



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB1368

Introduced 2/9/2011, by Rep. Thomas Holbrook

SYNOPSIS AS INTRODUCED:

20 ILCS 3855/1-75
20 ILCS 3855/1-125
220 ILCS 5/16-115D

Amends the Illinois Power Agency Act. Provides that beginning April 1, 2012, and each year thereafter, the Illinois Power Agency shall prepare a report for the General Assembly and Illinois Commerce Commission that shall include, but not be limited to, renewable portfolio standards. Provides that a required annual report shall include the quantity, price, and rate impact of all renewable resources purchased pursuant to long-term contracts under the electricity procurement plans for electric utilities. Amends the Public Utilities Act. Provides that beginning April 1, 2012 and by April 1 of each year thereafter, the Illinois Power Agency shall submit an annual report to the General Assembly, the Commission, and alternative retail electric suppliers that shall include specified information. Effective immediately.

LRB097 09296 ASK 49431 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning State government.

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 Sections 1-75 and 1-125 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, 2011, at least the following
24 percentages of the renewable energy resources used to
25 meet these standards shall come from photovoltaics on
26 the following schedule: 0.5% by June 1, 2012, 1.5% by

1 June 1, 2013; 3% by June 1, 2014; and 6% by June 1,
2 2015 and thereafter. For purposes of this subsection
3 (c), "cost-effective" means that the costs of
4 procuring renewable energy resources do not cause the
5 limit stated in paragraph (2) of this subsection (c) to
6 be exceeded and do not exceed benchmarks based on
7 market prices for renewable energy resources in the
8 region, which shall be developed by the procurement
9 administrator, in consultation with the Commission
10 staff, Agency staff, and the procurement monitor and
11 shall be subject to Commission review and approval.

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

26 Notwithstanding the requirements of this

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

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

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

16 (C) in 2010, the greater of an additional 0.5%
17 of the amount paid per kilowatthour by those
18 customers during the year ending May 31, 2009 or
19 1.5% of the amount paid per kilowatthour by those
20 customers during the year ending May 31, 2007;

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

26 (E) thereafter, the amount of renewable energy

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

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

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

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

14 (4) The electric utility shall retire all
15 renewable energy credits used to comply with the
16 standard.

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

1 electric utility shall retain all amounts collected as
2 a result of the application of the alternative
3 compliance payment rate or rates to such customers,
4 and, beginning in 2011, the utility shall include in
5 the information provided under item (1) of subsection
6 (d) of Section 16-111.5 of the Public Utilities Act the
7 amounts collected under the alternative compliance
8 payment rate or rates for the prior year ending May 31.
9 Notwithstanding any limitation on the procurement of
10 renewable energy resources imposed by item (2) of this
11 subsection (c), the Agency shall increase its spending
12 on the purchase of renewable energy resources to be
13 procured by the electric utility for the next plan year
14 by an amount equal to the amounts collected by the
15 utility under the alternative compliance payment rate
16 or rates in the prior year ending May 31. Beginning
17 April 1, 2012, and each year thereafter, the Agency
18 shall prepare a public report for the General Assembly
19 and Illinois Commerce Commission that shall include,
20 but not necessarily be limited to:

21 (A) a comparison of the costs associated with
22 the Agency's procurement of renewable energy
23 resources to the Agency's costs associated with
24 electricity generated by other types of generation
25 facilities; and

26 (B) an analysis of the rate impacts associated

1 with the Illinois Power Agency's procurement of
2 renewable resources, including, but not limited
3 to, any long-term contracts, on the eligible
4 retail customers of electric utilities.

5 The analysis shall include the Agency's estimate
6 of the total dollar impact that the Agency's
7 procurement of renewable resources has had on the
8 annual electricity bills of the customer classes that
9 comprise each eligible retail customer class taking
10 service from an electric utility. The Agency's report
11 shall also analyze how the operation of the alternative
12 compliance payment mechanism, any long-term contracts,
13 or other aspects of the applicable renewable portfolio
14 standards impacts the rates of customers of
15 alternative retail electric suppliers.

16 (d) Clean coal portfolio standard.

