



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB1422

by Rep. Elaine Nekritz

SYNOPSIS AS INTRODUCED:

220 ILCS 5/16-111.5

Amends the Public Utilities Act. Provides that certain electric utilities in Illinois shall procure energy efficiency products (in addition to power and energy) for its eligible retail customers in accordance with the applicable provisions of the Act and the Illinois Power Agency Act. Provides that for non-eligible retail customers the utility shall procure any supply requirements, including energy efficiency products, in the applicable markets as needed to serve those customers. Provides that a proposed procurement plan shall include the proposed energy efficiency products for which contracts will be executed during the next year. Further provides that cost effective energy efficiency measures shall be procured whenever the cost is lower than procuring comparable capacity products, supply products, or both, provided that certain conditions are met by the energy efficiency products. Provides that the Illinois Power Agency's procurement plan shall identify energy efficiency products to be procured. Provides that an electric utility shall recover its costs incurred in procuring energy efficiency products. Makes other changes.

LRB097 08915 ASK 49047 b

1 AN ACT concerning regulation.

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

4 Section 5. The Public Utilities Act is amended by changing
5 Section 16-111.5 as follows:

6 (220 ILCS 5/16-111.5)

7 Sec. 16-111.5. Provisions relating to procurement.

8 (a) An electric utility that on December 31, 2005 served at
9 least 100,000 customers in Illinois shall procure power, energy
10 efficiency products, and energy for its eligible retail
11 customers in accordance with the applicable provisions set
12 forth in Section 1-75 of the Illinois Power Agency Act and this
13 Section. "Eligible retail customers" for the purposes of this
14 Section means those retail customers that purchase power and
15 energy from the electric utility under fixed-price bundled
16 service tariffs, other than those retail customers whose
17 service is declared or deemed competitive under Section 16-113
18 and those other customer groups specified in this Section,
19 including self-generating customers, customers electing hourly
20 pricing, or those customers who are otherwise ineligible for
21 fixed-price bundled tariff service. Those customers that are
22 excluded from the definition of "eligible retail customers"
23 shall not be included in the procurement plan load

1 requirements, and the utility shall procure any supply
2 requirements, including capacity, ancillary services, energy
3 efficiency products, and hourly priced energy, in the
4 applicable markets as needed to serve those customers, provided
5 that the utility may include in its procurement plan load
6 requirements for the load that is associated with those retail
7 customers whose service has been declared or deemed competitive
8 pursuant to Section 16-113 of this Act to the extent that those
9 customers are purchasing power and energy during one of the
10 transition periods identified in subsection (b) of Section
11 16-113 of this Act.

12 (b) A procurement plan shall be prepared for each electric
13 utility consistent with the applicable requirements of the
14 Illinois Power Agency Act and this Section. For purposes of
15 this Section, Illinois electric utilities that are affiliated
16 by virtue of a common parent company are considered to be a
17 single electric utility. Each procurement plan shall analyze
18 the projected balance of supply and demand for eligible retail
19 customers over a 5-year period with the first planning year
20 beginning on June 1 of the year following the year in which the
21 plan is filed. The plan shall specifically identify the
22 wholesale products to be procured following plan approval, and
23 shall follow all the requirements set forth in the Public
24 Utilities Act and all applicable State and federal laws,
25 statutes, rules, or regulations, as well as Commission orders.
26 Nothing in this Section precludes consideration of contracts

1 longer than 5 years and related forecast data. Unless specified
2 otherwise in this Section, in the procurement plan or in the
3 implementing tariff, any procurement occurring in accordance
4 with this plan shall be competitively bid through a request for
5 proposals process. Approval and implementation of the
6 procurement plan shall be subject to review and approval by the
7 Commission according to the provisions set forth in this
8 Section. A procurement plan shall include each of the following
9 components:

10 (1) Hourly load analysis. This analysis shall include:

11 (i) multi-year historical analysis of hourly
12 loads;

13 (ii) switching trends and competitive retail
14 market analysis;

15 (iii) known or projected changes to future loads;

16 and

17 (iv) growth forecasts by customer class.

