



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

SB2550

Introduced 1/13/2010, by Sen. Don Harmon

#### SYNOPSIS AS INTRODUCED:

20 ILCS 3855/1-75

Amends the Illinois Power Agency Act. Provides that through June 1, 2016 (instead of 2011), renewable energy resources shall be counted for the purpose of meeting the renewable energy standards set forth in specified provisions only if they are generated from facilities located in the State, provided that cost-effective renewable energy resources are available from those facilities. Provides that after June 1, 2016 (instead of 2011), cost-effective renewable energy resources located in Illinois and in states that adjoin Illinois may be counted towards compliance with the standards set forth in specified provisions.

LRB096 16235 MJR 31491 b

1 AN ACT concerning utilities.

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

4 Section 5. The Illinois Power Agency Act is amended by  
5 changing Section 1-75 as follows:

6 (20 ILCS 3855/1-75)

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

1 of the Public Utilities Act. In order to qualify an  
2 expert or expert consulting firm must have:

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

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

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

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

15 (E) expertise in credit protocols and  
16 familiarity with contract protocols;

17 (F) adequate resources to perform and fulfill  
18 the required functions and responsibilities; and

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

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

1 expert consulting firm must have:

2 (A) direct previous experience administering a  
3 large-scale competitive procurement process;

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

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

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

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

11 (A) failure to satisfy qualification criteria;

12 (B) identification of a conflict of interest;

13 or

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

17 The Agency shall remove experts or expert  
18 consulting firms from the lists within 10 days if there  
19 is a reasonable basis for an objection and provide the  
20 updated lists to the affected utilities and other  
21 interested parties. If the Agency fails to remove an  
22 expert or expert consulting firm from a list, an  
23 objecting party may seek review by the Commission  
24 within 5 days thereafter by filing a petition, and the  
25 Commission shall render a ruling on the petition within  
26 10 days. There is no right of appeal of the

1 Commission's ruling.

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

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

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

21 (b) The experts or expert consulting firms retained by  
22 the Agency shall, as appropriate, prepare procurement  
23 plans, and conduct a competitive procurement process as  
24 prescribed in Section 16-111.5 of the Public Utilities Act,  
25 to ensure adequate, reliable, affordable, efficient, and  
26 environmentally sustainable electric service at the lowest

1 total cost over time, taking into account any benefits of  
2 price stability, for eligible retail customers of electric  
3 utilities that on December 31, 2005 provided electric  
4 service to at least 100,000 customers in the State of  
5 Illinois.

6 (c) Renewable portfolio standard.

7 (1) The procurement plans shall include  
8 cost-effective renewable energy resources. A minimum  
9 percentage of each utility's total supply to serve the  
10 load of eligible retail customers, as defined in  
11 Section 16-111.5(a) of the Public Utilities Act,  
12 procured for each of the following years shall be  
13 generated from cost-effective renewable energy  
14 resources: at least 2% by June 1, 2008; at least 4% by  
15 June 1, 2009; at least 5% by June 1, 2010; at least 6%  
16 by June 1, 2011; at least 7% by June 1, 2012; at least  
17 8% by June 1, 2013; at least 9% by June 1, 2014; at  
18 least 10% by June 1, 2015; and increasing by at least  
19 1.5% each year thereafter to at least 25% by June 1,  
20 2025. To the extent that it is available, at least 75%  
21 of the renewable energy resources used to meet these  
22 standards shall come from wind generation and,  
23 beginning on June 1, 2015, at least 6% of the renewable  
24 energy resources used to meet these standards shall  
25 come from photovoltaics. For purposes of this  
26 subsection (c), "cost-effective" means that the costs

1 of procuring renewable energy resources do not cause  
2 the limit stated in paragraph (2) of this subsection  
3 (c) to be exceeded and do not exceed benchmarks based  
4 on market prices for renewable energy resources in the  
5 region, which shall be developed by the procurement  
6 administrator, in consultation with the Commission  
7 staff, Agency staff, and the procurement monitor and  
8 shall be subject to Commission review and approval.

