



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB2071

Introduced 2/22/2011, by Rep. Lou Lang

#### SYNOPSIS AS INTRODUCED:

20 ILCS 3855/1-75

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

LRB097 08812 PJG 48942 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning utilities.

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

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

6 (20 ILCS 3855/1-75)

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

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

20 (1) The Agency shall each year, beginning in 2008,  
21 as needed, issue a request for qualifications for  
22 experts or expert consulting firms to develop the  
23 procurement plans in accordance with Section 16-111.5

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

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

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

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

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

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

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

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

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

1 expert consulting firm must have:

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

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

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

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

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

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

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

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

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

11 (A) failure to satisfy qualification criteria;

12 (B) identification of a conflict of interest;

13 or

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

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

1 Commission's ruling.

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

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

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

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

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

6 (c) Renewable portfolio standard.

7 (1) The procurement plans shall include  
8 cost-effective renewable energy resources. A minimum  
9 percentage of each utility's total supply to serve the  
10 load of eligible retail customers, as defined in  
11 Section 16-111.5(a) of the Public Utilities Act,  
12 procured for each of the following years shall be  
13 generated from cost-effective renewable energy  
14 resources: at least 2% by June 1, 2008; at least 4% by  
15 June 1, 2009; at least 5% by June 1, 2010; at least 6%  
16 by June 1, 2011; at least 7% by June 1, 2012; at least  
17 8% by June 1, 2013; at least 9% by June 1, 2014; at  
18 least 10% by June 1, 2015; and increasing by at least  
19 1.5% each year thereafter to at least 25% by June 1,  
20 2025. To the extent that it is available, at least 75%  
21 of the renewable energy resources used to meet these  
22 standards shall come from wind generation and,  
23 beginning on June 1, 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, 2016 ~~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, 2016 ~~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.

17 (d) Clean coal portfolio standard.

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

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

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

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

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

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

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

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

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

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

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

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

1 of (i) 2.015% of the amount paid per kilowatthour  
2 by those customers during the year ending May 31,  
3 2009 or (ii) the incremental amount per  
4 kilowatthour paid for these resources in 2013.  
5 These requirements may be altered only as provided  
6 by statute. No later than June 30, 2015, the  
7 Commission shall review the limitation on the  
8 total amount paid under sourcing agreements, if  
9 any, with clean coal facilities pursuant to this  
10 subsection (d) and report to the General Assembly  
11 its findings as to whether that limitation unduly  
12 constrains the amount of electricity generated by  
13 cost-effective clean coal facilities that is  
14 covered by sourcing agreements.

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



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

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

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

24 (ii) provide that all miscellaneous net  
25 revenue, including but not limited to net revenue  
26 from the sale of emission allowances, if any,

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

13 (B) power purchase provisions, which shall:

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

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

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

1 utility's retail market sales of electricity  
2 (expressed in kilowatthours sold) 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 purchased by the utility  
14 in any year will be limited by paragraph (2) of  
15 this subsection (d); and

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

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

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

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

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

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

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

12 (D) general provisions, which shall:

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

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

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

1 Regulatory Commission and to purchasers in  
2 accordance with applicable laws governing  
3 cost-based wholesale power contracts;

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

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

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

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

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

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



1           been proposed, and shall be completed within 9  
2           months;

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

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

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

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

1 Commission pursuant to Section 205 of the Federal  
2 Power Act;

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

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

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

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

1 (d) of this Section, and shall provide the  
2 Commission and the Agency access to the work  
3 papers, relied upon documents, and any other  
4 backup documentation related to the facility cost  
5 report.

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

1 Agency may begin the process of selecting such  
2 experts or consultants prior to receipt of the  
3 facility cost report.

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

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

1 sourcing agreement is prudent and reasonable.

2 The facility cost report shall be prepared as follows:

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

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

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

1 delivery.

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

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

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

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

25 (b) The balance of the operating and  
26 maintenance cost quote, excluding delivered fuel

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

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

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

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

1           reimbursed through Coal Development Bonds.

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



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

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

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

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

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

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

25 (Source: P.A. 95-481, eff. 8-28-07; 95-1027, eff. 6-1-09;  
26 96-159, eff. 8-10-09; 96-1437, eff. 8-17-10.)

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