18 (2) Analysis of the impact of any demand side and
19 renewable energy initiatives. This analysis shall include:

20 (i) the impact of demand response programs, both
21 current and projected;

22 (ii) supply side needs that are projected to be
23 offset by purchases of renewable energy resources, if
24 any; and

25 (iii) the impact of energy efficiency programs,
26 both current and projected.

1 obligations thereunder; and

2 (E) meet the same credit requirements as apply
3 to suppliers of capacity, in the applicable
4 regional transmission organization market;

5 (iii) the proposed energy efficiency products for
6 which contracts will be executed during the next year.
7 The cost effective energy efficiency measures shall be
8 procured whenever the cost is lower than procuring
9 comparable capacity products, supply products, or
10 both, provided that the energy efficiency products
11 shall:

12 (A) be procured by a energy efficiency
13 provider from eligible retail customers;

14 (B) at least satisfy evaluation, measurement,
15 and verification standards established pursuant to
16 Section 8-103 of this Act;

17 (C) provide for reimbursement by the energy
18 efficiency provider of the utility for any costs
19 incurred as a result of the failure of the supplier
20 of such products to perform its obligations
21 thereunder; and

22 (D) meet the same credit requirements as apply
23 to suppliers of capacity, in the applicable
24 regional transmission organization market;

25 (iv) ~~(iii)~~ monthly forecasted system supply
26 requirements, including expected minimum, maximum, and

1 average values for the planning period;

2 (v) ~~(iv)~~ the proposed mix and selection of standard
3 wholesale products for which contracts will be
4 executed during the next year, separately or in
5 combination, to meet that portion of its load
6 requirements not met through pre-existing contracts,
7 including but not limited to monthly 5 x 16 peak period
8 block energy, monthly off-peak wrap energy, monthly 7 x
9 24 energy, annual 5 x 16 energy, annual off-peak wrap
10 energy, annual 7 x 24 energy, monthly capacity, annual
11 capacity, peak load capacity obligations, capacity
12 purchase plan, energy efficiency products, and
13 ancillary services;

14 (vi) ~~(v)~~ proposed term structures for each
15 wholesale product type included in the proposed
16 procurement plan portfolio of products; and

17 (vii) ~~(vi)~~ an assessment of the price risk, load
18 uncertainty, and other factors that are associated
19 with the proposed procurement plan; this assessment,
20 to the extent possible, shall include an analysis of
21 the following factors: contract terms, time frames for
22 securing products or services, fuel costs, weather
23 patterns, transmission costs, market conditions, and
24 the governmental regulatory environment; the proposed
25 procurement plan shall also identify alternatives for
26 those portfolio measures that are identified as having

1 significant price risk.

2 (4) Proposed procedures for balancing loads. The
3 procurement plan shall include, for load requirements
4 included in the procurement plan, the process for (i)
5 hourly balancing of supply and demand and (ii) the criteria
6 for portfolio re-balancing in the event of significant
7 shifts in load.

8 (c) The procurement process set forth in Section 1-75 of
9 the Illinois Power Agency Act and subsection (e) of this
10 Section shall be administered by a procurement administrator
11 and monitored by a procurement monitor.

12 (1) The procurement administrator shall:

13 (i) design the final procurement process in
14 accordance with Section 1-75 of the Illinois Power
15 Agency Act and subsection (e) of this Section following
16 Commission approval of the procurement plan;

17 (ii) develop benchmarks in accordance with
18 subsection (e)(3) to be used to evaluate bids; these
19 benchmarks shall be submitted to the Commission for
20 review and approval on a confidential basis prior to
21 the procurement event;

22 (iii) serve as the interface between the electric
23 utility and suppliers;

24 (iv) manage the bidder pre-qualification and
25 registration process;

26 (v) obtain the electric utilities' agreement to

1 the final form of all supply contracts and credit
2 collateral agreements;

3 (vi) administer the request for proposals process;

