



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB3493

Introduced 2/24/2011, by Rep. Frank J. Mautino

#### SYNOPSIS AS INTRODUCED:

See Index

Provides that the amendatory Act may be referred to as the Illinois Renewable Electricity Resources Act. Amends the Illinois Power Agency Act. Defines "bundled renewable energy resources", "delivery services", "delivery services non-eligible retail customers", "excluded renewable energy resources contract costs", and "service area". Provides that procurement plans for periods beginning on or after June 1, 2012 shall include procurement of renewable energy credits in amounts projected to be sufficient to meet the renewable energy resources standard with respect to the kilowatthour usage of delivery services non-eligible retail customers. Provides that the Illinois Power Agency Renewable Energy Resources Fund shall be terminated upon depletion of all its funds through the purchase of renewable energy credits. Makes changes to provisions concerning the renewable portfolio standard. Makes other changes. Amends the Public Utilities Act. Provides that beginning on June 1, 2012, an electric utility shall be entitled to recover through its tariffed charges for delivery services the costs of any renewable energy credits purchased to meet certain renewable energy resource standards under the Illinois Power Agency Act and any excluded renewable energy resources contract costs as defined under the Illinois Power Agency Act. In a provision concerning renewable portfolio standards for alternative retail electric suppliers and electric utilities operating outside their service territories, provides that until May 31, 2012 an alternative retail supplier shall be responsible for procuring cost-effective renewable energy resources as required under the Act (previously, no date cut-off for the requirement). Provides that certain obligations of alternative electric suppliers and electric utilities operating outside their service territories and certain obligations of the Commission shall terminate effective May 31, 2012, provided, that the alternative electric suppliers and electric utilities operating outside their service territories shall be obligated to make all alternative compliance payments that they were obligated to pay for periods through and including May 31, 2012, but were not paid as of that date. Makes other changes. Includes a severability provision. Effective immediately.

LRB097 10810 ASK 51262 b

A BILL FOR

1 AN ACT concerning renewable energy.

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

4 Section 1. Short title. This amendatory Act may be referred  
5 to as the Illinois Renewable Electricity Resources Act.

6 Section 5. The Illinois Power Agency Act is amended by  
7 changing Sections 1-10, 1-20, 1-56, and 1-75 as follows:

8 (20 ILCS 3855/1-10)

9 Sec. 1-10. Definitions.

10 "Agency" means the Illinois Power Agency.

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

19 "Authority" means the Illinois Finance Authority.

20 "Bundled renewable energy resources" means electricity  
21 generated by a renewable energy resource and its associated  
22 renewable energy credit.

1 "Clean coal facility" means an electric generating  
2 facility that uses primarily coal as a feedstock and that  
3 captures and sequesters carbon emissions at the following  
4 levels: at least 50% of the total carbon emissions that the  
5 facility would otherwise emit if, at the time construction  
6 commences, the facility is scheduled to commence operation  
7 before 2016, at least 70% of the total carbon emissions that  
8 the facility would otherwise emit if, at the time construction  
9 commences, the facility is scheduled to commence operation  
10 during 2016 or 2017, and at least 90% of the total carbon  
11 emissions that the facility would otherwise emit if, at the  
12 time construction commences, the facility is scheduled to  
13 commence operation after 2017. The power block of the clean  
14 coal facility shall not exceed allowable emission rates for  
15 sulfur dioxide, nitrogen oxides, carbon monoxide, particulates  
16 and mercury for a natural gas-fired combined-cycle facility the  
17 same size as and in the same location as the clean coal  
18 facility at the time the clean coal facility obtains an  
19 approved air permit. All coal used by a clean coal facility  
20 shall have high volatile bituminous rank and greater than 1.7  
21 pounds of sulfur per million btu content, unless the clean coal  
22 facility does not use gasification technology and was operating  
23 as a conventional coal-fired electric generating facility on  
24 June 1, 2009 (the effective date of Public Act 95-1027).

25 "Clean coal SNG facility" means a facility that uses a  
26 gasification process to produce substitute natural gas, that

1 sequesters at least 90% of the total carbon emissions that the  
2 facility would otherwise emit and that uses petroleum coke or  
3 coal as a feedstock, with all such coal having a high  
4 bituminous rank and greater than 1.7 pounds of sulfur per  
5 million btu content.

6 "Commission" means the Illinois Commerce Commission.

7 "Costs incurred in connection with the development and  
8 construction of a facility" means:

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

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

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

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

25 (5) the costs of plans, specifications, site study and  
26 investigation, installation, surveys, other Agency costs

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

7 "Delivery services" has the same definition as found in  
8 Section 16-102 of the Public Utilities Act.

9 "Delivery services non-eligible retail customers" means  
10 the retail customers in an electric utility's service area for  
11 which the electric utility provides delivery services, but  
12 which are not eligible retail customers as defined in  
13 subsection (a) of Section 1-75 of this Act.

14 "Department" means the Department of Commerce and Economic  
15 Opportunity.

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

17 "Demand-response" means measures that decrease peak  
18 electricity demand or shift demand from peak to off-peak  
19 periods.

20 "Energy efficiency" means measures that reduce the amount  
21 of electricity or natural gas required to achieve a given end  
22 use.

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

25 "Excluded renewable energy resources contract costs" means  
26 the amount by which the costs of renewable energy resources,

1 purchased for a particular year to meet the renewable energy  
2 resources standards of paragraph (1) of subsection (c) of  
3 Section 1-75 of this Act applicable to the load of an electric  
4 utility's eligible retail customers pursuant to a contract with  
5 a term greater than one year that the electric utility entered  
6 into in a previous year in accordance with a procurement  
7 approved by the Commission pursuant to Section 16-111.5 of the  
8 Public Utilities Act, exceed the limitations imposed by  
9 paragraph (2) of subsection (c) of Section 1-75 of this Act for  
10 the particular year.

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

15 "Governmental aggregator" means one or more units of local  
16 government that individually or collectively procure  
17 electricity to serve residential retail electrical loads  
18 located within its or their jurisdiction.

19 "Local government" means a unit of local government as  
20 defined in Article VII of Section 1 of the Illinois  
21 Constitution.

22 "Municipality" means a city, village, or incorporated  
23 town.

24 "Person" means any natural person, firm, partnership,  
25 corporation, either domestic or foreign, company, association,  
26 limited liability company, joint stock company, or association

1 and includes any trustee, receiver, assignee, or personal  
2 representative thereof.

3 "Project" means the planning, bidding, and construction of  
4 a facility.

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

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

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

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

1 commercial waste, industrial lunchroom or office waste,  
2 landscape waste other than tree waste, railroad crossties,  
3 utility poles, or construction or demolition debris, other than  
4 untreated and unadulterated waste wood.

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

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

14 "Service area" has the same definition as found in Section  
15 16-102 of the Public Utilities Act.

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

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



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

4 "Total resource cost test" or "TRC test" means a standard  
5 that is met if, for an investment in energy efficiency or  
6 demand-response measures, the benefit-cost ratio is greater  
7 than one. The benefit-cost ratio is the ratio of the net  
8 present value of the total benefits of the program to the net  
9 present value of the total costs as calculated over the  
10 lifetime of the measures. A total resource cost test compares  
11 the sum of avoided electric utility costs, representing the  
12 benefits that accrue to the system and the participant in the  
13 delivery of those efficiency measures, as well as other  
14 quantifiable societal benefits, including avoided natural gas  
15 utility costs, to the sum of all incremental costs of end-use  
16 measures that are implemented due to the program (including  
17 both utility and participant contributions), plus costs to  
18 administer, deliver, and evaluate each demand-side program, to  
19 quantify the net savings obtained by substituting the  
20 demand-side program for supply resources. In calculating  
21 avoided costs of power and energy that an electric utility  
22 would otherwise have had to acquire, reasonable estimates shall  
23 be included of financial costs likely to be imposed by future  
24 regulations and legislation on emissions of greenhouse gases.  
25 (Source: P.A. 95-481, eff. 8-28-07; 95-913, eff. 1-1-09;  
26 95-1027, eff. 6-1-09; 96-33, eff. 7-10-09; 96-159, eff.

1 8-10-09; 96-784, eff. 8-28-09; 96-1000, eff. 7-2-10.)

2 (20 ILCS 3855/1-20)

3 Sec. 1-20. General powers of the Agency.

4 (a) The Agency is authorized to do each of the following:

5 (1) Develop electricity procurement plans to ensure  
6 adequate, reliable, affordable, efficient, and  
7 environmentally sustainable electric service at the lowest  
8 total cost over time, taking into account any benefits of  
9 price stability, for electric utilities that on December  
10 31, 2005 provided electric service to at least 100,000  
11 customers in Illinois. The procurement plans shall be  
12 updated on an annual basis and shall include electricity  
13 generated from renewable resources sufficient to achieve  
14 the standards specified in this Act. The procurement plans  
15 for periods beginning on and after June 1, 2012, shall  
16 include procurement of renewable energy credits, in  
17 accordance with subsection (c) of Section 1-75 of this Act,  
18 in amounts projected to be sufficient to meet the renewable  
19 energy resources standard specified in subsection (c) of  
20 Section 1-75 of this Act with respect to the kilowatthour  
21 usage of delivery services non-eligible retail customers  
22 in such electric utilities' service areas.

23 (2) Conduct competitive procurement processes to  
24 procure the supply resources identified in the procurement  
25 plan, pursuant to Section 16-111.5 of the Public Utilities

1 Act.

2 (3) Develop electric generation and co-generation  
3 facilities that use indigenous coal or renewable  
4 resources, or both, financed with bonds issued by the  
5 Illinois Finance Authority.

6 (4) Supply electricity from the Agency's facilities at  
7 cost to one or more of the following: municipal electric  
8 systems, governmental aggregators, or rural electric  
9 cooperatives in Illinois.

10 (b) Except as otherwise limited by this Act, the Agency has  
11 all of the powers necessary or convenient to carry out the  
12 purposes and provisions of this Act, including without  
13 limitation, each of the following:

14 (1) To have a corporate seal, and to alter that seal at  
15 pleasure, and to use it by causing it or a facsimile to be  
16 affixed or impressed or reproduced in any other manner.

17 (2) To use the services of the Illinois Finance  
18 Authority necessary to carry out the Agency's purposes.

19 (3) To negotiate and enter into loan agreements and  
20 other agreements with the Illinois Finance Authority.