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

1 the State that by January 1, 2025, 25% of the electricity
2 used in the State shall be generated by cost-effective
3 clean coal facilities. For purposes of this subsection (d),
4 "cost-effective" means that the expenditures pursuant to
5 such sourcing agreements do not cause the limit stated in
6 paragraph (2) of this subsection (d) to be exceeded and do
7 not exceed cost-based benchmarks, which shall be developed
8 to assess all expenditures pursuant to such sourcing
9 agreements covering electricity generated by clean coal
10 facilities, other than the initial clean coal facility, by
11 the procurement administrator, in consultation with the
12 Commission staff, Agency staff, and the procurement
13 monitor and shall be subject to Commission review and
14 approval.

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

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

26 (C) A utility shall be deemed to have complied with

1 the clean coal portfolio standard specified in this
2 subsection (d) if the utility enters into a sourcing
3 agreement as required by this subsection (d).

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

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

26 (A) in 2010, no more than 0.5% of the amount

1 paid per kilowatthour by those customers during
2 the year ending May 31, 2009;

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

8 (C) in 2012, the greater of an additional 0.5%
9 of the amount paid per kilowatthour by those
10 customers during the year ending May 31, 2011 or
11 1.5% of the amount paid per kilowatthour by those
12 customers during the year ending May 31, 2009;

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

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

1 by those customers during the year ending May 31,
2 2009 or (ii) the incremental amount per
3 kilowatthour paid for these resources in 2013.
4 These requirements may be altered only as provided
5 by statute. No later than June 30, 2015, the
6 Commission shall review the limitation on the
7 total amount paid under sourcing agreements, if
8 any, with clean coal facilities pursuant to this
9 subsection (d) and report to the General Assembly
10 its findings as to whether that limitation unduly
11 constrains the amount of electricity generated by
12 cost-effective clean coal facilities that is
13 covered by sourcing agreements.

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

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

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

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

23 (ii) provide that all miscellaneous net
24 revenue, including but not limited to net revenue
25 from the sale of emission allowances, if any,
26 substitute natural gas, if any, grants or other

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

12 (B) power purchase provisions, which shall:

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

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

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

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

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

18 (C) contract for differences provisions, which
19 shall:

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

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

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

1 utility's supply obligations are financially
2 settled on an hourly basis) (the "reference
3 price") on the day preceding the day on which the
4 electricity is delivered to the initial clean coal
5 facility busbar, multiplied by (2) the quantity of
6 electricity determined pursuant to the preceding
7 clause (i); and

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

11 (D) general provisions, which shall:

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

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

23 (iii) provide that all costs associated with
24 the initial clean coal facility will be
25 periodically reported to the Federal Energy
26 Regulatory Commission and to purchasers in

1 accordance with applicable laws governing
2 cost-based wholesale power contracts;

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

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

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

1 coal facility, with the advance written approval
2 of the Attorney General. The Commission may, in the
3 course of the review specified in item (vii),
4 reduce the allowable return on equity for the
5 facility if the facility wilfully fails to comply
6 with the carbon capture and sequestration
7 requirements set forth in this item (v);

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

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

1 months;

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

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

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

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

1 Power Act;

2 (xii) provide that any changes to the terms of
3 the contract, insofar as such changes relate to the
4 power purchase provisions, are subject to review
5 under the public interest standard applied by the
6 Federal Energy Regulatory Commission pursuant to
7 Sections 205 and 206 of the Federal Power Act; and

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

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

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

1 Commission and the Agency access to the work
2 papers, relied upon documents, and any other
3 backup documentation related to the facility cost
4 report.

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

1 experts or consultants prior to receipt of the
2 facility cost report.

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

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

1 The facility cost report shall be prepared as follows:

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

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

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

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

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

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

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

24 (b) The balance of the operating and
25 maintenance cost quote, excluding delivered fuel
26 costs will be developed based on the inputs

1 provided by duly licensed engineering and
2 construction firms performing the construction
3 cost quote, potential vendors under long-term
4 service agreements and plant operating agreements,
5 or recognized third party plant operator or
6 operators.

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

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

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

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

1 approval. The Commission shall have authority to inspect
2 all books and records associated with these clean coal
3 facilities during the term of any such contract.