4 (vii) have the discretion to negotiate to
5 determine whether bidders are willing to lower the
6 price of bids that meet the benchmarks approved by the
7 Commission; any post-bid negotiations with bidders
8 shall be limited to price only and shall be completed
9 within 24 hours after opening the sealed bids and shall
10 be conducted in a fair and unbiased manner; in
11 conducting the negotiations, there shall be no
12 disclosure of any information derived from proposals
13 submitted by competing bidders; if information is
14 disclosed to any bidder, it shall be provided to all
15 competing bidders;

16 (viii) maintain confidentiality of supplier and
17 bidding information in a manner consistent with all
18 applicable laws, rules, regulations, and tariffs;

19 (ix) submit a confidential report to the
20 Commission recommending acceptance or rejection of
21 bids;

22 (x) notify the utility of contract counterparties
23 and contract specifics; and

24 (xi) administer related contingency procurement
25 events.

26 (2) The procurement monitor, who shall be retained by

1 the Commission, shall:

2 (i) monitor interactions among the procurement
3 administrator, suppliers, and utility;

4 (ii) monitor and report to the Commission on the
5 progress of the procurement process;

6 (iii) provide an independent confidential report
7 to the Commission regarding the results of the
8 procurement event;

9 (iv) assess compliance with the procurement plans
10 approved by the Commission for each utility that on
11 December 31, 2005 provided electric service to a least
12 100,000 customers in Illinois;

13 (v) preserve the confidentiality of supplier and
14 bidding information in a manner consistent with all
15 applicable laws, rules, regulations, and tariffs;

16 (vi) provide expert advice to the Commission and
17 consult with the procurement administrator regarding
18 issues related to procurement process design, rules,
19 protocols, and policy-related matters; and

20 (vii) consult with the procurement administrator
21 regarding the development and use of benchmark
22 criteria, standard form contracts, credit policies,
23 and bid documents.

24 (d) Except as provided in subsection (j), the planning
25 process shall be conducted as follows:

26 (1) Beginning in 2008, each Illinois utility procuring

1 power pursuant to this Section shall annually provide a
2 range of load forecasts to the Illinois Power Agency by
3 July 15 of each year, or such other date as may be required
4 by the Commission or Agency. The load forecasts shall cover
5 the 5-year procurement planning period for the next
6 procurement plan and shall include hourly data
7 representing a high-load, low-load and expected-load
8 scenario for the load of the eligible retail customers. The
9 utility shall provide supporting data and assumptions for
10 each of the scenarios.

11 (2) Beginning in 2008, the Illinois Power Agency shall
12 prepare a procurement plan by August 15th of each year, or
13 such other date as may be required by the Commission. The
14 procurement plan shall identify the portfolio of
15 demand-response, energy efficiency products, and power and
16 energy products to be procured. Cost-effective
17 demand-response measures and cost-effective energy
18 efficiency measures shall be procured as set forth in item
19 (iii) and (iv) of subsection (b) of this Section. Copies of
20 the procurement plan shall be posted and made publicly
21 available on the Agency's and Commission's websites, and
22 copies shall also be provided to each affected electric
23 utility. An affected utility shall have 30 days following
24 the date of posting to provide comment to the Agency on the
25 procurement plan. Other interested entities also may
26 comment on the procurement plan. All comments submitted to

1 the Agency shall be specific, supported by data or other
2 detailed analyses, and, if objecting to all or a portion of
3 the procurement plan, accompanied by specific alternative
4 wording or proposals. All comments shall be posted on the
5 Agency's and Commission's websites. During this 30-day
6 comment period, the Agency shall hold at least one public
7 hearing within each utility's service area for the purpose
8 of receiving public comment on the procurement plan. Within
9 14 days following the end of the 30-day review period, the
10 Agency shall revise the procurement plan as necessary based
11 on the comments received and file the procurement plan with
12 the Commission and post the procurement plan on the
13 websites.