21 (4) To obtain and employ personnel and hire consultants  
22 that are necessary to fulfill the Agency's purposes, and to  
23 make expenditures for that purpose within the  
24 appropriations for that purpose.

25 (5) To purchase, receive, take by grant, gift, devise,  
26 bequest, or otherwise, lease, or otherwise acquire, own,

1 hold, improve, employ, use, and otherwise deal in and with,  
2 real or personal property whether tangible or intangible,  
3 or any interest therein, within the State.

4 (6) To acquire real or personal property, whether  
5 tangible or intangible, including without limitation  
6 property rights, interests in property, franchises,  
7 obligations, contracts, and debt and equity securities,  
8 and to do so by the exercise of the power of eminent domain  
9 in accordance with Section 1-21; except that any real  
10 property acquired by the exercise of the power of eminent  
11 domain must be located within the State.

12 (7) To sell, convey, lease, exchange, transfer,  
13 abandon, or otherwise dispose of, or mortgage, pledge, or  
14 create a security interest in, any of its assets,  
15 properties, or any interest therein, wherever situated.

16 (8) To purchase, take, receive, subscribe for, or  
17 otherwise acquire, hold, make a tender offer for, vote,  
18 employ, sell, lend, lease, exchange, transfer, or  
19 otherwise dispose of, mortgage, pledge, or grant a security  
20 interest in, use, and otherwise deal in and with, bonds and  
21 other obligations, shares, or other securities (or  
22 interests therein) issued by others, whether engaged in a  
23 similar or different business or activity.

24 (9) To make and execute agreements, contracts, and  
25 other instruments necessary or convenient in the exercise  
26 of the powers and functions of the Agency under this Act,

1 including contracts with any person, local government,  
2 State agency, or other entity; and all State agencies and  
3 all local governments are authorized to enter into and do  
4 all things necessary to perform any such agreement,  
5 contract, or other instrument with the Agency. No such  
6 agreement, contract, or other instrument shall exceed 40  
7 years.

8 (10) To lend money, invest and reinvest its funds in  
9 accordance with the Public Funds Investment Act, and take  
10 and hold real and personal property as security for the  
11 payment of funds loaned or invested.

12 (11) To borrow money at such rate or rates of interest  
13 as the Agency may determine, issue its notes, bonds, or  
14 other obligations to evidence that indebtedness, and  
15 secure any of its obligations by mortgage or pledge of its  
16 real or personal property, machinery, equipment,  
17 structures, fixtures, inventories, revenues, grants, and  
18 other funds as provided or any interest therein, wherever  
19 situated.

20 (12) To enter into agreements with the Illinois Finance  
21 Authority to issue bonds whether or not the income  
22 therefrom is exempt from federal taxation.

23 (13) To procure insurance against any loss in  
24 connection with its properties or operations in such amount  
25 or amounts and from such insurers, including the federal  
26 government, as it may deem necessary or desirable, and to

1 pay any premiums therefor.

2 (14) To negotiate and enter into agreements with  
3 trustees or receivers appointed by United States  
4 bankruptcy courts or federal district courts or in other  
5 proceedings involving adjustment of debts and authorize  
6 proceedings involving adjustment of debts and authorize  
7 legal counsel for the Agency to appear in any such  
8 proceedings.

9 (15) To file a petition under Chapter 9 of Title 11 of  
10 the United States Bankruptcy Code or take other similar  
11 action for the adjustment of its debts.

12 (16) To enter into management agreements for the  
13 operation of any of the property or facilities owned by the  
14 Agency.

15 (17) To enter into an agreement to transfer and to  
16 transfer any land, facilities, fixtures, or equipment of  
17 the Agency to one or more municipal electric systems,  
18 governmental aggregators, or rural electric agencies or  
19 cooperatives, for such consideration and upon such terms as  
20 the Agency may determine to be in the best interest of the  
21 citizens of Illinois.

22 (18) To enter upon any lands and within any building  
23 whenever in its judgment it may be necessary for the  
24 purpose of making surveys and examinations to accomplish  
25 any purpose authorized by this Act.

26 (19) To maintain an office or offices at such place or

1 places in the State as it may determine.

2 (20) To request information, and to make any inquiry,  
3 investigation, survey, or study that the Agency may deem  
4 necessary to enable it effectively to carry out the  
5 provisions of this Act.

6 (21) To accept and expend appropriations.

7 (22) To engage in any activity or operation that is  
8 incidental to and in furtherance of efficient operation to  
9 accomplish the Agency's purposes.

10 (23) To adopt, revise, amend, and repeal rules with  
11 respect to its operations, properties, and facilities as  
12 may be necessary or convenient to carry out the purposes of  
13 this Act, subject to the provisions of the Illinois  
14 Administrative Procedure Act and Sections 1-22 and 1-35 of  
15 this Act.

16 (24) To establish and collect charges and fees as  
17 described in this Act.

18 (25) To manage procurement of substitute natural gas  
19 from a facility that meets the criteria specified in  
20 subsection (a) of Section 1-58 of this Act, on terms and  
21 conditions that may be approved by the Agency pursuant to  
22 subsection (d) of Section 1-58 of this Act, to support the  
23 operations of State agencies and local governments that  
24 agree to such terms and conditions. This procurement  
25 process is not subject to the Procurement Code.

26 (Source: P.A. 95-481, eff. 8-28-07; 96-784, eff. 8-28-09;

1 96-1000, eff. 7-2-10.)

2 (20 ILCS 3855/1-56)

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

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

7 (b) The Illinois Power Agency Renewable Energy Resources  
8 Fund shall be administered by the Agency to procure renewable  
9 energy resources. Prior to June 1, 2011, resources procured  
10 pursuant to this Section shall be procured from facilities  
11 located in Illinois, provided the resources are available from  
12 those facilities. If resources are not available in Illinois,  
13 then they shall be procured in states that adjoin Illinois. If  
14 resources are not available in Illinois or in states that  
15 adjoin Illinois, then they may be purchased elsewhere.  
16 Beginning June 1, 2011, resources procured pursuant to this  
17 Section shall be procured from facilities located in Illinois  
18 or states that adjoin Illinois. If resources are not available  
19 in Illinois or in states that adjoin Illinois, then they may be  
20 procured elsewhere. To the extent available, at least 75% of  
21 these renewable energy resources shall come from wind  
22 generation. Of the renewable energy resources procured  
23 pursuant to this Section at least the following specified  
24 percentages shall come from photovoltaics on the following  
25 schedule: 0.5% by June 1, 2012; 1.5% by June 1, 2013; 3% by



1 June 1, 2014; and 6% by June 1, 2015 and thereafter.

2 (c) The Agency shall procure renewable energy resources at  
3 least once each year in conjunction with a procurement event  
4 for electric utilities required to comply with Section 1-75 of  
5 the Act and shall, whenever possible, enter into long-term  
6 contracts. For periods beginning on and after June 1, 2012, the  
7 Agency shall use the Illinois Power Agency Renewable Energy  
8 Resources Fund, until depleted, to procure renewable energy  
9 credits for the purposes specified in paragraphs (2) and (6) of  
10 subsection (c) of Section 1-75 of this Act. For each  
11 procurement of renewable energy credits pursuant to this  
12 Section for periods beginning on and after June 1, 2012, the  
13 Agency shall designate an electric utility service area to  
14 which the procurement pertains.

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

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

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

26 (g) All disbursements from the Illinois Power Agency

1 Renewable Energy Resources Fund shall be made only upon  
2 warrants of the Comptroller drawn upon the Treasurer as  
3 custodian of the Fund upon vouchers signed by the Director or  
4 by the person or persons designated by the Director for that  
5 purpose. The Comptroller is authorized to draw the warrant upon  
6 vouchers so signed. The Treasurer shall accept all warrants so  
7 signed and shall be released from liability for all payments  
8 made on those warrants.

9 (h) The Illinois Power Agency Renewable Energy Resources  
10 Fund shall not be subject to sweeps, administrative charges, or  
11 chargebacks, including, but not limited to, those authorized  
12 under Section 8h of the State Finance Act, that would in any  
13 way result in the transfer of any funds from this Fund to any  
14 other fund of this State or in having any such funds utilized  
15 for any purpose other than the express purposes set forth in  
16 this Section.

17 (i) The Illinois Power Agency Renewable Energy Resources  
18 Fund shall be terminated upon depletion of all funds therein  
19 through the purchase of renewable energy credits.

20 (Source: P.A. 96-159, eff. 8-10-09; 96-1000, eff. 7-2-10;  
21 96-1437, eff. 8-17-10.)

22 (20 ILCS 3855/1-75)

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

1           (a) The Planning and Procurement Bureau shall each  
2 year, beginning in 2008, develop procurement plans and  
3 conduct competitive procurement processes in accordance  
4 with the requirements of Section 16-111.5 of the Public  
5 Utilities Act for the eligible retail customers of electric  
6 utilities that on December 31, 2005 provided electric  
7 service to at least 100,000 customers in Illinois, and for  
8 years beginning on and after June 1, 2012, for the  
9 procurement of renewable energy credits in respect of the  
10 kilowatthour usage of delivery services non-eligible  
11 retail customers in such electric utilities' service  
12 areas. For the purposes of this Section, the term "eligible  
13 retail customers" has the same definition as found in  
14 Section 16-111.5(a) of the Public Utilities Act.

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

21           (A) direct previous experience assembling  
22 large-scale power supply plans or portfolios for  
23 end-use customers;

24           (B) an advanced degree in economics,  
25 mathematics, engineering, risk management, or a  
26 related area of study;

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

3 (D) expertise in wholesale electricity market  
4 rules, including those established by the Federal  
5 Energy Regulatory Commission and regional  
6 transmission organizations;

7 (E) expertise in credit protocols and  
8 familiarity with contract protocols;

9 (F) adequate resources to perform and fulfill  
10 the required functions and responsibilities; and

11 (G) the absence of a conflict of interest and  
12 inappropriate bias for or against potential  
13 bidders or the affected electric utilities.

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

20 (A) direct previous experience administering a  
21 large-scale competitive procurement process;

22 (B) an advanced degree in economics,  
23 mathematics, engineering, or a related area of  
24 study;

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

1 (D) expertise in wholesale electricity market  
2 rules, including those established by the Federal  
3 Energy Regulatory Commission and regional  
4 transmission organizations;

5 (E) expertise in credit and contract  
6 protocols;

7 (F) adequate resources to perform and fulfill  
8 the required functions and responsibilities; and

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

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

1 expert consulting firms on the lists. Objections shall  
2 be based on:

3 (A) failure to satisfy qualification criteria;

4 (B) identification of a conflict of interest;

5 or

6 (C) evidence of inappropriate bias for or  
7 against potential bidders or the affected  
8 utilities.

