogeneration or
18 self-generation facility and that seeks certification only to
19 provide electric power and energy from such facility to retail
20 customers at separate locations which customers are both (i)
21 owned by, or a subsidiary or other corporate affiliate of, such
22 applicant and (ii) eligible for delivery services, shall be
23 granted a certificate of service authority upon filing an
24 application and notifying the Commission that it has entered
25 into an agreement with the relevant electric utilities pursuant
26 to Section 16-118. Provided, however, that if the retail

1 customer owning such cogeneration or self-generation facility
2 would not be charged a transition charge due to the exemption
3 provided under subsection (f) of Section 16-108 prior to the
4 certification, and the retail customers at separate locations
5 are taking delivery services in conjunction with purchasing
6 power and energy from the facility, the retail customer on
7 whose premises the facility is located shall not thereafter be
8 required to pay transition charges on the power and energy that
9 such retail customer takes from the facility.

10 (f) The Commission shall have the authority to promulgate
11 rules and regulations to carry out the provisions of this
12 Section. On or before May 1, 1999, the Commission shall adopt a
13 rule or rules applicable to the certification of those
14 alternative retail electric suppliers that seek to serve only
15 nonresidential retail customers with maximum electrical
16 demands of one megawatt or more which shall provide for (i)
17 expedited and streamlined procedures for certification of such
18 alternative retail electric suppliers and (ii) specific
19 criteria which, if met by any such alternative retail electric
20 supplier, shall constitute the demonstration of technical,
21 financial and managerial resources and abilities to provide
22 service required by subsection (d) (1) of this Section, such as
23 a requirement to post a bond or letter of credit, from a
24 responsible surety or financial institution, of sufficient
25 size for the nature and scope of the services to be provided;
26 demonstration of adequate insurance for the scope and nature of

1 the services to be provided; and experience in providing
2 similar services in other jurisdictions.

3 (Source: P.A. 95-130, eff. 1-1-08; 95-1027, eff. 6-1-09.)

4 (220 ILCS 5/16-115D new)

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

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

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

16 (2) The quantity of renewable energy resources shall be
17 measured as a percentage of the actual amount of metered
18 electricity (megawatt-hours) delivered by the alternative
19 retail electric supplier to Illinois retail customers
20 during the 12-month period June 1 through May 31,
21 commencing June 1, 2009, and the comparable 12-month period
22 in each year thereafter except as provided in item (6) of
23 this subsection (a).

24 (3) The quantity of renewable energy resources shall be
25 in amounts at least equal to the annual percentages set

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

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

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

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

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

16 (b) An alternative retail electric supplier shall comply
17 with the renewable energy portfolio standards by making an
18 alternative compliance payment, as described in subsection (d)
19 of this Section, to cover at least one-half of the alternative
20 retail electric supplier's compliance obligation and any one or
21 combination of the following means to cover the remainder of
22 the alternative retail electric supplier's compliance
23 obligation:

24 (1) Generating electricity using renewable energy
25 resources identified pursuant to item (4) of subsection (a)
26 of this Section.

1 (2) Purchasing electricity generated using renewable
2 energy resources identified pursuant to item (4) of
3 subsection (a) of this Section through an energy contract.

4 (3) Purchasing renewable energy credits from renewable
5 energy resources identified pursuant to item (4) of
6 subsection (a) of this Section.

7 (4) Making an alternative compliance payment as
8 described in subsection (d) of this Section.

9 (c) Use of renewable energy credits.

10 (1) Renewable energy credits that are not used by an
11 alternative retail electric supplier to comply with a
12 renewable portfolio standard in a compliance year may be
13 banked and carried forward up to 2 12-month compliance
14 periods after the compliance period in which the credit was
15 generated for the purpose of complying with a renewable
16 portfolio standard in those 2 subsequent compliance
17 periods. For the 2009-2010 and 2010-2011 compliance
18 periods, an alternative retail electric supplier may use
19 renewable credits generated after December 31, 2008 and
20 before June 1, 2009 to comply with this Section.

21 (2) An alternative retail electric supplier is
22 responsible for demonstrating that a renewable energy
23 credit used to comply with a renewable portfolio standard
24 is derived from a renewable energy resource and that the
25 alternative retail electric supplier has not used, traded,
26 sold, or otherwise transferred the credit.

1 (3) The same renewable energy credit may be used by an
2 alternative retail electric supplier to comply with a
3 federal renewable portfolio standard and a renewable
4 portfolio standard established under this Act. An
5 alternative retail electric supplier that uses a renewable
6 energy credit to comply with a renewable portfolio standard
7 imposed by any other state may not use the same credit to
8 comply with a renewable portfolio standard established
9 under this Act.

10 (d) Alternative compliance payments.