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

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

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

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

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

24 (Source: P.A. 95-481, eff. 8-28-07; 95-1027, eff. 6-1-09;
25 96-159, eff. 8-10-09; 96-1437, eff. 8-17-10.)

1 (20 ILCS 3855/1-125)

2 Sec. 1-125. Agency annual reports. By December 1, 2011 and
3 each December 1 thereafter, the ~~The~~ Agency shall report
4 annually to the Governor and the General Assembly on the
5 operations and transactions of the Agency. The annual report
6 shall include, but not be limited to, each of the following:

7 (1) The quantity, price, and term of all contracts for
8 electricity procured under the procurement plans for
9 electric utilities.

10 (2) The quantity, price, and rate impact of all
11 renewable resources purchased under the electricity
12 procurement plans for electric utilities.

13 (3) The quantity, price, and rate impact of all energy
14 efficiency and demand response measures purchased for
15 electric utilities.

16 (4) The amount of power and energy produced by each
17 Agency facility.

18 (5) The quantity of electricity supplied by each Agency
19 facility to municipal electric systems, governmental
20 aggregators, or rural electric cooperatives in Illinois.

21 (6) The revenues as allocated by the Agency to each
22 facility.

23 (7) The costs as allocated by the Agency to each
24 facility.

25 (8) The accumulated depreciation for each facility.

26 (9) The status of any projects under development.

1 (10) Basic financial and operating information
2 specifically detailed for the reporting year and
3 including, but not limited to, income and expense
4 statements, balance sheets, and changes in financial
5 position, all in accordance with generally accepted
6 accounting principles, debt structure, and a summary of
7 funds on a cash basis.

8 (11) The quantity, price, and rate impact of all
9 renewable resources purchased pursuant to long-term
10 contracts under the electricity procurement plans for
11 electric utilities.

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

13 Section 10. The Public Utilities Act is amended by changing
14 Section 16-115D as follows:

15 (220 ILCS 5/16-115D)

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

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

23 (1) The definition of renewable energy resources
24 contained in Section 1-10 of the Illinois Power Agency Act

1 applies to all renewable energy resources required to be
2 procured by alternative retail electric suppliers.

3 (2) The quantity of renewable energy resources shall be
4 measured as a percentage of the actual amount of metered
5 electricity (megawatt-hours) delivered by the alternative
6 retail electric supplier to Illinois retail customers
7 during the 12-month period June 1 through May 31,
8 commencing June 1, 2009, and the comparable 12-month period
9 in each year thereafter except as provided in item (6) of
10 this subsection (a).

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

26 (4) The quantity and source of renewable energy

1 resources shall be independently verified through the PJM
2 Environmental Information System Generation Attribute
3 Tracking System (PJM-GATS) or the Midwest Renewable Energy
4 Tracking System (M-RETS), which shall document the
5 location of generation, resource type, month, and year of
6 generation for all qualifying renewable energy resources
7 that an alternative retail electric supplier uses to comply
8 with this Section. No later than June 1, 2009, the Illinois
9 Power Agency shall provide PJM-GATS, M-RETS, and
10 alternative retail electric suppliers with all information
11 necessary to identify resources located in Illinois,
12 within states that adjoin Illinois or within portions of
13 the PJM and MISO footprint in the United States that
14 qualify under the definition of renewable energy resources
15 in Section 1-10 of the Illinois Power Agency Act for
16 compliance with this Section 16-115D. Alternative retail
17 electric suppliers shall not be subject to the requirements
18 in item (3) of subsection (c) of Section 1-75 of the
19 Illinois Power Agency Act.

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

22 (6) The required procurement of renewable energy
23 resources by an alternative retail electric supplier shall
24 apply to all metered electricity delivered to Illinois
25 retail customers by the alternative retail electric
26 supplier pursuant to contracts executed or extended after

1 March 15, 2009.

2 (b) An alternative retail electric supplier shall comply
3 with the renewable energy portfolio standards by making an
4 alternative compliance payment, as described in subsection (d)
5 of this Section, to cover at least one-half of the alternative
6 retail electric supplier's compliance obligation and any one or
7 combination of the following means to cover the remainder of
8 the alternative retail electric supplier's compliance
9 obligation:

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

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

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

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

21 (c) Use of renewable energy credits.