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

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

24 (5) The Agency shall select an expert or expert  
25 consulting firm to develop procurement plans based on  
26 the proposals submitted and shall award one-year

1 contracts to those selected with an option for the  
2 Agency for a one-year renewal.

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

13 (b) The experts or expert consulting firms retained by  
14 the Agency shall, as appropriate, prepare procurement  
15 plans, and conduct a competitive procurement process as  
16 prescribed in Section 16-111.5 of the Public Utilities Act,  
17 to ensure adequate, reliable, affordable, efficient, and  
18 environmentally sustainable electric service at the lowest  
19 total cost over time, taking into account any benefits of  
20 price stability, for eligible retail customers of electric  
21 utilities that on December 31, 2005 provided electric  
22 service to at least 100,000 customers in the State of  
23 Illinois.

24 (c) Renewable portfolio standard.

25 (1) The procurement plans shall include  
26 cost-effective renewable energy resources. A minimum

1 percentage of each utility's total supply to serve the  
2 load of eligible retail customers, as defined in  
3 Section 16-111.5(a) of the Public Utilities Act,  
4 procured for each of the following years shall be  
5 generated from cost-effective renewable energy  
6 resources: at least 2% by June 1, 2008; at least 4% by  
7 June 1, 2009; at least 5% by June 1, 2010; at least 6%  
8 by June 1, 2011; at least 7% by June 1, 2012; at least  
9 8% by June 1, 2013; at least 9% by June 1, 2014; at  
10 least 10% by June 1, 2015; and increasing by at least  
11 1.5% each year thereafter to at least 25% by June 1,  
12 2025. For periods beginning on and after June 1, 2012,  
13 the procurement plans shall include the procurement of  
14 renewable energy credits equal to the projected  
15 kilowatthour usage of the delivery services  
16 non-eligible retail customers within the service area  
17 of the electric utility times the applicable renewable  
18 energy resource percentage for that year as set forth  
19 under this paragraph (1). To the extent that it is  
20 available, at least 75% of the renewable energy  
21 resources used to meet these standards shall come from  
22 wind generation and, beginning on June 1, 2011, at  
23 least the following percentages of the renewable  
24 energy resources used to meet these standards shall  
25 come from photovoltaics on the following schedule:  
26 0.5% by June 1, 2012, 1.5% by June 1, 2013; 3% by June



1 1, 2014; and 6% by June 1, 2015 and thereafter. For  
2 purposes of this subsection (c), "cost-effective"  
3 means that the costs of procuring renewable energy  
4 resources do not cause the limit stated in paragraph  
5 (2) of this subsection (c) to be exceeded and do not  
6 exceed benchmarks based on market prices for renewable  
7 energy resources in the region, which shall be  
8 developed by the procurement administrator, in  
9 consultation with the Commission staff, Agency staff,  
10 and the procurement monitor and shall be subject to  
11 Commission review and approval; provided, that only  
12 the benchmarks, and not the remainder of the definition  
13 of "cost-effective", shall be applicable to the  
14 procurement of renewable energy credits on and after  
15 June 1, 2012 in respect of the forecasted kilowatthour  
16 usage of the delivery services non-eligible retail  
17 customers in the electric utility's service area.

18 (2) For purposes of this subsection (c), the  
19 required procurement of cost-effective renewable  
20 energy resources for a particular year shall be based  
21 on ~~measured as a percentage of~~ the actual amount of  
22 electricity (megawatt-hours) supplied by the electric  
23 utility to eligible retail customers in the planning  
24 year ending immediately prior to the procurement and  
25 load forecasts supplied by the electric utility and  
26 incorporated in the procurement plan approved by the

1           Commission, and, for periods beginning on and after  
2           June 1, 2012, the required procurement of renewable  
3           energy credits with respect to the delivery services  
4           non-eligible retail customers of the electric utility  
5           shall be based on the projected kilowatthour usage of  
6           delivery services non-eligible retail customers for  
7           each year. For purposes of this subsection (c), the  
8           amount paid per kilowatthour means the total amount  
9           paid for electric service expressed on a per  
10          kilowatthour basis. For purposes of this subsection  
11          (c), the total amount paid for electric service  
12          includes without limitation amounts paid for supply,  
13          transmission, distribution, surcharges, and add-on  
14          taxes.

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

25                         (A) in 2008, no more than 0.5% of the amount  
26                         paid per kilowatthour by those customers during

1 the year ending May 31, 2007;

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

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

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

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

1 amount per kilowatthour paid for these resources  
2 in 2011.

3 The foregoing limitations shall not be applicable  
4 to the purchase, for periods beginning on and after  
5 June 1, 2012, of renewable energy credits in respect of  
6 the projected kilowatthour usage of the electric  
7 utility's delivery services non-eligible retail  
8 customers. For periods beginning on and after June 1,  
9 2012, any excluded renewable energy resources contract  
10 costs shall be recoverable by the electric utility  
11 through its tariffed charges for delivery services  
12 pursuant to Section 16-108 of the Public Utilities Act  
13 to its residential class delivery services  
14 non-eligible retail customers. No later than June 30,  
15 2011, the Commission shall review the limitation on the  
16 amount of renewable energy resources procured pursuant  
17 to this subsection (c) and report to the General  
18 Assembly its findings as to whether that limitation  
19 unduly constrains the procurement of cost-effective  
20 renewable energy resources.

21 (3) Through June 1, 2016 ~~2011~~, renewable energy  
22 resources shall be counted for the purpose of meeting  
23 the renewable energy standards set forth in paragraph  
24 (1) of this subsection (c) only if they are generated  
25 from facilities located in the State, provided that  
26 cost-effective renewable energy resources are

1 available from those facilities. If those  
2 cost-effective resources are not available in  
3 Illinois, they shall be procured in states that adjoin  
4 Illinois and may be counted towards compliance. If  
5 those cost-effective resources are not available in  
6 Illinois or in states that adjoin Illinois, they shall  
7 be purchased elsewhere and shall be counted towards  
8 compliance. After June 1, 2016 ~~2011~~, cost-effective  
9 renewable energy resources located in Illinois and in  
10 states that adjoin Illinois may be counted towards  
11 compliance with the standards set forth in paragraph  
12 (1) of this subsection (c). If those cost-effective  
13 resources are not available in Illinois or in states  
14 that adjoin Illinois, they shall be purchased  
15 elsewhere and shall be counted towards compliance. The  
16 provisions of this paragraph (3) are severable under  
17 Section 1.31 of the Statute on Statutes.

18 (4) The electric utility shall retire all  
19 renewable energy credits used to comply with the  
20 standard.

21 (5) Beginning with the year commencing June 1,  
22 2010, and ending with the year commencing June 1, 2011,  
23 an electric utility subject to this subsection (c)  
24 shall apply the lesser of the maximum alternative  
25 compliance payment rate or the most recent estimated  
26 alternative compliance payment rate for its service

1 territory for the corresponding compliance period,  
2 established pursuant to subsection (d) of Section  
3 16-115D of the Public Utilities Act to its retail  
4 customers that take service pursuant to the electric  
5 utility's hourly pricing tariff or tariffs. The  
6 electric utility shall retain all amounts collected as  
7 a result of the application of the alternative  
8 compliance payment rate or rates to such customers,  
9 and, beginning in 2011, the utility shall include in  
10 the information provided under item (1) of subsection  
11 (d) of Section 16-111.5 of the Public Utilities Act the  
12 amounts collected under the alternative compliance  
13 payment rate or rates for the prior year ending May 31.  
14 Notwithstanding any limitation on the procurement of  
15 renewable energy resources imposed by item (2) of this  
16 subsection (c), the Agency shall increase its spending  
17 on the purchase of renewable energy resources to be  
18 procured by the electric utility for the next plan year  
19 by an amount equal to the amounts collected by the  
20 utility under the alternative compliance payment rate  
21 or rates in the prior year ending May 31. For years  
22 commencing on and after June 1, 2012, the kilowatthours  
23 supplied by the electric utility to its retail  
24 customers that take service pursuant to the electric  
25 utility's hourly pricing tariff or tariffs shall be  
26 considered usage of delivery services non-eligible

1 retail customers.

2 (6) Each annual procurement plan for periods  
3 beginning on and after June 1, 2012 shall include (i)  
4 the procurement of electricity from cost-effective  
5 renewable energy resources to meet the renewable  
6 energy resource requirements specified in paragraph  
7 (2) of this subsection (c) with respect to the load of  
8 the electric utility's eligible retail customers and  
9 (ii) the procurement of renewable energy credits to  
10 meet the renewable energy resource requirements  
11 specified in paragraph (2) of this subsection (c) with  
12 respect to the kilowatthour usage of the electric  
13 utility's delivery services non-eligible retail  
14 customers; provided that the electric utility's  
15 obligation to purchase renewable energy credits with  
16 respect to the kilowatthour usage of delivery services  
17 non-eligible retail customers shall be reduced by the  
18 amount of any purchases of renewable energy credits by  
19 the Agency for the year in respect of the electric  
20 utility's service area pursuant to Section 1-56 of this  
21 Act using the Illinois Power Agency Renewable Energy  
22 Resources Fund. At least 60% and no more than 90% of  
23 the cost-effective renewable energy resources required  
24 to meet the renewable energy resource requirement  
25 applicable to the load of the electric utility's  
26 eligible retail customers in each year shall be

1 procured through contracts for bundled renewable  
2 energy resources with terms of at least 20 years, and  
3 the balance of the renewable energy resources required  
4 to meet the renewable energy resource requirement  
5 applicable to the load of the electric utility's  
6 eligible retail customers for the year shall be  
7 procured through the purchase of renewable energy  
8 credits. All procurements of renewable energy credits  
9 specified in the procurement plan shall be through a  
10 mix of contracts with terms of one year, 5 years, and  
11 10 years as approved by the Commission. The electric  
12 utility shall be entitled to recover its costs of  
13 procuring renewable energy credits through its  
14 tariffed charges for delivery services in accordance  
15 with Section 16-108 of the Public Utilities Act. All  
16 procurements of bundled renewable energy resources and  
17 renewable energy credits in the procurement plans of  
18 the electric utilities shall be pursuant to  
19 competitive bidding processes and shall be approved by  
20 the Commission pursuant to Section 16-111.5 of the  
21 Public Utilities Act.