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

23 Notwithstanding the requirements of this  
24 subsection (c), the total of renewable energy  
25 resources procured pursuant to the procurement plan  
26 for any single year shall be reduced by an amount



1 necessary to limit the annual estimated average net  
2 increase due to the costs of these resources included  
3 in the amounts paid by eligible retail customers in  
4 connection with electric service to:

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

8 (B) in 2009, the greater of an additional 0.5%  
9 of the amount paid per kilowatthour by those  
10 customers during the year ending May 31, 2008 or 1%  
11 of the amount paid per kilowatthour by those  
12 customers during the year ending May 31, 2007;

13 (C) in 2010, the greater of an additional 0.5%  
14 of the amount paid per kilowatthour by those  
15 customers during the year ending May 31, 2009 or  
16 1.5% of the amount paid per kilowatthour by those  
17 customers during the year ending May 31, 2007;

18 (D) in 2011, the greater of an additional 0.5%  
19 of the amount paid per kilowatthour by those  
20 customers during the year ending May 31, 2010 or 2%  
21 of the amount paid per kilowatthour by those  
22 customers during the year ending May 31, 2007; and

23 (E) thereafter, the amount of renewable energy  
24 resources procured pursuant to the procurement  
25 plan for any single year shall be reduced by an  
26 amount necessary to limit the estimated average

1 net increase due to the cost of these resources  
2 included in the amounts paid by eligible retail  
3 customers in connection with electric service to  
4 no more than the greater of 2.015% of the amount  
5 paid per kilowatthour by those customers during  
6 the year ending May 31, 2007 or the incremental  
7 amount per kilowatthour paid for these resources  
8 in 2011.

9 No later than June 30, 2011, the Commission shall  
10 review the limitation on the amount of renewable energy  
11 resources procured pursuant to this subsection (c) and  
12 report to the General Assembly its findings as to  
13 whether that limitation unduly constrains the  
14 procurement of cost-effective renewable energy  
15 resources.

16 (3) Through June 1, 2016 ~~2011~~, renewable energy  
17 resources shall be counted for the purpose of meeting  
18 the renewable energy standards set forth in paragraph  
19 (1) of this subsection (c) only if they are generated  
20 from facilities located in the State, provided that  
21 cost-effective renewable energy resources are  
22 available from those facilities. If those  
23 cost-effective resources are not available in  
24 Illinois, they shall be procured in states that adjoin  
25 Illinois and may be counted towards compliance. If  
26 those cost-effective resources are not available in

1 Illinois or in states that adjoin Illinois, they shall  
2 be purchased elsewhere and shall be counted towards  
3 compliance. After June 1, 2016 ~~2011~~, cost-effective  
4 renewable energy resources located in Illinois and in  
5 states that adjoin Illinois may be counted towards  
6 compliance with the standards set forth in paragraph  
7 (1) of this subsection (c). If those cost-effective  
8 resources are not available in Illinois or in states  
9 that adjoin Illinois, they shall be purchased  
10 elsewhere and shall be counted towards compliance.

11 (4) The electric utility shall retire all  
12 renewable energy credits used to comply with the  
13 standard.

14 (5) Beginning with the year commencing June 1,  
15 2010, an electric utility subject to this subsection  
16 (c) shall apply the lesser of the maximum alternative  
17 compliance payment rate or the most recent estimated  
18 alternative compliance payment rate for its service  
19 territory for the corresponding compliance period,  
20 established pursuant to subsection (d) of Section  
21 16-115D of the Public Utilities Act to its retail  
22 customers that take service pursuant to the electric  
23 utility's hourly pricing tariff or tariffs. The  
24 electric utility shall retain all amounts collected as  
25 a result of the application of the alternative  
26 compliance payment rate or rates to such customers,

1 and, beginning in 2011, the utility shall include in  
2 the information provided under item (1) of subsection  
3 (d) of Section 16-111.5 of the Public Utilities Act the  
4 amounts collected under the alternative compliance  
5 payment rate or rates for the prior year ending May 31.  
6 Notwithstanding any limitation on the procurement of  
7 renewable energy resources imposed by item (2) of this  
8 subsection (c), the Agency shall increase its spending  
9 on the purchase of renewable energy resources to be  
10 procured by the electric utility for the next plan year  
11 by an amount equal to the amounts collected by the  
12 utility under the alternative compliance payment rate  
13 or rates in the prior year ending May 31.