22 (1) Renewable energy credits that are not used by an
23 alternative retail electric supplier to comply with a
24 renewable portfolio standard in a compliance year may be
25 banked and carried forward up to 2 12-month compliance
26 periods after the compliance period in which the credit was

1 generated for the purpose of complying with a renewable
2 portfolio standard in those 2 subsequent compliance
3 periods. For the 2009-2010 and 2010-2011 compliance
4 periods, an alternative retail electric supplier may use
5 renewable credits generated after December 31, 2008 and
6 before June 1, 2009 to comply with this Section.

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

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

22 (d) Alternative compliance payments.

23 (1) The Commission shall establish and post on its
24 website, within 5 business days after entering an order
25 approving a procurement plan pursuant to Section 1-75 of
26 the Illinois Power Agency Act, maximum alternative

1 compliance payment rates, expressed on a per kilowatt-hour
2 basis, that will be applicable in the first compliance
3 period following the plan approval. A separate maximum
4 alternative compliance payment rate shall be established
5 for the service territory of each electric utility that is
6 subject to subsection (c) of Section 1-75 of the Illinois
7 Power Agency Act. Each maximum alternative compliance
8 payment rate shall be equal to the maximum allowable annual
9 estimated average net increase due to the costs of the
10 utility's purchase of renewable energy resources included
11 in the amounts paid by eligible retail customers in
12 connection with electric service, as described in item (2)
13 of subsection (c) of Section 1-75 of the Illinois Power
14 Agency Act for the compliance period, and as established in
15 the approved procurement plan. Following each procurement
16 event through which renewable energy resources are
17 purchased for one or more of these utilities for the
18 compliance period, the Commission shall establish and post
19 on its website estimates of the alternative compliance
20 payment rates, expressed on a per kilowatt-hour basis, that
21 shall apply for that compliance period. Posting of the
22 estimates shall occur no later than 10 business days
23 following the procurement event, however, the Commission
24 shall not be required to establish and post such estimates
25 more often than once per calendar month. By July 1 of each
26 year, the Commission shall establish and post on its

1 website the actual alternative compliance payment rates
2 for the preceding compliance year. For compliance years
3 beginning prior to June 1, 2014, each alternative
4 compliance payment rate shall be equal to the total amount
5 of dollars that the utility contracted to spend on
6 renewable resources, excepting the additional incremental
7 cost attributable to solar resources, for the compliance
8 period divided by the forecasted load of eligible retail
9 customers, at the customers' meters, as previously
10 established in the Commission-approved procurement plan
11 for that compliance year. For compliance years commencing
12 on or after June 1, 2014, each alternative compliance
13 payment rate shall be equal to the total amount of dollars
14 that the utility contracted to spend on all renewable
15 resources for the compliance period divided by the
16 forecasted load of eligible retail customers, at the
17 customers' meters, as previously established in the
18 Commission-approved procurement plan for that compliance
19 year. The actual alternative compliance payment rates may
20 not exceed the maximum alternative compliance payment
21 rates established for the compliance period. For purposes
22 of this subsection (d), the term "eligible retail
23 customers" has the same meaning as found in Section
24 16-111.5 of this Act.

25 (2) In any given compliance year, an alternative retail
26 electric supplier may elect to use alternative compliance

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

13 (3) An alternative retail electric supplier's
14 alternative compliance payments shall be computed
15 separately for each electric utility's service territory
16 within which the alternative retail electric supplier
17 provided retail service during the compliance period,
18 provided that the electric utility was subject to
19 subsection (c) of Section 1-75 of the Illinois Power Agency
20 Act. For each service territory, the alternative retail
21 electric supplier's alternative compliance payment shall
22 be equal to (i) the actual alternative compliance payment
23 rate established in item (1) of this subsection (d),
24 multiplied by (ii) the actual amount of metered electricity
25 delivered by the alternative retail electric supplier to
26 retail customers within the service territory during the

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

11 (4) All alternative compliance payments by alternative
12 retail electric suppliers shall be deposited in the
13 Illinois Power Agency Renewable Energy Resources Fund and
14 used to purchase renewable energy credits, in accordance
15 with Section 1-56 of the Illinois Power Agency Act.
16 Beginning April 1, 2012 and by April 1 of each year
17 thereafter, the Illinois Power Agency shall submit an
18 annual report to the General Assembly, the Commission, and
19 alternative retail electric suppliers that shall include,
20 but not be limited to:

21 (A) the total amount of alternative compliance
22 payments received in aggregate from alternative retail
23 electric suppliers by planning year for all previous
24 planning years in which the alternative compliance
25 payment was in effect;

26 (B) the amount of those payments utilized to

1 purchased renewable energy credits itemized by the
2 date of each procurement in which the payments were
3 utilized; and

4 (C) the unused and remaining balance in the Agency
5 Renewable Energy Resources Fund attributable to those
6 payments.

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

19 (e) Each alternative retail electric supplier shall, by
20 September 1, 2010 and by September 1 of each year thereafter,
21 prepare and submit to the Commission a report, in a format to
22 be specified by the Commission on or before December 31, 2009,
23 that provides information certifying compliance by the
24 alternative retail electric supplier with this Section,
25 including copies of all PJM-GATS and M-RETS reports, and
26 documentation relating to banking, retiring renewable energy

1 credits, and any other information that the Commission
2 determines necessary to ensure compliance with this Section. An
3 alternative retail electric supplier may file commercially or
4 financially sensitive information or trade secrets with the
5 Commission as provided under the rules of the Commission. To be
6 filed confidentially, the information shall be accompanied by
7 an affidavit that sets forth both the reasons for the
8 confidentiality and a public synopsis of the information.

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

18 (1) immediately comply with this Section; and

19 (2) if the violation involves a failure to procure the
20 requisite quantity of renewable energy resources or pay the
21 applicable alternative compliance payment by the annual
22 deadline, the Commission shall require the alternative
23 retail electric supplier to double the applicable
24 alternative compliance payment that would otherwise be
25 required to bring the alternative retail electric supplier
26 into compliance with this Section.

1 If an alternative retail electric supplier fails to comply
2 with the renewable energy resource portfolio requirement in
3 this Section more than once in a 5-year period, then the
4 Commission shall revoke the alternative electric supplier's
5 certificate of service authority. The Commission shall not
6 accept an application for a certificate of service authority
7 from an alternative retail electric supplier that has lost
8 certification under this subsection (f), or any corporate
9 affiliate thereof, for at least one year after the date of
10 revocation.

11 (g) All of the provisions of this Section apply to electric
12 utilities operating outside their service area except under
13 item (2) of subsection (a) of this Section the quantity of
14 renewable energy resources shall be measured as a percentage of
15 the actual amount of electricity (megawatt-hours) supplied in
16 the State outside of the utility's service territory during the
17 12-month period June 1 through May 31, commencing June 1, 2009,
18 and the comparable 12-month period in each year thereafter
19 except as provided in item (6) of subsection (a) of this
20 Section.

21 If any such utility fails to procure the requisite quantity
22 of renewable energy resources by the annual deadline, then the
23 Commission shall require the utility to double the alternative
24 compliance payment that would otherwise be required to bring
25 the utility into compliance with this Section.

26 If any such utility fails to comply with the renewable

1 energy resource portfolio requirement in this Section more than
2 once in a 5-year period, then the Commission shall order the
3 utility to cease all sales outside of the utility's service
4 territory for a period of at least one year.

5 (h) The provisions of this Section and the provisions of
6 subsection (d) of Section 16-115 of this Act relating to
7 procurement of renewable energy resources shall not apply to an
8 alternative retail electric supplier that operates a combined
9 heat and power system in this State or that has a corporate
10 affiliate that operates such a combined heat and power system
11 in this State that supplies electricity primarily to or for the
12 benefit of: (i) facilities owned by the supplier, its
13 subsidiary, or other corporate affiliate; (ii) facilities
14 electrically integrated with the electrical system of
15 facilities owned by the supplier, its subsidiary, or other
16 corporate affiliate; or (iii) facilities that are adjacent to
17 the site on which the combined heat and power system is
18 located.

19 (Source: P.A. 96-33, eff. 7-10-09; 96-159, eff. 8-10-09;
20 96-1437, eff. 8-17-10.)

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