22 (d) Clean coal portfolio standard.

23 (1) The procurement plans shall include electricity  
24 generated using clean coal. Each utility shall enter into  
25 one or more sourcing agreements with the initial clean coal  
26 facility, as provided in paragraph (3) of this subsection



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

21 (A) A utility party to a sourcing agreement shall  
22 immediately retire any emission credits that it  
23 receives in connection with the electricity covered by  
24 such agreement.

25 (B) Utilities shall maintain adequate records  
26 documenting the purchases under the sourcing agreement

1 to comply with this subsection (d) and shall file an  
2 accounting with the load forecast that must be filed  
3 with the Agency by July 15 of each year, in accordance  
4 with subsection (d) of Section 16-111.5 of the Public  
5 Utilities Act.

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

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

24 Notwithstanding the requirements of this subsection  
25 (d), the total amount paid under sourcing agreements with  
26 clean coal facilities pursuant to the procurement plan for

1 any given year shall be reduced by an amount necessary to  
2 limit the annual estimated average net increase due to the  
3 costs of these resources included in the amounts paid by  
4 eligible retail customers in connection with electric  
5 service to:

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

9 (B) in 2011, the greater of an additional 0.5%  
10 of the amount paid per kilowatthour by those  
11 customers during the year ending May 31, 2010 or 1%  
12 of the amount paid per kilowatthour by those  
13 customers during the year ending May 31, 2009;

14 (C) in 2012, the greater of an additional 0.5%  
15 of the amount paid per kilowatthour by those  
16 customers during the year ending May 31, 2011 or  
17 1.5% of the amount paid per kilowatthour by those  
18 customers during the year ending May 31, 2009;

19 (D) in 2013, the greater of an additional 0.5%  
20 of the amount paid per kilowatthour by those  
21 customers during the year ending May 31, 2012 or 2%  
22 of the amount paid per kilowatthour by those  
23 customers during the year ending May 31, 2009; and

24 (E) thereafter, the total amount paid under  
25 sourcing agreements with clean coal facilities  
26 pursuant to the procurement plan for any single

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

20 (3) Initial clean coal facility. In order to promote  
21 development of clean coal facilities in Illinois, each  
22 electric utility subject to this Section shall execute a  
23 sourcing agreement to source electricity from a proposed  
24 clean coal facility in Illinois (the "initial clean coal  
25 facility") that will have a nameplate capacity of at least  
26 500 MW when commercial operation commences, that has a

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

16 (A) a formula contractual price (the "contract  
17 price") approved pursuant to paragraph (4) of this  
18 subsection (d), which shall:

19 (i) be determined using a cost of service  
20 methodology employing either a level or deferred  
21 capital recovery component, based on a capital  
22 structure consisting of 45% equity and 55% debt,  
23 and a return on equity as may be approved by the  
24 Federal Energy Regulatory Commission, which in any  
25 case may not exceed the lower of 11.5% or the rate  
26 of return approved by the General Assembly

1 pursuant to paragraph (4) of this subsection (d);

2 and

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

18 (B) power purchase provisions, which shall:

19 (i) provide that the utility party to such  
20 sourcing agreement shall pay the contract price  
21 for electricity delivered under such sourcing  
22 agreement;

23 (ii) require delivery of electricity to the  
24 regional transmission organization market of the  
25 utility that is party to such sourcing agreement;

26 (iii) require the utility party to such

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

21 (iv) be considered pre-existing contracts in  
22 such utility's procurement plans for eligible  
23 retail customers;

24 (C) contract for differences provisions, which  
25 shall:

26 (i) require the utility party to such sourcing

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

22 (ii) provide that the utility's payment  
23 obligation in respect of the quantity of  
24 electricity determined pursuant to the preceding  
25 clause (i) shall be limited to an amount equal to  
26 (1) the difference between the contract price



1 determined pursuant to subparagraph (A) of  
2 paragraph (3) of this subsection (d) and the  
3 day-ahead price for electricity delivered to the  
4 regional transmission organization market of the  
5 utility that is party to such sourcing agreement  
6 (or any successor delivery point at which such  
7 utility's supply obligations are financially  
8 settled on an hourly basis) (the "reference  
9 price") on the day preceding the day on which the  
10 electricity is delivered to the initial clean coal  
11 facility busbar, multiplied by (2) the quantity of  
12 electricity determined pursuant to the preceding  
13 clause (i); and

14 (iii) not require the utility to take physical  
15 delivery of the electricity produced by the  
16 facility;

17 (D) general provisions, which shall:

18 (i) specify a term of no more than 30 years,  
19 commencing on the commercial operation date of the  
20 facility;

21 (ii) provide that utilities shall maintain  
22 adequate records documenting purchases under the  
23 sourcing agreements entered into to comply with  
24 this subsection (d) and shall file an accounting  
25 with the load forecast that must be filed with the  
26 Agency by July 15 of each year, in accordance with

1 subsection (d) of Section 16-111.5 of the Public  
2 Utilities Act.

3 (iii) provide that all costs associated with  
4 the initial clean coal facility will be  
5 periodically reported to the Federal Energy  
6 Regulatory Commission and to purchasers in  
7 accordance with applicable laws governing  
8 cost-based wholesale power contracts;

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

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

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

1 requirement and the other terms of this contract  
2 provision. Compliance with the sequestration  
3 requirements and offset purchase requirements  
4 specified in paragraph (3) of this subsection (d)  
5 shall be reviewed annually by an independent  
6 expert retained by the owner of the initial clean  
7 coal facility, with the advance written approval  
8 of the Attorney General. The Commission may, in the  
9 course of the review specified in item (vii),  
10 reduce the allowable return on equity for the  
11 facility if the facility wilfully fails to comply  
12 with the carbon capture and sequestration  
13 requirements set forth in this item (v);

14 (vi) include limits on, and accordingly  
15 provide for modification of, the amount the  
16 utility is required to source under the sourcing  
17 agreement consistent with paragraph (2) of this  
18 subsection (d);

19 (vii) require Commission review: (1) to  
20 determine the justness, reasonableness, and  
21 prudence of the inputs to the formula referenced in  
22 subparagraphs (A) (i) through (A) (iii) of paragraph  
23 (3) of this subsection (d), prior to an adjustment  
24 in those inputs including, without limitation, the  
25 capital structure and return on equity, fuel  
26 costs, and other operations and maintenance costs

1 and (2) to approve the costs to be passed through  
2 to customers under the sourcing agreement by which  
3 the utility satisfies its statutory obligations.  
4 Commission review shall occur no less than every 3  
5 years, regardless of whether any adjustments have  
6 been proposed, and shall be completed within 9  
7 months;

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

15 (ix) limit the utility's or alternative retail  
16 electric supplier's obligation to incur any  
17 liability until such time as the facility is in  
18 commercial operation and generating power and  
19 energy and such power and energy is being delivered  
20 to the facility busbar;

21 (x) provide that the owner or owners of the  
22 initial clean coal facility, which is the  
23 counterparty to such sourcing agreement, shall  
24 have the right from time to time to elect whether  
25 the obligations of the utility party thereto shall  
26 be governed by the power purchase provisions or the

1 contract for differences provisions;

2 (xi) append documentation showing that the  
3 formula rate and contract, insofar as they relate  
4 to the power purchase provisions, have been  
5 approved by the Federal Energy Regulatory  
6 Commission pursuant to Section 205 of the Federal  
7 Power Act;

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

14 (xiii) conform with customary lender  
15 requirements in power purchase agreements used as  
16 the basis for financing non-utility generators.

17 (4) Effective date of sourcing agreements with the  
18 initial clean coal facility. Any proposed sourcing  
19 agreement with the initial clean coal facility shall not  
20 become effective unless the following reports are prepared  
21 and submitted and authorizations and approvals obtained:

22 (i) Facility cost report. The owner of the  
23 initial clean coal facility shall submit to the  
24 Commission, the Agency, and the General Assembly a  
25 front-end engineering and design study, a facility  
26 cost report, method of financing (including but

1 not limited to structure and associated costs),  
2 and an operating and maintenance cost quote for the  
3 facility (collectively "facility cost report"),  
4 which shall be prepared in accordance with the  
5 requirements of this paragraph (4) of subsection  
6 (d) of this Section, and shall provide the  
7 Commission and the Agency access to the work  
8 papers, relied upon documents, and any other  
9 backup documentation related to the facility cost  
10 report.

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

1 To assist in the preparation of its report, the  
2 Commission, in consultation with the Agency, may  
3 hire one or more experts or consultants, the costs  
4 of which shall be paid for by the owner of the  
5 initial clean coal facility. The Commission and  
6 Agency may begin the process of selecting such  
7 experts or consultants prior to receipt of the  
8 facility cost report.

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

21 (iv) Commission review. If the General  
22 Assembly enacts authorizing legislation pursuant  
23 to subparagraph (iii) approving a sourcing  
24 agreement, the Commission shall, within 90 days of  
25 such enactment, complete a review of such sourcing  
26 agreement. During such time period, the Commission



1 shall implement any directive of the General  
2 Assembly, resolve any disputes between the parties  
3 to the sourcing agreement concerning the terms of  
4 such agreement, approve the form of such  
5 agreement, and issue an order finding that the  
6 sourcing agreement is prudent and reasonable.

7 The facility cost report shall be prepared as follows:

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

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

22 (ii) an estimate of the capital cost of the  
23 balance of the plant, including any capital costs  
24 associated with sequestration of carbon dioxide  
25 emissions and all interconnects and interfaces  
26 required to operate the facility, such as

1 transmission of electricity, construction or  
2 backfeed power supply, pipelines to transport  
3 substitute natural gas or carbon dioxide, potable  
4 water supply, natural gas supply, water supply,  
5 water discharge, landfill, access roads, and coal  
6 delivery.

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

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

21 (C) The facility cost report shall also include an  
22 operating and maintenance cost quote that will provide  
23 the estimated cost of delivered fuel, personnel,  
24 maintenance contracts, chemicals, catalysts,  
25 consumables, spares, and other fixed and variable  
26 operations and maintenance costs.

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

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

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

21           (D) The facility cost report shall also include (i)  
22 an analysis of the initial clean coal facility's  
23 ability to deliver power and energy into the applicable  
24 regional transmission organization markets and (ii) an  
25 analysis of the expected capacity factor for the  
26 initial clean coal facility.