14 (d) Clean coal portfolio standard.

15 (1) The procurement plans shall include electricity  
16 generated using clean coal. Each utility shall enter into  
17 one or more sourcing agreements with the initial clean coal  
18 facility, as provided in paragraph (3) of this subsection  
19 (d), covering electricity generated by the initial clean  
20 coal facility representing at least 5% of each utility's  
21 total supply to serve the load of eligible retail customers  
22 in 2015 and each year thereafter, as described in paragraph  
23 (3) of this subsection (d), subject to the limits specified  
24 in paragraph (2) of this subsection (d). It is the goal of  
25 the State that by January 1, 2025, 25% of the electricity  
26 used in the State shall be generated by cost-effective

1 clean coal facilities. For purposes of this subsection (d),  
2 "cost-effective" means that the expenditures pursuant to  
3 such sourcing agreements do not cause the limit stated in  
4 paragraph (2) of this subsection (d) to be exceeded and do  
5 not exceed cost-based benchmarks, which shall be developed  
6 to assess all expenditures pursuant to such sourcing  
7 agreements covering electricity generated by clean coal  
8 facilities, other than the initial clean coal facility, by  
9 the procurement administrator, in consultation with the  
10 Commission staff, Agency staff, and the procurement  
11 monitor and shall be subject to Commission review and  
12 approval.

13 (A) A utility party to a sourcing agreement shall  
14 immediately retire any emission credits that it  
15 receives in connection with the electricity covered by  
16 such agreement.

17 (B) Utilities shall maintain adequate records  
18 documenting the purchases under the sourcing agreement  
19 to comply with this subsection (d) and shall file an  
20 accounting with the load forecast that must be filed  
21 with the Agency by July 15 of each year, in accordance  
22 with subsection (d) of Section 16-111.5 of the Public  
23 Utilities Act.

24 (C) A utility shall be deemed to have complied with  
25 the clean coal portfolio standard specified in this  
26 subsection (d) if the utility enters into a sourcing

1 agreement as required by this subsection (d).

2 (2) For purposes of this subsection (d), the required  
3 execution of sourcing agreements with the initial clean  
4 coal facility for a particular year shall be measured as a  
5 percentage of the actual amount of electricity  
6 (megawatt-hours) supplied by the electric utility to  
7 eligible retail customers in the planning year ending  
8 immediately prior to the agreement's execution. For  
9 purposes of this subsection (d), the amount paid per  
10 kilowatthour means the total amount paid for electric  
11 service expressed on a per kilowatthour basis. For purposes  
12 of this subsection (d), the total amount paid for electric  
13 service includes without limitation amounts paid for  
14 supply, transmission, distribution, surcharges and add-on  
15 taxes.

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

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

1 (B) in 2011, the greater of an additional 0.5%  
2 of the amount paid per kilowatthour by those  
3 customers during the year ending May 31, 2010 or 1%  
4 of the amount paid per kilowatthour by those  
5 customers during the year ending May 31, 2009;

6 (C) in 2012, the greater of an additional 0.5%  
7 of the amount paid per kilowatthour by those  
8 customers during the year ending May 31, 2011 or  
9 1.5% of the amount paid per kilowatthour by those  
10 customers during the year ending May 31, 2009;

11 (D) in 2013, the greater of an additional 0.5%  
12 of the amount paid per kilowatthour by those  
13 customers during the year ending May 31, 2012 or 2%  
14 of the amount paid per kilowatthour by those  
15 customers during the year ending May 31, 2009; and