14 (3) Within 5 days after the filing of the procurement
15 plan, any person objecting to the procurement plan shall
16 file an objection with the Commission. Within 10 days after
17 the filing, the Commission shall determine whether a
18 hearing is necessary. The Commission shall enter its order
19 confirming or modifying the procurement plan within 90 days
20 after the filing of the procurement plan by the Illinois
21 Power Agency.

22 (4) The Commission shall approve the procurement plan,
23 including expressly the forecast used in the procurement
24 plan, if the Commission determines that it will ensure
25 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.

3 (e) The procurement process shall include each of the
4 following components:

5 (1) Solicitation, pre-qualification, and registration
6 of bidders. The procurement administrator shall
7 disseminate information to potential bidders to promote a
8 procurement event, notify potential bidders that the
9 procurement administrator may enter into a post-bid price
10 negotiation with bidders that meet the applicable
11 benchmarks, provide supply requirements, and otherwise
12 explain the competitive procurement process. In addition
13 to such other publication as the procurement administrator
14 determines is appropriate, this information shall be
15 posted on the Illinois Power Agency's and the Commission's
16 websites. The procurement administrator shall also
17 administer the prequalification process, including
18 evaluation of credit worthiness, compliance with
19 procurement rules, and agreement to the standard form
20 contract developed pursuant to paragraph (2) of this
21 subsection (e). The procurement administrator shall then
22 identify and register bidders to participate in the
23 procurement event.

24 (2) Standard contract forms and credit terms and
25 instruments. The procurement administrator, in
26 consultation with the utilities, the Commission, and other

1 interested parties and subject to Commission oversight,
2 shall develop and provide standard contract forms for the
3 supplier contracts that meet generally accepted industry
4 practices. Standard credit terms and instruments that meet
5 generally accepted industry practices shall be similarly
6 developed. The procurement administrator shall make
7 available to the Commission all written comments it
8 receives on the contract forms, credit terms, or
9 instruments. If the procurement administrator cannot reach
10 agreement with the applicable electric utility as to the
11 contract terms and conditions, the procurement
12 administrator must notify the Commission of any disputed
13 terms and the Commission shall resolve the dispute. The
14 terms of the contracts shall not be subject to negotiation
15 by winning bidders, and the bidders must agree to the terms
16 of the contract in advance so that winning bids are
17 selected solely on the basis of price.

18 (3) Establishment of a market-based price benchmark.
19 As part of the development of the procurement process, the
20 procurement administrator, in consultation with the
21 Commission staff, Agency staff, and the procurement
22 monitor, shall establish benchmarks for evaluating the
23 final prices in the contracts for each of the products that
24 will be procured through the procurement process. The
25 benchmarks shall be based on price data for similar
26 products for the same delivery period and same delivery

1 hub, or other delivery hubs after adjusting for that
2 difference. The price benchmarks may also be adjusted to
3 take into account differences between the information
4 reflected in the underlying data sources and the specific
5 products and procurement process being used to procure
6 power for the Illinois utilities. The benchmarks shall be
7 confidential but shall be provided to, and will be subject
8 to Commission review and approval, prior to a procurement
9 event.

10 (4) Request for proposals competitive procurement
11 process. The procurement administrator shall design and
12 issue a request for proposals to supply electricity in
13 accordance with each utility's procurement plan, as
14 approved by the Commission. The request for proposals shall
15 set forth a procedure for sealed, binding commitment
16 bidding with pay-as-bid settlement, and provision for
17 selection of bids on the basis of price.

18 (5) A plan for implementing contingencies in the event
19 of supplier default or failure of the procurement process
20 to fully meet the expected load requirement due to
21 insufficient supplier participation, Commission rejection
22 of results, or any other cause.