1           (E) Amounts paid to third parties unrelated to the  
2           owner or owners of the initial clean coal facility to  
3           prepare the core plant construction cost quote,  
4           including the front end engineering and design study,  
5           and the operating and maintenance cost quote will be  
6           reimbursed through Coal Development Bonds.

7           (5) Re-powering and retrofitting coal-fired power  
8           plants previously owned by Illinois utilities to qualify as  
9           clean coal facilities. During the 2009 procurement  
10          planning process and thereafter, the Agency and the  
11          Commission shall consider sourcing agreements covering  
12          electricity generated by power plants that were previously  
13          owned by Illinois utilities and that have been or will be  
14          converted into clean coal facilities, as defined by Section  
15          1-10 of this Act. Pursuant to such procurement planning  
16          process, the owners of such facilities may propose to the  
17          Agency sourcing agreements with utilities and alternative  
18          retail electric suppliers required to comply with  
19          subsection (d) of this Section and item (5) of subsection  
20          (d) of Section 16-115 of the Public Utilities Act, covering  
21          electricity generated by such facilities. In the case of  
22          sourcing agreements that are power purchase agreements,  
23          the contract price for electricity sales shall be  
24          established on a cost of service basis. In the case of  
25          sourcing agreements that are contracts for differences,  
26          the contract price from which the reference price is

1 subtracted shall be established on a cost of service basis.  
2 The Agency and the Commission may approve any such utility  
3 sourcing agreements that do not exceed cost-based  
4 benchmarks developed by the procurement administrator, in  
5 consultation with the Commission staff, Agency staff and  
6 the procurement monitor, subject to Commission review and  
7 approval. The Commission shall have authority to inspect  
8 all books and records associated with these clean coal  
9 facilities during the term of any such contract.

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

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

19 (f) The Agency shall submit the final procurement plan  
20 to the Commission. The Agency shall revise a procurement  
21 plan if the Commission determines that it does not meet the  
22 standards set forth in Section 16-111.5 of the Public  
23 Utilities Act.

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

1           (h) The Agency shall assess fees to each bidder to  
2           recover the costs incurred in connection with a competitive  
3           procurement process.

4           (Source: P.A. 95-481, eff. 8-28-07; 95-1027, eff. 6-1-09;  
5           96-159, eff. 8-10-09; 96-1437, eff. 8-17-10.)

6           Section 10. The Public Utilities Act is amended by changing  
7           Sections 16-108, 16-111.5, and 16-115D as follows:

8           (220 ILCS 5/16-108)

9           Sec. 16-108. Recovery of costs associated with the  
10          provision of delivery services.

11          (a) An electric utility shall file a delivery services  
12          tariff with the Commission at least 210 days prior to the date  
13          that it is required to begin offering such services pursuant to  
14          this Act. An electric utility shall provide the components of  
15          delivery services that are subject to the jurisdiction of the  
16          Federal Energy Regulatory Commission at the same prices, terms  
17          and conditions set forth in its applicable tariff as approved  
18          or allowed into effect by that Commission. The Commission shall  
19          otherwise have the authority pursuant to Article IX to review,  
20          approve, and modify the prices, terms and conditions of those  
21          components of delivery services not subject to the jurisdiction  
22          of the Federal Energy Regulatory Commission, including the  
23          authority to determine the extent to which such delivery  
24          services should be offered on an unbundled basis. In making any

1 such determination the Commission shall consider, at a minimum,  
2 the effect of additional unbundling on (i) the objective of  
3 just and reasonable rates, (ii) electric utility employees, and  
4 (iii) the development of competitive markets for electric  
5 energy services in Illinois.

6 (b) The Commission shall enter an order approving, or  
7 approving as modified, the delivery services tariff no later  
8 than 30 days prior to the date on which the electric utility  
9 must commence offering such services. The Commission may  
10 subsequently modify such tariff pursuant to this Act.

11 (c) The electric utility's tariffs shall define the classes  
12 of its customers for purposes of delivery services charges.  
13 Delivery services shall be priced and made available to all  
14 retail customers electing delivery services in each such class  
15 on a nondiscriminatory basis regardless of whether the retail  
16 customer chooses the electric utility, an affiliate of the  
17 electric utility, or another entity as its supplier of electric  
18 power and energy. Charges for delivery services shall be cost  
19 based, and shall allow the electric utility to recover the  
20 costs of providing delivery services through its charges to its  
21 delivery service customers that use the facilities and services  
22 associated with such costs. Such costs shall include the costs  
23 of owning, operating and maintaining transmission and  
24 distribution facilities. The Commission shall also be  
25 authorized to consider whether, and if so to what extent, the  
26 following costs are appropriately included in the electric

1 utility's delivery services rates: (i) the costs of that  
2 portion of generation facilities used for the production and  
3 absorption of reactive power in order that retail customers  
4 located in the electric utility's service area can receive  
5 electric power and energy from suppliers other than the  
6 electric utility, and (ii) the costs associated with the use  
7 and redispatch of generation facilities to mitigate  
8 constraints on the transmission or distribution system in order  
9 that retail customers located in the electric utility's service  
10 area can receive electric power and energy from suppliers other  
11 than the electric utility. Nothing in this subsection shall be  
12 construed as directing the Commission to allocate any of the  
13 costs described in (i) or (ii) that are found to be  
14 appropriately included in the electric utility's delivery  
15 services rates to any particular customer group or geographic  
16 area in setting delivery services rates.

17 (d) The Commission shall establish charges, terms and  
18 conditions for delivery services that are just and reasonable  
19 and shall take into account customer impacts when establishing  
20 such charges. In establishing charges, terms and conditions for  
21 delivery services, the Commission shall take into account  
22 voltage level differences. A retail customer shall have the  
23 option to request to purchase electric service at any delivery  
24 service voltage reasonably and technically feasible from the  
25 electric facilities serving that customer's premises provided  
26 that there are no significant adverse impacts upon system



1 reliability or system efficiency. A retail customer shall also  
2 have the option to request to purchase electric service at any  
3 point of delivery that is reasonably and technically feasible  
4 provided that there are no significant adverse impacts on  
5 system reliability or efficiency. Such requests shall not be  
6 unreasonably denied.

7 (e) Electric utilities shall recover the costs of  
8 installing, operating or maintaining facilities for the  
9 particular benefit of one or more delivery services customers,  
10 including without limitation any costs incurred in complying  
11 with a customer's request to be served at a different voltage  
12 level, directly from the retail customer or customers for whose  
13 benefit the costs were incurred, to the extent such costs are  
14 not recovered through the charges referred to in subsections  
15 (c) and (d) of this Section.

16 (f) An electric utility shall be entitled but not required  
17 to implement transition charges in conjunction with the  
18 offering of delivery services pursuant to Section 16-104. If an  
19 electric utility implements transition charges, it shall  
20 implement such charges for all delivery services customers and  
21 for all customers described in subsection (h), but shall not  
22 implement transition charges for power and energy that a retail  
23 customer takes from cogeneration or self-generation facilities  
24 located on that retail customer's premises, if such facilities  
25 meet the following criteria:

26 (i) the cogeneration or self-generation facilities

1           serve a single retail customer and are located on that  
2           retail customer's premises (for purposes of this  
3           subparagraph and subparagraph (ii), an industrial or  
4           manufacturing retail customer and a third party contractor  
5           that is served by such industrial or manufacturing customer  
6           through such retail customer's own electrical distribution  
7           facilities under the circumstances described in subsection  
8           (vi) of the definition of "alternative retail electric  
9           supplier" set forth in Section 16-102, shall be considered  
10          a single retail customer);

11           (ii) the cogeneration or self-generation facilities  
12          either (A) are sized pursuant to generally accepted  
13          engineering standards for the retail customer's electrical  
14          load at that premises (taking into account standby or other  
15          reliability considerations related to that retail  
16          customer's operations at that site) or (B) if the facility  
17          is a cogeneration facility located on the retail customer's  
18          premises, the retail customer is the thermal host for that  
19          facility and the facility has been designed to meet that  
20          retail customer's thermal energy requirements resulting in  
21          electrical output beyond that retail customer's electrical  
22          demand at that premises, comply with the operating and  
23          efficiency standards applicable to "qualifying facilities"  
24          specified in title 18 Code of Federal Regulations Section  
25          292.205 as in effect on the effective date of this  
26          amendatory Act of 1999;

1           (iii) the retail customer on whose premises the  
2 facilities are located either has an exclusive right to  
3 receive, and corresponding obligation to pay for, all of  
4 the electrical capacity of the facility, or in the case of  
5 a cogeneration facility that has been designed to meet the  
6 retail customer's thermal energy requirements at that  
7 premises, an identified amount of the electrical capacity  
8 of the facility, over a minimum 5-year period; and

9           (iv) if the cogeneration facility is sized for the  
10 retail customer's thermal load at that premises but exceeds  
11 the electrical load, any sales of excess power or energy  
12 are made only at wholesale, are subject to the jurisdiction  
13 of the Federal Energy Regulatory Commission, and are not  
14 for the purpose of circumventing the provisions of this  
15 subsection (f).

16 If a generation facility located at a retail customer's  
17 premises does not meet the above criteria, an electric utility  
18 implementing transition charges shall implement a transition  
19 charge until December 31, 2006 for any power and energy taken  
20 by such retail customer from such facility as if such power and  
21 energy had been delivered by the electric utility. Provided,  
22 however, that an industrial retail customer that is taking  
23 power from a generation facility that does not meet the above  
24 criteria but that is located on such customer's premises will  
25 not be subject to a transition charge for the power and energy  
26 taken by such retail customer from such generation facility if

1 the facility does not serve any other retail customer and  
2 either was installed on behalf of the customer and for its own  
3 use prior to January 1, 1997, or is both predominantly fueled  
4 by byproducts of such customer's manufacturing process at such  
5 premises and sells or offers an average of 300 megawatts or  
6 more of electricity produced from such generation facility into  
7 the wholesale market. Such charges shall be calculated as  
8 provided in Section 16-102, and shall be collected on each  
9 kilowatt-hour delivered under a delivery services tariff to a  
10 retail customer from the date the customer first takes delivery  
11 services until December 31, 2006 except as provided in  
12 subsection (h) of this Section. Provided, however, that an  
13 electric utility, other than an electric utility providing  
14 service to at least 1,000,000 customers in this State on  
15 January 1, 1999, shall be entitled to petition for entry of an  
16 order by the Commission authorizing the electric utility to  
17 implement transition charges for an additional period ending no  
18 later than December 31, 2008. The electric utility shall file  
19 its petition with supporting evidence no earlier than 16  
20 months, and no later than 12 months, prior to December 31,  
21 2006. The Commission shall hold a hearing on the electric  
22 utility's petition and shall enter its order no later than 8  
23 months after the petition is filed. The Commission shall  
24 determine whether and to what extent the electric utility shall  
25 be authorized to implement transition charges for an additional  
26 period. The Commission may authorize the electric utility to

1 implement transition charges for some or all of the additional  
2 period, and shall determine the mitigation factors to be used  
3 in implementing such transition charges; provided, that the  
4 Commission shall not authorize mitigation factors less than  
5 110% of those in effect during the 12 months ended December 31,  
6 2006. In making its determination, the Commission shall  
7 consider the following factors: the necessity to implement  
8 transition charges for an additional period in order to  
9 maintain the financial integrity of the electric utility; the  
10 prudence of the electric utility's actions in reducing its  
11 costs since the effective date of this amendatory Act of 1997;  
12 the ability of the electric utility to provide safe, adequate  
13 and reliable service to retail customers in its service area;  
14 and the impact on competition of allowing the electric utility  
15 to implement transition charges for the additional period.