16 (E) thereafter, the total amount paid under  
17 sourcing agreements with clean coal facilities  
18 pursuant to the procurement plan for any single  
19 year shall be reduced by an amount necessary to  
20 limit the estimated average net increase due to the  
21 cost of these resources included in the amounts  
22 paid by eligible retail customers in connection  
23 with electric service to no more than the greater  
24 of (i) 2.015% of the amount paid per kilowatthour  
25 by those customers during the year ending May 31,  
26 2009 or (ii) the incremental amount per

1 kilowatthour paid for these resources in 2013.  
2 These requirements may be altered only as provided  
3 by statute. No later than June 30, 2015, the  
4 Commission shall review the limitation on the  
5 total amount paid under sourcing agreements, if  
6 any, with clean coal facilities pursuant to this  
7 subsection (d) and report to the General Assembly  
8 its findings as to whether that limitation unduly  
9 constrains the amount of electricity generated by  
10 cost-effective clean coal facilities that is  
11 covered by sourcing agreements.

12 (3) Initial clean coal facility. In order to promote  
13 development of clean coal facilities in Illinois, each  
14 electric utility subject to this Section shall execute a  
15 sourcing agreement to source electricity from a proposed  
16 clean coal facility in Illinois (the "initial clean coal  
17 facility") that will have a nameplate capacity of at least  
18 500 MW when commercial operation commences, that has a  
19 final Clean Air Act permit on the effective date of this  
20 amendatory Act of the 95th General Assembly, and that will  
21 meet the definition of clean coal facility in Section 1-10  
22 of this Act when commercial operation commences. The  
23 sourcing agreements with this initial clean coal facility  
24 shall be subject to both approval of the initial clean coal  
25 facility by the General Assembly and satisfaction of the  
26 requirements of paragraph (4) of this subsection (d) and



1 shall be executed within 90 days after any such approval by  
2 the General Assembly. The Agency and the Commission shall  
3 have authority to inspect all books and records associated  
4 with the initial clean coal facility during the term of  
5 such a sourcing agreement. A utility's sourcing agreement  
6 for electricity produced by the initial clean coal facility  
7 shall include:

8 (A) a formula contractual price (the "contract  
9 price") approved pursuant to paragraph (4) of this  
10 subsection (d), which shall:

11 (i) be determined using a cost of service  
12 methodology employing either a level or deferred  
13 capital recovery component, based on a capital  
14 structure consisting of 45% equity and 55% debt,  
15 and a return on equity as may be approved by the  
16 Federal Energy Regulatory Commission, which in any  
17 case may not exceed the lower of 11.5% or the rate  
18 of return approved by the General Assembly  
19 pursuant to paragraph (4) of this subsection (d);  
20 and

21 (ii) provide that all miscellaneous net  
22 revenue, including but not limited to net revenue  
23 from the sale of emission allowances, if any,  
24 substitute natural gas, if any, grants or other  
25 support provided by the State of Illinois or the  
26 United States Government, firm transmission

1 rights, if any, by-products produced by the  
2 facility, energy or capacity derived from the  
3 facility and not covered by a sourcing agreement  
4 pursuant to paragraph (3) of this subsection (d) or  
5 item (5) of subsection (d) of Section 16-115 of the  
6 Public Utilities Act, whether generated from the  
7 synthesis gas derived from coal, from SNG, or from  
8 natural gas, shall be credited against the revenue  
9 requirement for this initial clean coal facility;

10 (B) power purchase provisions, which shall:

11 (i) provide that the utility party to such  
12 sourcing agreement shall pay the contract price  
13 for electricity delivered under such sourcing  
14 agreement;

15 (ii) require delivery of electricity to the  
16 regional transmission organization market of the  
17 utility that is party to such sourcing agreement;

18 (iii) require the utility party to such  
19 sourcing agreement to buy from the initial clean  
20 coal facility in each hour an amount of energy  
21 equal to all clean coal energy made available from  
22 the initial clean coal facility during such hour  
23 times a fraction, the numerator of which is such  
24 utility's retail market sales of electricity  
25 (expressed in kilowatthours sold) in the State  
26 during the prior calendar month and the