23 (i) Event of supplier default: In the event of
24 supplier default, the utility shall review the
25 contract of the defaulting supplier to determine if the
26 amount of supply is 200 megawatts or greater, and if

1 there are more than 60 days remaining of the contract
2 term. If both of these conditions are met, and the
3 default results in termination of the contract, the
4 utility shall immediately notify the Illinois Power
5 Agency that a request for proposals must be issued to
6 procure replacement power or energy efficiency
7 products, and the procurement administrator shall run
8 an additional procurement event. If the contracted
9 supply of the defaulting supplier is less than 200
10 megawatts or there are less than 60 days remaining of
11 the contract term, the utility shall procure energy
12 efficiency products or power and energy from the
13 applicable regional transmission organization market,
14 including ancillary services, capacity, energy
15 efficiency products, and day-ahead or real time
16 energy, or both, for the duration of the contract term
17 to replace the contracted supply; provided, however,
18 that if a needed product is not available through the
19 regional transmission organization market it shall be
20 purchased from the wholesale market.

21 (ii) Failure of the procurement process to fully
22 meet the expected load requirement: If the procurement
23 process fails to fully meet the expected load
24 requirement due to insufficient supplier participation
25 or due to a Commission rejection of the procurement
26 results, the procurement administrator, the

1 procurement monitor, and the Commission staff shall
2 meet within 10 days to analyze potential causes of low
3 supplier interest or causes for the Commission
4 decision. If changes are identified that would likely
5 result in increased supplier participation, or that
6 would address concerns causing the Commission to
7 reject the results of the prior procurement event, the
8 procurement administrator may implement those changes
9 and rerun the request for proposals process according
10 to a schedule determined by those parties and
11 consistent with Section 1-75 of the Illinois Power
12 Agency Act and this subsection. In any event, a new
13 request for proposals process shall be implemented by
14 the procurement administrator within 90 days after the
15 determination that the procurement process has failed
16 to fully meet the expected load requirement.

17 (iii) In all cases where there is insufficient
18 supply provided under contracts awarded through the
19 procurement process to fully meet the electric
20 utility's load requirement, the utility shall meet the
21 load requirement by procuring power and energy from the
22 applicable regional transmission organization market,
23 including ancillary services, capacity, and day-ahead
24 or real time energy or both; provided, however, that if
25 a needed product is not available through the regional
26 transmission organization market it shall be purchased

1 from the wholesale market.

2 (6) The procurement process described in this
3 subsection is exempt from the requirements of the Illinois
4 Procurement Code, pursuant to Section 20-10 of that Code.

5 (f) Within 2 business days after opening the sealed bids,
6 the procurement administrator shall submit a confidential
7 report to the Commission. The report shall contain the results
8 of the bidding for each of the products along with the
9 procurement administrator's recommendation for the acceptance
10 and rejection of bids based on the price benchmark criteria and
11 other factors observed in the process. The procurement monitor
12 also shall submit a confidential report to the Commission
13 within 2 business days after opening the sealed bids. The
14 report shall contain the procurement monitor's assessment of
15 bidder behavior in the process as well as an assessment of the
16 procurement administrator's compliance with the procurement
17 process and rules. The Commission shall review the confidential
18 reports submitted by the procurement administrator and
19 procurement monitor, and shall accept or reject the
20 recommendations of the procurement administrator within 2
21 business days after receipt of the reports.

22 (g) Within 3 business days after the Commission decision
23 approving the results of a procurement event, the utility shall
24 enter into binding contractual arrangements with the winning
25 suppliers using the standard form contracts; except that the
26 utility shall not be required either directly or indirectly to

1 execute the contracts if a tariff that is consistent with
2 subsection (l) of this Section has not been approved and placed
3 into effect for that utility.

4 (h) The names of the successful bidders and the load
5 weighted average of the winning bid prices for each contract
6 type and for each contract term shall be made available to the
7 public at the time of Commission approval of a procurement
8 event. The Commission, the procurement monitor, the
9 procurement administrator, the Illinois Power Agency, and all
10 participants in the procurement process shall maintain the
11 confidentiality of all other supplier and bidding information
12 in a manner consistent with all applicable laws, rules,
13 regulations, and tariffs. Confidential information, including
14 the confidential reports submitted by the procurement
15 administrator and procurement monitor pursuant to subsection
16 (f) of this Section, shall not be made publicly available and
17 shall not be discoverable by any party in any proceeding,
18 absent a compelling demonstration of need, nor shall those
19 reports be admissible in any proceeding other than one for law
20 enforcement purposes.