16 (g) The electric utility shall file tariffs that establish  
17 the transition charges to be paid by each class of customers to  
18 the electric utility in conjunction with the provision of  
19 delivery services. The electric utility's tariffs shall define  
20 the classes of its customers for purposes of calculating  
21 transition charges. The electric utility's tariffs shall  
22 provide for the calculation of transition charges on a  
23 customer-specific basis for any retail customer whose average  
24 monthly maximum electrical demand on the electric utility's  
25 system during the 6 months with the customer's highest monthly  
26 maximum electrical demands equals or exceeds 3.0 megawatts for

1 electric utilities having more than 1,000,000 customers, and  
2 for other electric utilities for any customer that has an  
3 average monthly maximum electrical demand on the electric  
4 utility's system of one megawatt or more, and (A) for which  
5 there exists data on the customer's usage during the 3 years  
6 preceding the date that the customer became eligible to take  
7 delivery services, or (B) for which there does not exist data  
8 on the customer's usage during the 3 years preceding the date  
9 that the customer became eligible to take delivery services, if  
10 in the electric utility's reasonable judgment there exists  
11 comparable usage information or a sufficient basis to develop  
12 such information, and further provided that the electric  
13 utility can require customers for which an individual  
14 calculation is made to sign contracts that set forth the  
15 transition charges to be paid by the customer to the electric  
16 utility pursuant to the tariff.

17 (h) An electric utility shall also be entitled to file  
18 tariffs that allow it to collect transition charges from retail  
19 customers in the electric utility's service area that do not  
20 take delivery services but that take electric power or energy  
21 from an alternative retail electric supplier or from an  
22 electric utility other than the electric utility in whose  
23 service area the customer is located. Such charges shall be  
24 calculated, in accordance with the definition of transition  
25 charges in Section 16-102, for the period of time that the  
26 customer would be obligated to pay transition charges if it

1 were taking delivery services, except that no deduction for  
2 delivery services revenues shall be made in such calculation,  
3 and usage data from the customer's class shall be used where  
4 historical usage data is not available for the individual  
5 customer. The customer shall be obligated to pay such charges  
6 on a lump sum basis on or before the date on which the customer  
7 commences to take service from the alternative retail electric  
8 supplier or other electric utility, provided, that the electric  
9 utility in whose service area the customer is located shall  
10 offer the customer the option of signing a contract pursuant to  
11 which the customer pays such charges ratably over the period in  
12 which the charges would otherwise have applied.

13 (i) An electric utility shall be entitled to add to the  
14 bills of delivery services customers charges pursuant to  
15 Sections 9-221, 9-222 (except as provided in Section 9-222.1),  
16 and Section 16-114 of this Act, Section 5-5 of the Electricity  
17 Infrastructure Maintenance Fee Law, Section 6-5 of the  
18 Renewable Energy, Energy Efficiency, and Coal Resources  
19 Development Law of 1997, and Section 13 of the Energy  
20 Assistance Act.

21 (j) If a retail customer that obtains electric power and  
22 energy from cogeneration or self-generation facilities  
23 installed for its own use on or before January 1, 1997,  
24 subsequently takes service from an alternative retail electric  
25 supplier or an electric utility other than the electric utility  
26 in whose service area the customer is located for any portion

1 of the customer's electric power and energy requirements  
2 formerly obtained from those facilities (including that amount  
3 purchased from the utility in lieu of such generation and not  
4 as standby power purchases, under a cogeneration displacement  
5 tariff in effect as of the effective date of this amendatory  
6 Act of 1997), the transition charges otherwise applicable  
7 pursuant to subsections (f), (g), or (h) of this Section shall  
8 not be applicable in any year to that portion of the customer's  
9 electric power and energy requirements formerly obtained from  
10 those facilities, provided, that for purposes of this  
11 subsection (j), such portion shall not exceed the average  
12 number of kilowatt-hours per year obtained from the  
13 cogeneration or self-generation facilities during the 3 years  
14 prior to the date on which the customer became eligible for  
15 delivery services, except as provided in subsection (f) of  
16 Section 16-110.

17 (k) Beginning June 1, 2012, the electric utility shall be  
18 entitled to recover through its tariffed charges for delivery  
19 services (1) the costs of any renewable energy credits  
20 purchased to meet the renewable energy resource standards of  
21 subsection (c) of Section 1-75 of the Illinois Power Agency  
22 Act, pursuant to the electric utility's procurement plan as  
23 approved in accordance with Section 16-111.5 of this Act, and  
24 (2) any excluded renewable energy resources contract costs as  
25 defined in Section 1-10 of the Illinois Power Agency Act. The  
26 Commission shall determine a just and reasonable allocation of



1 such costs to the various classes of customers taking delivery  
2 services from the electric utility, taking into account the  
3 provisions of paragraph (6) of subsection (c) of Section 1-75  
4 of the Illinois Power Agency Act. For purposes of recovery  
5 through the electric utility's tariffed charges for delivery  
6 services, the cost of the renewable energy credits included in  
7 purchases of bundled renewable energy resources, as defined in  
8 Section 1-10 of the Illinois Power Agency Act, to meet the  
9 renewable energy resource standards applicable to the load of  
10 the electric utility's eligible retail customers, as defined in  
11 subsection (a) of Section 16-111.5 of this Act, shall be the  
12 allocated renewable energy credit prices approved by the  
13 Commission in accordance with subsection (f) of Section  
14 16-111.5 of this Act. The electric utility shall be entitled to  
15 recover the cost of such renewable energy credits and excluded  
16 renewable energy resources contract costs through an automatic  
17 adjustment charge mechanism in the electric utility's delivery  
18 services tariffs that allows the electric utility to adjust its  
19 tariffed charges on an annual basis for changes in its costs  
20 incurred to purchase renewable energy credits for the year and  
21 its excluded renewable energy resources contract costs, if any,  
22 for the year, without the need to file a general delivery  
23 services rate case. The electric utility's collections  
24 pursuant to such an automatic adjustment charge tariff shall be  
25 subject to review, reconciliation and true-up against actual  
26 costs by the Commission pursuant to a procedure that shall be

1 specified in the electric utility's tariff.

2 (Source: P.A. 91-50, eff. 6-30-99; 92-690, eff. 7-18-02.)

3 (220 ILCS 5/16-111.5)

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

5 (a) An electric utility that on December 31, 2005 served at  
6 least 100,000 customers in Illinois shall procure power and  
7 energy for its eligible retail customers in accordance with the  
8 applicable provisions set forth in Section 1-75 of the Illinois  
9 Power Agency Act and this Section and, for years beginning on  
10 and after June 1, 2012, shall procure renewable energy credits  
11 with respect to the kilowatthour usage of delivery services  
12 non-eligible retail customers in the electric utility's  
13 service area in accordance with the applicable provisions set  
14 forth in Section 1-75 of the Illinois Power Agency Act and this  
15 Section. "Eligible retail customers" for the purposes of this  
16 Section means those retail customers that purchase power and  
17 energy from the electric utility under fixed-price bundled  
18 service tariffs, other than those retail customers whose  
19 service is declared or deemed competitive under Section 16-113  
20 and those other customer groups specified in this Section,  
21 including self-generating customers, customers electing hourly  
22 pricing, or those customers who are otherwise ineligible for  
23 fixed-price bundled tariff service. "Delivery services  
24 non-eligible retail customers" for the purposes of this Section  
25 has the meaning set forth in Section 1-10 of the Illinois Power

1 Agency Act. Those customers that are excluded from the  
2 definition of "eligible retail customers" shall not be included  
3 in the procurement plan electric supply service ~~load~~  
4 requirements, and the utility shall procure any supply  
5 requirements, including capacity, ancillary services, and  
6 hourly priced energy, in the applicable markets as needed to  
7 serve those customers, provided that the utility may include in  
8 its procurement plan load requirements for the load that is  
9 associated with those retail customers whose service has been  
10 declared or deemed competitive pursuant to Section 16-113 of  
11 this Act to the extent that those customers are purchasing  
12 power and energy during one of the transition periods  
13 identified in subsection (b) of Section 16-113 of this Act.

14 (b) A procurement plan shall be prepared for each electric  
15 utility consistent with the applicable requirements of the  
16 Illinois Power Agency Act and this Section. For purposes of  
17 this Section, Illinois electric utilities that are affiliated  
18 by virtue of a common parent company are considered to be a  
19 single electric utility. Each procurement plan shall analyze  
20 the projected balance of supply and demand for eligible retail  
21 customers over a 5-year period, or such longer period as is  
22 specified in this subsection (b), with the first planning year  
23 beginning on June 1 of the year following the year in which the  
24 plan is filed. The plan shall specifically identify the  
25 wholesale products to be procured following plan approval, and  
26 shall follow all the requirements set forth in the Public

1 Utilities Act and all applicable State and federal laws,  
2 statutes, rules, or regulations, as well as Commission orders.  
3 Nothing in this Section precludes consideration of contracts  
4 longer than 5 years and related forecast data. Unless specified  
5 otherwise in this Section, in the procurement plan or in the  
6 implementing tariff, any procurement occurring in accordance  
7 with this plan shall be competitively bid through a request for  
8 proposals process. Approval and implementation of the  
9 procurement plan shall be subject to review and approval by the  
10 Commission according to the provisions set forth in this  
11 Section. A procurement plan shall include each of the following  
12 components:

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

14 (i) multi-year historical analysis of hourly  
15 loads;

16 (ii) switching trends and competitive retail  
17 market analysis;

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

19 and

20 (iv) growth forecasts by customer class.