1 denominator of which is the total retail market  
2 sales of electricity (expressed in kilowatthours  
3 sold) in the State by utilities during such prior  
4 month and the sales of electricity (expressed in  
5 kilowatthours sold) in the State by alternative  
6 retail electric suppliers during such prior month  
7 that are subject to the requirements of this  
8 subsection (d) and paragraph (5) of subsection (d)  
9 of Section 16-115 of the Public Utilities Act,  
10 provided that the amount purchased by the utility  
11 in any year will be limited by paragraph (2) of  
12 this subsection (d); and

13 (iv) be considered pre-existing contracts in  
14 such utility's procurement plans for eligible  
15 retail customers;

16 (C) contract for differences provisions, which  
17 shall:

18 (i) require the utility party to such sourcing  
19 agreement to contract with the initial clean coal  
20 facility in each hour with respect to an amount of  
21 energy equal to all clean coal energy made  
22 available from the initial clean coal facility  
23 during such hour times a fraction, the numerator of  
24 which is such utility's retail market sales of  
25 electricity (expressed in kilowatthours sold) in  
26 the utility's service territory in the State

1 during the prior calendar month and the  
2 denominator of which is the total retail market  
3 sales of electricity (expressed in kilowatthours  
4 sold) in the State by utilities during such prior  
5 month and the sales of electricity (expressed in  
6 kilowatthours sold) in the State by alternative  
7 retail electric suppliers during such prior month  
8 that are subject to the requirements of this  
9 subsection (d) and paragraph (5) of subsection (d)  
10 of Section 16-115 of the Public Utilities Act,  
11 provided that the amount paid by the utility in any  
12 year will be limited by paragraph (2) of this  
13 subsection (d);

14 (ii) provide that the utility's payment  
15 obligation in respect of the quantity of  
16 electricity determined pursuant to the preceding  
17 clause (i) shall be limited to an amount equal to  
18 (1) the difference between the contract price  
19 determined pursuant to subparagraph (A) of  
20 paragraph (3) of this subsection (d) and the  
21 day-ahead price for electricity delivered to the  
22 regional transmission organization market of the  
23 utility that is party to such sourcing agreement  
24 (or any successor delivery point at which such  
25 utility's supply obligations are financially  
26 settled on an hourly basis) (the "reference

1 price") on the day preceding the day on which the  
2 electricity is delivered to the initial clean coal  
3 facility busbar, multiplied by (2) the quantity of  
4 electricity determined pursuant to the preceding  
5 clause (i); and

6 (iii) not require the utility to take physical  
7 delivery of the electricity produced by the  
8 facility;

9 (D) general provisions, which shall:

10 (i) specify a term of no more than 30 years,  
11 commencing on the commercial operation date of the  
12 facility;

13 (ii) provide that utilities shall maintain  
14 adequate records documenting purchases under the  
15 sourcing agreements entered into to comply with  
16 this subsection (d) and shall file an accounting  
17 with the load forecast that must be filed with the  
18 Agency by July 15 of each year, in accordance with  
19 subsection (d) of Section 16-111.5 of the Public  
20 Utilities Act.

21 (iii) provide that all costs associated with  
22 the initial clean coal facility will be  
23 periodically reported to the Federal Energy  
24 Regulatory Commission and to purchasers in  
25 accordance with applicable laws governing  
26 cost-based wholesale power contracts;

1 (iv) permit the Illinois Power Agency to  
2 assume ownership of the initial clean coal  
3 facility, without monetary consideration and  
4 otherwise on reasonable terms acceptable to the  
5 Agency, if the Agency so requests no less than 3  
6 years prior to the end of the stated contract term;

7 (v) require the owner of the initial clean coal  
8 facility to provide documentation to the  
9 Commission each year, starting in the facility's  
10 first year of commercial operation, accurately  
11 reporting the quantity of carbon emissions from  
12 the facility that have been captured and  
13 sequestered and report any quantities of carbon  
14 released from the site or sites at which carbon  
15 emissions were sequestered in prior years, based  
16 on continuous monitoring of such sites. If, in any  
17 year after the first year of commercial operation,  
18 the owner of the facility fails to demonstrate that  
19 the initial clean coal facility captured and  
20 sequestered at least 50% of the total carbon  
21 emissions that the facility would otherwise emit  
22 or that sequestration of emissions from prior  
23 years has failed, resulting in the release of  
24 carbon dioxide into the atmosphere, the owner of  
25 the facility must offset excess emissions. Any  
26 such carbon offsets must be permanent, additional,