21 (i) Within 2 business days after a Commission decision
22 approving the results of a procurement event or such other date
23 as may be required by the Commission from time to time, the
24 utility shall file for informational purposes with the
25 Commission its actual or estimated retail supply charges, as
26 applicable, by customer supply group reflecting the costs

1 associated with the procurement and computed in accordance with
2 the tariffs filed pursuant to subsection (l) of this Section
3 and approved by the Commission.

4 (j) Within 60 days following the effective date of this
5 amendatory Act, each electric utility that on December 31, 2005
6 provided electric service to at least 100,000 customers in
7 Illinois shall prepare and file with the Commission an initial
8 procurement plan, which shall conform in all material respects
9 to the requirements of the procurement plan set forth in
10 subsection (b); provided, however, that the Illinois Power
11 Agency Act shall not apply to the initial procurement plan
12 prepared pursuant to this subsection. The initial procurement
13 plan shall identify the portfolio of power and energy products
14 to be procured and delivered for the period June 2008 through
15 May 2009, and shall identify the proposed procurement
16 administrator, who shall have the same experience and expertise
17 as is required of a procurement administrator hired pursuant to
18 Section 1-75 of the Illinois Power Agency Act. Copies of the
19 procurement plan shall be posted and made publicly available on
20 the Commission's website. The initial procurement plan may
21 include contracts for renewable resources that extend beyond
22 May 2009.

23 (i) Within 14 days following filing of the initial
24 procurement plan, any person may file a detailed objection
25 with the Commission contesting the procurement plan
26 submitted by the electric utility. All objections to the

1 electric utility's plan shall be specific, supported by
2 data or other detailed analyses. The electric utility may
3 file a response to any objections to its procurement plan
4 within 7 days after the date objections are due to be
5 filed. Within 7 days after the date the utility's response
6 is due, the Commission shall determine whether a hearing is
7 necessary. If it determines that a hearing is necessary, it
8 shall require the hearing to be completed and issue an
9 order on the procurement plan within 60 days after the
10 filing of the procurement plan by the electric utility.

11 (ii) The order shall approve or modify the procurement
12 plan, approve an independent procurement administrator,
13 and approve or modify the electric utility's tariffs that
14 are proposed with the initial procurement plan. The
15 Commission shall approve the procurement plan if the
16 Commission determines that it will ensure adequate,
17 reliable, affordable, efficient, and environmentally
18 sustainable electric service at the lowest total cost over
19 time, taking into account any benefits of price stability.

20 (k) In order to promote price stability for residential and
21 small commercial customers during the transition to
22 competition in Illinois, and notwithstanding any other
23 provision of this Act, each electric utility subject to this
24 Section shall enter into one or more multi-year financial swap
25 contracts that become effective on the effective date of this
26 amendatory Act. These contracts may be executed with generators

1 and power marketers, including affiliated interests of the
2 electric utility. These contracts shall be for a term of no
3 more than 5 years and shall, for each respective utility or for
4 any Illinois electric utilities that are affiliated by virtue
5 of a common parent company and that are thereby considered a
6 single electric utility for purposes of this subsection (k),
7 not exceed in the aggregate 3,000 megawatts for any hour of the
8 year. The contracts shall be financial contracts and not energy
9 sales contracts. The contracts shall be executed as
10 transactions under a negotiated master agreement based on the
11 form of master agreement for financial swap contracts sponsored
12 by the International Swaps and Derivatives Association, Inc.
13 and shall be considered pre-existing contracts in the
14 utilities' procurement plans for residential and small
15 commercial customers. Costs incurred pursuant to a contract
16 authorized by this subsection (k) shall be deemed prudently
17 incurred and reasonable in amount and the electric utility
18 shall be entitled to full cost recovery pursuant to the tariffs
19 filed with the Commission.