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

23 (i) the impact of demand response programs, both  
24 current and projected;

25 (ii) supply side needs that are projected to be  
26 offset by purchases of renewable energy resources, if



1 demand-response provider of the utility for any  
2 costs incurred as a result of the failure of the  
3 supplier of such products to perform its  
4 obligations thereunder; and

5 (E) meet the same credit requirements as apply  
6 to suppliers of capacity, in the applicable  
7 regional transmission organization market;

8 (iii) monthly forecasted system supply  
9 requirements, including expected minimum, maximum, and  
10 average values for the planning period;

11 (iv) the proposed mix and selection of standard  
12 wholesale products for which contracts will be  
13 executed during the next year, separately or in  
14 combination, to meet that portion of its load  
15 requirements not met through pre-existing contracts,  
16 including but not limited to monthly 5 x 16 peak period  
17 block energy, monthly off-peak wrap energy, monthly 7 x  
18 24 energy, annual 5 x 16 energy, annual off-peak wrap  
19 energy, annual 7 x 24 energy, monthly capacity, annual  
20 capacity, peak load capacity obligations, capacity  
21 purchase plan, and ancillary services;

22 (v) proposed term structures for each wholesale  
23 product type included in the proposed procurement plan  
24 portfolio of products; and

25 (vi) an assessment of the price risk, load  
26 uncertainty, and other factors that are associated

1 with the proposed procurement plan; this assessment,  
2 to the extent possible, shall include an analysis of  
3 the following factors: contract terms, time frames for  
4 securing products or services, fuel costs, weather  
5 patterns, transmission costs, market conditions, and  
6 the governmental regulatory environment; the proposed  
7 procurement plan shall also identify alternatives for  
8 those portfolio measures that are identified as having  
9 significant price risk.

10 (4) Proposed procedures for balancing loads. The  
11 procurement plan shall include, for load requirements  
12 included in the procurement plan, the process for (i)  
13 hourly balancing of supply and demand and (ii) the criteria  
14 for portfolio re-balancing in the event of significant  
15 shifts in load.

16 (5) For procurement plans for periods beginning on and  
17 after June 1, 2012, the projected annual kilowatthour usage  
18 of eligible retail customers and the projected annual  
19 kilowatthour usage of delivery services non-eligible  
20 retail customers in the electric utility's service area for  
21 the ensuing 20 years.

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

26 (1) The procurement administrator shall:

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

5 (ii) develop benchmarks in accordance with  
6 subsection (e)(3) to be used to evaluate bids; these  
7 benchmarks shall be submitted to the Commission for  
8 review and approval on a confidential basis prior to  
9 the procurement event;

10 (iii) serve as the interface between the electric  
11 utility and suppliers;

12 (iv) manage the bidder pre-qualification and  
13 registration process;

14 (v) obtain the electric utilities' agreement to  
15 the final form of all supply contracts and credit  
16 collateral agreements;

17 (vi) administer the request for proposals process;

18 (vii) have the discretion to negotiate to  
19 determine whether bidders are willing to lower the  
20 price of bids that meet the benchmarks approved by the  
21 Commission; any post-bid negotiations with bidders  
22 shall be limited to price only and shall be completed  
23 within 24 hours after opening the sealed bids and shall  
24 be conducted in a fair and unbiased manner; in  
25 conducting the negotiations, there shall be no  
26 disclosure of any information derived from proposals



1 submitted by competing bidders; if information is  
2 disclosed to any bidder, it shall be provided to all  
3 competing bidders;

4 (viii) maintain confidentiality of supplier and  
5 bidding information in a manner consistent with all  
6 applicable laws, rules, regulations, and tariffs;

7 (ix) submit a confidential report to the  
8 Commission recommending acceptance or rejection of  
9 bids;

10 (x) notify the utility of contract counterparties  
11 and contract specifics; and

12 (xi) administer related contingency procurement  
13 events.

14 (2) The procurement monitor, who shall be retained by  
15 the Commission, shall:

16 (i) monitor interactions among the procurement  
17 administrator, suppliers, and utility;

18 (ii) monitor and report to the Commission on the  
19 progress of the procurement process;

20 (iii) provide an independent confidential report  
21 to the Commission regarding the results of the  
22 procurement event;

23 (iv) assess compliance with the procurement plans  
24 approved by the Commission for each utility that on  
25 December 31, 2005 provided electric service to a least  
26 100,000 customers in Illinois;

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

4 (vi) provide expert advice to the Commission and  
5 consult with the procurement administrator regarding  
6 issues related to procurement process design, rules,  
7 protocols, and policy-related matters; and

8 (vii) consult with the procurement administrator  
9 regarding the development and use of benchmark  
10 criteria, standard form contracts, credit policies,  
11 and bid documents.

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

14 (1) Beginning in 2008, each Illinois utility procuring  
15 power pursuant to this Section shall annually provide a  
16 range of load forecasts to the Illinois Power Agency by  
17 July 15 of each year, or such other date as may be required  
18 by the Commission or Agency. The load forecasts shall cover  
19 the 5-year procurement planning period for the next  
20 procurement plan and shall include hourly data  
21 representing a high-load, low-load and expected-load  
22 scenario for the load of the eligible retail customers. For  
23 procurement planning periods beginning on and after June 1,  
24 2012, the electric utility shall provide a range of annual  
25 forecasts for the first through twentieth years of the  
26 procurement planning period of the total annual

1        kilowatthour usage of eligible retail customers and the  
2        total annual kilowatthour usage of delivery services  
3        non-eligible retail customers in its service area. The  
4        utility shall provide supporting data and assumptions for  
5        each of the scenarios.

6            (2) Beginning in 2008, the Illinois Power Agency shall  
7        prepare a procurement plan by August 15th of each year, or  
8        such other date as may be required by the Commission. The  
9        procurement plan shall identify the portfolio of  
10       demand-response and power and energy products to be  
11       procured. Cost-effective demand-response measures shall be  
12       procured as set forth in item (iii) of subsection (b) of  
13       this Section. Copies of the procurement plan shall be  
14       posted and made publicly available on the Agency's and  
15       Commission's websites, and copies shall also be provided to  
16       each affected electric utility. An affected utility shall  
17       have 30 days following the date of posting to provide  
18       comment to the Agency on the procurement plan. Other  
19       interested entities also may comment on the procurement  
20       plan. All comments submitted to the Agency shall be  
21       specific, supported by data or other detailed analyses,  
22       and, if objecting to all or a portion of the procurement  
23       plan, accompanied by specific alternative wording or  
24       proposals. All comments shall be posted on the Agency's and  
25       Commission's websites. During this 30-day comment period,  
26       the Agency shall hold at least one public hearing within

1 each utility's service area for the purpose of receiving  
2 public comment on the procurement plan. Within 14 days  
3 following the end of the 30-day review period, the Agency  
4 shall revise the procurement plan as necessary based on the  
5 comments received and file the procurement plan with the  
6 Commission and post the procurement plan on the websites.

7 (3) Within 5 days after the filing of the procurement  
8 plan, any person objecting to the procurement plan shall  
9 file an objection with the Commission. Within 10 days after  
10 the filing, the Commission shall determine whether a  
11 hearing is necessary. The Commission shall enter its order  
12 confirming or modifying the procurement plan within 90 days  
13 after the filing of the procurement plan by the Illinois  
14 Power Agency.

15 (4) The Commission shall approve the procurement plan,  
16 including expressly the forecast used in the procurement  
17 plan, if the Commission determines that it will ensure  
18 adequate, reliable, affordable, efficient, and  
19 environmentally sustainable electric service at the lowest  
20 total cost over time, taking into account any benefits of  
21 price stability.

22 (e) The procurement process shall include each of the  
23 following components:

24 (1) Solicitation, pre-qualification, and registration  
25 of bidders. The procurement administrator shall  
26 disseminate information to potential bidders to promote a

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

17 (2) Standard contract forms and credit terms and  
18 instruments. The procurement administrator, in  
19 consultation with the utilities, the Commission, and other  
20 interested parties and subject to Commission oversight,  
21 shall develop and provide standard contract forms for the  
22 supplier contracts that meet generally accepted industry  
23 practices. Standard credit terms and instruments that meet  
24 generally accepted industry practices shall be similarly  
25 developed. The procurement administrator shall make  
26 available to the Commission all written comments it

1 receives on the contract forms, credit terms, or  
2 instruments. If the procurement administrator cannot reach  
3 agreement with the applicable electric utility as to the  
4 contract terms and conditions, the procurement  
5 administrator must notify the Commission of any disputed  
6 terms and the Commission shall resolve the dispute. The  
7 terms of the contracts shall not be subject to negotiation  
8 by winning bidders, and the bidders must agree to the terms  
9 of the contract in advance so that winning bids are  
10 selected solely on the basis of price.

11 (3) Establishment of a market-based price benchmark.  
12 As part of the development of the procurement process, the  
13 procurement administrator, in consultation with the  
14 Commission staff, Agency staff, and the procurement  
15 monitor, shall establish benchmarks for evaluating the  
16 final prices in the contracts for each of the products that  
17 will be procured through the procurement process. The  
18 benchmarks shall be based on price data for similar  
19 products for the same delivery period and same delivery  
20 hub, or other delivery hubs after adjusting for that  
21 difference. The price benchmarks may also be adjusted to  
22 take into account differences between the information  
23 reflected in the underlying data sources and the specific  
24 products and procurement process being used to procure  
25 power for the Illinois utilities. The benchmarks shall be  
26 confidential but shall be provided to, and will be subject

1 to Commission review and approval, prior to a procurement  
2 event.

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

11 (5) A plan for implementing contingencies in the event  
12 of supplier default or failure of the procurement process  
13 to fully meet the expected load requirement due to  
14 insufficient supplier participation, Commission rejection  
15 of results, or any other cause.