1           verifiable, real, located within the State of  
2           Illinois, and legally and practicably enforceable.  
3           The cost of such offsets for the facility that are  
4           not recoverable shall not exceed \$15 million in any  
5           given year. No costs of any such purchases of  
6           carbon offsets may be recovered from a utility or  
7           its customers. All carbon offsets purchased for  
8           this purpose and any carbon emission credits  
9           associated with sequestration of carbon from the  
10          facility must be permanently retired. The initial  
11          clean coal facility shall not forfeit its  
12          designation as a clean coal facility if the  
13          facility fails to fully comply with the applicable  
14          carbon sequestration requirements in any given  
15          year, provided the requisite offsets are  
16          purchased. However, the Attorney General, on  
17          behalf of the People of the State of Illinois, may  
18          specifically enforce the facility's sequestration  
19          requirement and the other terms of this contract  
20          provision. Compliance with the sequestration  
21          requirements and offset purchase requirements  
22          specified in paragraph (3) of this subsection (d)  
23          shall be reviewed annually by an independent  
24          expert retained by the owner of the initial clean  
25          coal facility, with the advance written approval  
26          of the Attorney General. The Commission may, in the

1 course of the review specified in item (vii),  
2 reduce the allowable return on equity for the  
3 facility if the facility wilfully fails to comply  
4 with the carbon capture and sequestration  
5 requirements set forth in this item (v);

6 (vi) include limits on, and accordingly  
7 provide for modification of, the amount the  
8 utility is required to source under the sourcing  
9 agreement consistent with paragraph (2) of this  
10 subsection (d);

11 (vii) require Commission review: (1) to  
12 determine the justness, reasonableness, and  
13 prudence of the inputs to the formula referenced in  
14 subparagraphs (A) (i) through (A) (iii) of paragraph  
15 (3) of this subsection (d), prior to an adjustment  
16 in those inputs including, without limitation, the  
17 capital structure and return on equity, fuel  
18 costs, and other operations and maintenance costs  
19 and (2) to approve the costs to be passed through  
20 to customers under the sourcing agreement by which  
21 the utility satisfies its statutory obligations.  
22 Commission review shall occur no less than every 3  
23 years, regardless of whether any adjustments have  
24 been proposed, and shall be completed within 9  
25 months;

26 (viii) limit the utility's obligation to such



1 amount as the utility is allowed to recover through  
2 tariffs filed with the Commission, provided that  
3 neither the clean coal facility nor the utility  
4 waives any right to assert federal pre-emption or  
5 any other argument in response to a purported  
6 disallowance of recovery costs;

7 (ix) limit the utility's or alternative retail  
8 electric supplier's obligation to incur any  
9 liability until such time as the facility is in  
10 commercial operation and generating power and  
11 energy and such power and energy is being delivered  
12 to the facility busbar;

13 (x) provide that the owner or owners of the  
14 initial clean coal facility, which is the  
15 counterparty to such sourcing agreement, shall  
16 have the right from time to time to elect whether  
17 the obligations of the utility party thereto shall  
18 be governed by the power purchase provisions or the  
19 contract for differences provisions;

20 (xi) append documentation showing that the  
21 formula rate and contract, insofar as they relate  
22 to the power purchase provisions, have been  
23 approved by the Federal Energy Regulatory  
24 Commission pursuant to Section 205 of the Federal  
25 Power Act;

26 (xii) provide that any changes to the terms of

1 the contract, insofar as such changes relate to the  
2 power purchase provisions, are subject to review  
3 under the public interest standard applied by the  
4 Federal Energy Regulatory Commission pursuant to  
5 Sections 205 and 206 of the Federal Power Act; and

6 (xiii) conform with customary lender  
7 requirements in power purchase agreements used as  
8 the basis for financing non-utility generators.