11 (1) The Commission shall establish and post on its web
12 site, within 5 business days after entering an order
13 approving a procurement plan pursuant to Section 1-75 of
14 the Illinois Power Agency Act, maximum alternative
15 compliance payment rates, expressed on a per kilowatt-hour
16 basis, that will be applicable in the first compliance
17 period following the plan approval. A separate maximum
18 alternative compliance payment rate shall be established
19 for the service territory of each electric utility that is
20 subject to subsection (c) of Section 1-75 of the Illinois
21 Power Agency Act. Each maximum alternative compliance
22 payment rate shall be equal to the maximum allowable annual
23 estimated average net increase due to the costs of the
24 utility's purchase of renewable energy resources included
25 in the amounts paid by eligible retail customers in
26 connection with electric service, as described in item (2)

1 of subsection (c) of Section 1-75 of the Illinois Power
2 Agency Act for the compliance period, and as established in
3 the approved procurement plan. Following each procurement
4 event through which renewable energy resources are
5 purchased for one or more of these utilities for the
6 compliance period, the Commission shall establish and post
7 on its website estimates of the alternative compliance
8 payment rates, expressed on a per kilowatt-hour basis, that
9 shall apply for that compliance period. Posting of the
10 estimates shall occur no later than 10 business days
11 following the procurement event, however, the Commission
12 shall not be required to establish and post such estimates
13 more often than once per calendar month. By July 1 of each
14 year, the Commission shall establish and post on its
15 website the actual alternative compliance payment rates
16 for the preceding compliance year. Each alternative
17 compliance payment rate shall be equal to the total amount
18 of dollars for which the utility contracted to spend on
19 renewable resources for the compliance period divided by
20 the forecasted load of eligible retail customers, at the
21 customers' meters, as previously established in the
22 Commission-approved procurement plan for that compliance
23 year. The actual alternative compliance payment rates may
24 not exceed the maximum alternative compliance payment
25 rates established for the compliance period. For purposes
26 of this subsection (d), the term "eligible retail

1 customers" has the same meaning as found in Section
2 16-111.5 of this Act.

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

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

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

15 (4) All alternative compliance payments by alternative
16 retail electric suppliers shall be deposited in the
17 Illinois Power Agency Renewable Energy Resources Fund and
18 used to purchase renewable energy credits, in accordance
19 with Section 1-56 of the Illinois Power Agency Act.

20 (5) The Commission, in consultation with the Illinois
21 Power Agency, shall establish a process or proceeding to
22 consider the impact of a federal renewable portfolio
23 standard, if enacted, on the operation of the alternative
24 compliance mechanism, which shall include, but not be
25 limited to, developing, to the extent permitted by the
26 applicable federal statute, an appropriate methodology to

1 apportion renewable energy credits retired as a result of
2 alternative compliance payments made in accordance with
3 this Section. The Commission shall commence any such
4 process or proceeding with 35 days after enactment of a
5 federal renewable portfolio standard.

6 (e) Each alternative retail electric supplier shall, by
7 September 1, 2010 and by September 1 of each year thereafter,
8 prepare and submit to the Commission a report, in a format to
9 be specified by the Commission on or before December 31, 2009,
10 that provides information certifying compliance by the
11 alternative retail electric supplier with this Section,
12 including copies of all PJM-GATS and M-RETS reports, and
13 documentation relating to banking, retiring renewable energy
14 credits, and any other information that the Commission
15 determines necessary to ensure compliance with this Section. An
16 alternative retail electric supplier may file commercially or
17 financially sensitive information or trade secrets with the
18 Commission as provided under the rules of the Commission. To be
19 filed confidentially, the information shall be accompanied by
20 an affidavit that sets forth both the reasons for the
21 confidentiality and a public synopsis of the information.

22 (f) The Commission may initiate a contested case to review
23 allegations that the alternative retail electric supplier has
24 violated this Section, including an order issued or rule
25 promulgated under this Section. In any such proceeding, the
26 alternative retail electric supplier shall have the burden of

1 proof. If the Commission finds, after notice and hearing, that
2 an alternative retail electric supplier has violated this
3 Section, then the Commission shall issue an order requiring the
4 alternative retail electric supplier to:

5 (1) immediately comply with this Section; and

6 (2) if the violation involves a failure to procure the
7 requisite quantity of renewable energy resources or pay the
8 applicable alternative compliance payment by the annual
9 deadline, the Commission shall require the alternative retail
10 electric supplier to double the applicable alternative
11 compliance payment that would otherwise be required to bring
12 the alternative retail electric supplier into compliance with
13 this Section

14 If an alternative retail electric supplier fails to comply
15 with the renewable energy resource portfolio requirement in
16 this Section more than once in a 5-year period, then the
17 Commission shall revoke the alternative electric supplier's
18 certificate of service authority. The Commission shall not
19 accept an application for a certificate of service authority
20 from an alternative retail electric supplier that has lost
21 certification under this subsection (f), or any corporate
22 affiliate thereof, for at least one year after the date of
23 revocation.

24 (g) All of the provisions of this Section apply to electric
25 utilities operating outside their service area except under
26 item (2) of subsection (a) of this Section the quantity of

1 renewable energy resources shall be measured as a percentage of
2 the actual amount of electricity (megawatt-hours) supplied in
3 the State outside of the utility's service territory during the
4 12-month period June 1 through May 31, commencing June 1,
5 2009, and the comparable 12-month period in each year thereafter
6 except as provided in item (6) of subsection (a) of this
7 Section.

8 If any such utility fails to procure the requisite quantity
9 of renewable energy resources by the annual deadline, then the
10 Commission shall require the utility to double the alternative
11 compliance payment that would otherwise be required to bring
12 the utility into compliance with this Section.

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

18 Section 95. No acceleration or delay. Where this Act makes
19 changes in a statute that is represented in this Act by text
20 that is not yet or no longer in effect (for example, a Section
21 represented by multiple versions), the use of that text does
22 not accelerate or delay the taking effect of (i) the changes
23 made by this Act or (ii) provisions derived from any other
24 Public Act.

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.".