20 (1) An electric utility shall recover its costs incurred
21 under this Section, including, but not limited to, the costs of
22 procuring power, energy efficiency products, and energy
23 demand-response resources under this Section. The utility
24 shall file with the initial procurement plan its proposed
25 tariffs through which its costs of procuring power that are
26 incurred pursuant to a Commission-approved procurement plan

1 and those other costs identified in this subsection (1), will
2 be recovered. The tariffs shall include a formula rate or
3 charge designed to pass through both the costs incurred by the
4 utility in procuring a supply of electric power and energy for
5 the applicable customer classes with no mark-up or return on
6 the price paid by the utility for that supply, plus any just
7 and reasonable costs that the utility incurs in arranging and
8 providing for the supply of electric power and energy. The
9 formula rate or charge shall also contain provisions that
10 ensure that its application does not result in over or under
11 recovery due to changes in customer usage and demand patterns,
12 and that provide for the correction, on at least an annual
13 basis, of any accounting errors that may occur. A utility shall
14 recover through the tariff all reasonable costs incurred to
15 implement or comply with any procurement plan that is developed
16 and put into effect pursuant to Section 1-75 of the Illinois
17 Power Agency Act and this Section, including any fees assessed
18 by the Illinois Power Agency, costs associated with load
19 balancing, and contingency plan costs. The electric utility
20 shall also recover its full costs of procuring electric supply
21 for which it contracted before the effective date of this
22 Section in conjunction with the provision of full requirements
23 service under fixed-price bundled service tariffs subsequent
24 to December 31, 2006. All such costs shall be deemed to have
25 been prudently incurred. The pass-through tariffs that are
26 filed and approved pursuant to this Section shall not be

1 subject to review under, or in any way limited by, Section
2 16-111(i) of this Act.

3 (m) The Commission has the authority to adopt rules to
4 carry out the provisions of this Section. For the public
5 interest, safety, and welfare, the Commission also has
6 authority to adopt rules to carry out the provisions of this
7 Section on an emergency basis immediately following the
8 effective date of this amendatory Act.

9 (n) Notwithstanding any other provision of this Act, any
10 affiliated electric utilities that submit a single procurement
11 plan covering their combined needs may procure for those
12 combined needs in conjunction with that plan, and may enter
13 jointly into power supply contracts, purchases, and other
14 procurement arrangements, and allocate capacity, energy
15 efficiency products, and energy and cost responsibility
16 therefor among themselves in proportion to their requirements.

17 (o) On or before June 1 of each year, the Commission shall
18 hold an informal hearing for the purpose of receiving comments
19 on the prior year's procurement process and any recommendations
20 for change.

21 (p) An electric utility subject to this Section may propose
22 to invest, lease, own, or operate an electric generation
23 facility as part of its procurement plan, provided the utility
24 demonstrates that such facility is the least-cost option to
25 provide electric service to eligible retail customers. If the
26 facility is shown to be the least-cost option and is included

1 in a procurement plan prepared in accordance with Section 1-75
2 of the Illinois Power Agency Act and this Section, then the
3 electric utility shall make a filing pursuant to Section 8-406
4 of the Act, and may request of the Commission any statutory
5 relief required thereunder. If the Commission grants all of the
6 necessary approvals for the proposed facility, such supply
7 shall thereafter be considered as a pre-existing contract under
8 subsection (b) of this Section. The Commission shall in any
9 order approving a proposal under this subsection specify how
10 the utility will recover the prudently incurred costs of
11 investing in, leasing, owning, or operating such generation
12 facility through just and reasonable rates charged to eligible
13 retail customers. Cost recovery for facilities included in the
14 utility's procurement plan pursuant to this subsection shall
15 not be subject to review under or in any way limited by the
16 provisions of Section 16-111(i) of this Act. Nothing in this
17 Section is intended to prohibit a utility from filing for a
18 fuel adjustment clause as is otherwise permitted under Section
19 9-220 of this Act.

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