9 (4) Effective date of sourcing agreements with the  
10 initial clean coal facility. Any proposed sourcing  
11 agreement with the initial clean coal facility shall not  
12 become effective unless the following reports are prepared  
13 and submitted and authorizations and approvals obtained:

14 (i) Facility cost report. The owner of the  
15 initial clean coal facility shall submit to the  
16 Commission, the Agency, and the General Assembly a  
17 front-end engineering and design study, a facility  
18 cost report, method of financing (including but  
19 not limited to structure and associated costs),  
20 and an operating and maintenance cost quote for the  
21 facility (collectively "facility cost report"),  
22 which shall be prepared in accordance with the  
23 requirements of this paragraph (4) of subsection  
24 (d) of this Section, and shall provide the  
25 Commission and the Agency access to the work  
26 papers, relied upon documents, and any other

1 backup documentation related to the facility cost  
2 report.

3 (ii) Commission report. Within 6 months  
4 following receipt of the facility cost report, the  
5 Commission, in consultation with the Agency, shall  
6 submit a report to the General Assembly setting  
7 forth its analysis of the facility cost report.  
8 Such report shall include, but not be limited to, a  
9 comparison of the costs associated with  
10 electricity generated by the initial clean coal  
11 facility to the costs associated with electricity  
12 generated by other types of generation facilities,  
13 an analysis of the rate impacts on residential and  
14 small business customers over the life of the  
15 sourcing agreements, and an analysis of the  
16 likelihood that the initial clean coal facility  
17 will commence commercial operation by and be  
18 delivering power to the facility's busbar by 2016.  
19 To assist in the preparation of its report, the  
20 Commission, in consultation with the Agency, may  
21 hire one or more experts or consultants, the costs  
22 of which shall be paid for by the owner of the  
23 initial clean coal facility. The Commission and  
24 Agency may begin the process of selecting such  
25 experts or consultants prior to receipt of the  
26 facility cost report.

1 (iii) General Assembly approval. The proposed  
2 sourcing agreements shall not take effect unless,  
3 based on the facility cost report and the  
4 Commission's report, the General Assembly enacts  
5 authorizing legislation approving (A) the  
6 projected price, stated in cents per kilowatthour,  
7 to be charged for electricity generated by the  
8 initial clean coal facility, (B) the projected  
9 impact on residential and small business  
10 customers' bills over the life of the sourcing  
11 agreements, and (C) the maximum allowable return  
12 on equity for the project; and

13 (iv) Commission review. If the General  
14 Assembly enacts authorizing legislation pursuant  
15 to subparagraph (iii) approving a sourcing  
16 agreement, the Commission shall, within 90 days of  
17 such enactment, complete a review of such sourcing  
18 agreement. During such time period, the Commission  
19 shall implement any directive of the General  
20 Assembly, resolve any disputes between the parties  
21 to the sourcing agreement concerning the terms of  
22 such agreement, approve the form of such  
23 agreement, and issue an order finding that the  
24 sourcing agreement is prudent and reasonable.

25 The facility cost report shall be prepared as follows:

26 (A) The facility cost report shall be prepared by

1           duly licensed engineering and construction firms  
2           detailing the estimated capital costs payable to one or  
3           more contractors or suppliers for the engineering,  
4           procurement and construction of the components  
5           comprising the initial clean coal facility and the  
6           estimated costs of operation and maintenance of the  
7           facility. The facility cost report shall include:

8                   (i) an estimate of the capital cost of the core  
9                   plant based on one or more front end engineering  
10                  and design studies for the gasification island and  
11                  related facilities. The core plant shall include  
12                  all civil, structural, mechanical, electrical,  
13                  control, and safety systems.

14                  (ii) an estimate of the capital cost of the  
15                  balance of the plant, including any capital costs  
16                  associated with sequestration of carbon dioxide  
17                  emissions and all interconnects and interfaces  
18                  required to operate the facility, such as  
19                  transmission of electricity, construction or  
20                  backfeed power supply, pipelines to transport  
21                  substitute natural gas or carbon dioxide, potable  
22                  water supply, natural gas supply, water supply,  
23                  water discharge, landfill, access roads, and coal  
24                  delivery.

25           The quoted construction costs shall be expressed  
26           in nominal dollars as of the date that the quote is

1 prepared and shall include (1) capitalized financing  
2 costs during construction, (2) taxes, insurance, and  
3 other owner's costs, and (3) an assumed escalation in  
4 materials and labor beyond the date as of which the  
5 construction cost quote is expressed.

6 (B) The front end engineering and design study for  
7 the gasification island and the cost study for the  
8 balance of plant shall include sufficient design work  
9 to permit quantification of major categories of  
10 materials, commodities and labor hours, and receipt of  
11 quotes from vendors of major equipment required to  
12 construct and operate the clean coal facility.

13 (C) The facility cost report shall also include an  
14 operating and maintenance cost quote that will provide  
15 the estimated cost of delivered fuel, personnel,  
16 maintenance contracts, chemicals, catalysts,  
17 consumables, spares, and other fixed and variable  
18 operations and maintenance costs.

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

22 (b) The balance of the operating and  
23 maintenance cost quote, excluding delivered fuel  
24 costs will be developed based on the inputs  
25 provided by duly licensed engineering and  
26 construction firms performing the construction

1 cost quote, potential vendors under long-term  
2 service agreements and plant operating agreements,  
3 or recognized third party plant operator or  
4 operators.

5 The operating and maintenance cost quote  
6 (including the cost of the front end engineering  
7 and design study) shall be expressed in nominal  
8 dollars as of the date that the quote is prepared  
9 and shall include (1) taxes, insurance, and other  
10 owner's costs, and (2) an assumed escalation in  
11 materials and labor beyond the date as of which the  
12 operating and maintenance cost quote is expressed.

13 (D) The facility cost report shall also include (i)  
14 an analysis of the initial clean coal facility's  
15 ability to deliver power and energy into the applicable  
16 regional transmission organization markets and (ii) an  
17 analysis of the expected capacity factor for the  
18 initial clean coal facility.

19 (E) Amounts paid to third parties unrelated to the  
20 owner or owners of the initial clean coal facility to  
21 prepare the core plant construction cost quote,  
22 including the front end engineering and design study,  
23 and the operating and maintenance cost quote will be  
24 reimbursed through Coal Development Bonds.

25 (5) Re-powering and retrofitting coal-fired power  
26 plants previously owned by Illinois utilities to qualify as

1 clean coal facilities. During the 2009 procurement  
2 planning process and thereafter, the Agency and the  
3 Commission shall consider sourcing agreements covering  
4 electricity generated by power plants that were previously  
5 owned by Illinois utilities and that have been or will be  
6 converted into clean coal facilities, as defined by Section  
7 1-10 of this Act. Pursuant to such procurement planning  
8 process, the owners of such facilities may propose to the  
9 Agency sourcing agreements with utilities and alternative  
10 retail electric suppliers required to comply with  
11 subsection (d) of this Section and item (5) of subsection  
12 (d) of Section 16-115 of the Public Utilities Act, covering  
13 electricity generated by such facilities. In the case of  
14 sourcing agreements that are power purchase agreements,  
15 the contract price for electricity sales shall be  
16 established on a cost of service basis. In the case of  
17 sourcing agreements that are contracts for differences,  
18 the contract price from which the reference price is  
19 subtracted shall be established on a cost of service basis.  
20 The Agency and the Commission may approve any such utility  
21 sourcing agreements that do not exceed cost-based  
22 benchmarks developed by the procurement administrator, in  
23 consultation with the Commission staff, Agency staff and  
24 the procurement monitor, subject to Commission review and  
25 approval. The Commission shall have authority to inspect  
26 all books and records associated with these clean coal



1 facilities during the term of any such contract.

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

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

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

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

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

22 (Source: P.A. 95-481, eff. 8-28-07; 95-1027, eff. 6-1-09;  
23 96-159, eff. 8-10-09.)