16 (i) Event of supplier default: In the event of  
17 supplier default, the utility shall review the  
18 contract of the defaulting supplier to determine if the  
19 amount of supply is 200 megawatts or greater, and if  
20 there are more than 60 days remaining of the contract  
21 term. If both of these conditions are met, and the  
22 default results in termination of the contract, the  
23 utility shall immediately notify the Illinois Power  
24 Agency that a request for proposals must be issued to  
25 procure replacement power, and the procurement  
26 administrator shall run an additional procurement

1 event. If the contracted supply of the defaulting  
2 supplier is less than 200 megawatts or there are less  
3 than 60 days remaining of the contract term, the  
4 utility shall procure power and energy from the  
5 applicable regional transmission organization market,  
6 including ancillary services, capacity, and day-ahead  
7 or real time energy, or both, for the duration of the  
8 contract term to replace the contracted supply;  
9 provided, however, that if a needed product is not  
10 available through the regional transmission  
11 organization market it shall be purchased from the  
12 wholesale market.

13 (ii) Failure of the procurement process to fully  
14 meet the expected load requirement: If the procurement  
15 process fails to fully meet the expected load  
16 requirement due to insufficient supplier participation  
17 or due to a Commission rejection of the procurement  
18 results, the procurement administrator, the  
19 procurement monitor, and the Commission staff shall  
20 meet within 10 days to analyze potential causes of low  
21 supplier interest or causes for the Commission  
22 decision. If changes are identified that would likely  
23 result in increased supplier participation, or that  
24 would address concerns causing the Commission to  
25 reject the results of the prior procurement event, the  
26 procurement administrator may implement those changes



1 and rerun the request for proposals process according  
2 to a schedule determined by those parties and  
3 consistent with Section 1-75 of the Illinois Power  
4 Agency Act and this subsection. In any event, a new  
5 request for proposals process shall be implemented by  
6 the procurement administrator within 90 days after the  
7 determination that the procurement process has failed  
8 to fully meet the expected load requirement.

9 (iii) In all cases where there is insufficient  
10 supply provided under contracts awarded through the  
11 procurement process to fully meet the electric  
12 utility's load requirement, the utility shall meet the  
13 load requirement by procuring power and energy from the  
14 applicable regional transmission organization market,  
15 including ancillary services, capacity, and day-ahead  
16 or real time energy or both; provided, however, that if  
17 a needed product is not available through the regional  
18 transmission organization market it shall be purchased  
19 from the wholesale market.

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

23 (f) Within 2 business days after opening the sealed bids,  
24 the procurement administrator shall submit a confidential  
25 report to the Commission. The report shall contain the results  
26 of the bidding for each of the products along with the

1 procurement administrator's recommendation for the acceptance  
2 and rejection of bids based on the price benchmark criteria and  
3 other factors observed in the process. For procurements  
4 applicable to periods beginning on and after June 1, 2012, the  
5 report shall also include, with respect to each recommended  
6 purchase of bundled renewable energy resources as defined in  
7 Section 1-10 of the Illinois Power Agency Act, an allocation of  
8 the price between the price of the electricity generated by  
9 renewable energy resources and the price of the associated  
10 renewable energy credits. The procurement monitor also shall  
11 submit a confidential report to the Commission within 2  
12 business days after opening the sealed bids. The report shall  
13 contain the procurement monitor's assessment of bidder  
14 behavior in the process as well as an assessment of the  
15 procurement administrator's compliance with the procurement  
16 process and rules. The Commission shall review the confidential  
17 reports submitted by the procurement administrator and  
18 procurement monitor, and shall accept or reject the  
19 recommendations of the procurement administrator, including  
20 the recommended allocation of the price of each purchase of  
21 bundled renewable energy resources between the price of the  
22 electricity and the price of the associated renewable energy  
23 credits, within 2 business days after receipt of the reports.

24 (g) Within 3 business days after the Commission decision  
25 approving the results of a procurement event, the utility shall  
26 enter into binding contractual arrangements with the winning

1 suppliers using the standard form contracts; except that the  
2 utility shall not be required either directly or indirectly to  
3 execute the contracts if a tariff that is consistent with  
4 subsection (l) of this Section has not been approved and placed  
5 into effect for that utility.

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

23 (i) Within 2 business days after a Commission decision  
24 approving the results of a procurement event or such other date  
25 as may be required by the Commission from time to time, the  
26 utility shall file for informational purposes with the

1 Commission its actual or estimated retail supply charges, as  
2 applicable, by customer supply group reflecting the costs  
3 associated with the procurement and computed in accordance with  
4 the tariffs filed pursuant to subsection (l) of this Section  
5 and approved by the Commission.

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

25 (i) Within 14 days following filing of the initial  
26 procurement plan, any person may file a detailed objection

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

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

22 (k) In order to promote price stability for residential and  
23 small commercial customers during the transition to  
24 competition in Illinois, and notwithstanding any other  
25 provision of this Act, each electric utility subject to this  
26 Section shall enter into one or more multi-year financial swap

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

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

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

1 pass-through tariffs that are filed and approved pursuant to  
2 this Section shall not be subject to review under, or in any  
3 way limited by, Section 16-111(i) of this Act. Beginning June  
4 1, 2012, the costs incurred by the electric utility to purchase  
5 renewable energy credits in accordance with subsection (c) of  
6 Section 1-75 of the Illinois Power Agency Act shall be  
7 recovered through the electric utility's tariffed charges for  
8 delivery services pursuant to Section 16-108 of this Act and  
9 shall not be recovered through the electric utility's tariffed  
10 charges for electric power and energy supply to its eligible  
11 retail customers.

12 (m) The Commission has the authority to adopt rules to  
13 carry out the provisions of this Section. For the public  
14 interest, safety, and welfare, the Commission also has  
15 authority to adopt rules to carry out the provisions of this  
16 Section on an emergency basis immediately following the  
17 effective date of this amendatory Act.

18 (n) Notwithstanding any other provision of this Act, any  
19 affiliated electric utilities that submit a single procurement  
20 plan covering their combined needs may procure for those  
21 combined needs in conjunction with that plan, and may enter  
22 jointly into power supply contracts, purchases, and other  
23 procurement arrangements, and allocate capacity and energy and  
24 cost responsibility therefor among themselves in proportion to  
25 their requirements.

26 (o) On or before June 1 of each year, the Commission shall



1 hold an informal hearing for the purpose of receiving comments  
2 on the prior year's procurement process and any recommendations  
3 for change.

4 (p) An electric utility subject to this Section may propose  
5 to invest, lease, own, or operate an electric generation  
6 facility as part of its procurement plan, provided the utility  
7 demonstrates that such facility is the least-cost option to  
8 provide electric service to eligible retail customers. If the  
9 facility is shown to be the least-cost option and is included  
10 in a procurement plan prepared in accordance with Section 1-75  
11 of the Illinois Power Agency Act and this Section, then the  
12 electric utility shall make a filing pursuant to Section 8-406  
13 of the Act, and may request of the Commission any statutory  
14 relief required thereunder. If the Commission grants all of the  
15 necessary approvals for the proposed facility, such supply  
16 shall thereafter be considered as a pre-existing contract under  
17 subsection (b) of this Section. The Commission shall in any  
18 order approving a proposal under this subsection specify how  
19 the utility will recover the prudently incurred costs of  
20 investing in, leasing, owning, or operating such generation  
21 facility through just and reasonable rates charged to eligible  
22 retail customers. Cost recovery for facilities included in the  
23 utility's procurement plan pursuant to this subsection shall  
24 not be subject to review under or in any way limited by the  
25 provisions of Section 16-111(i) of this Act. Nothing in this  
26 Section is intended to prohibit a utility from filing for a

1 fuel adjustment clause as is otherwise permitted under Section  
2 9-220 of this Act.

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

4 (220 ILCS 5/16-115D)

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

8 (a) Until May 31, 2012, an ~~An~~ alternative retail electric  
9 supplier shall be responsible for procuring cost-effective  
10 renewable energy resources as required under item (5) of  
11 subsection (d) of Section 16-115 of this Act as outlined  
12 herein:

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

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

25 (3) The quantity of renewable energy resources shall be

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

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

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

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

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

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

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

1 of this Section.

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

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

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

10 (c) Use of renewable energy credits.

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

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

1 sold, or otherwise transferred the credit.

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

11 (d) Alternative compliance payments.

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

1 connection with electric service, as described in item (2)  
2 of subsection (c) of Section 1-75 of the Illinois Power  
3 Agency Act for the compliance period, and as established in  
4 the approved procurement plan. Following each procurement  
5 event through which renewable energy resources are  
6 purchased for one or more of these utilities for the  
7 compliance period, the Commission shall establish and post  
8 on its website estimates of the alternative compliance  
9 payment rates, expressed on a per kilowatt-hour basis, that  
10 shall apply for that compliance period. Posting of the  
11 estimates shall occur no later than 10 business days  
12 following the procurement event, however, the Commission  
13 shall not be required to establish and post such estimates  
14 more often than once per calendar month. By July 1 of each  
15 year, the Commission shall establish and post on its  
16 website the actual alternative compliance payment rates  
17 for the preceding compliance year. For compliance years  
18 beginning prior to June 1, 2014, each alternative  
19 compliance payment rate shall be equal to the total amount  
20 of dollars that the utility contracted to spend on  
21 renewable resources, excepting the additional incremental  
22 cost attributable to solar resources, for the compliance  
23 period divided by the forecasted load of eligible retail  
24 customers, at the customers' meters, as previously  
25 established in the Commission-approved procurement plan  
26 for that compliance year. For compliance years commencing

1 on or after June 1, 2014, each alternative compliance  
2 payment rate shall be equal to the total amount of dollars  
3 that the utility contracted to spend on all renewable  
4 resources for the compliance period divided by the  
5 forecasted load of eligible retail customers, at the  
6 customers' meters, as previously established in the  
7 Commission-approved procurement plan for that compliance  
8 year. The actual alternative compliance payment rates may  
9 not exceed the maximum alternative compliance payment  
10 rates established for the compliance period. For purposes  
11 of this subsection (d), the term "eligible retail  
12 customers" has the same meaning as found in Section  
13 16-111.5 of this Act.

14 (2) In any given compliance year, an alternative retail  
15 electric supplier may elect to use alternative compliance  
16 payments to comply with all or a part of the applicable  
17 renewable portfolio standard. In the event that an  
18 alternative retail electric supplier elects to make  
19 alternative compliance payments to comply with all or a  
20 part of the applicable renewable portfolio standard, such  
21 payments shall be made by September 1, 2010 for the period  
22 of June 1, 2009 to May 1, 2010 and by September 1 of each  
23 year thereafter for the subsequent compliance period, in  
24 the manner and form as determined by the Commission. Any  
25 election by an alternative retail electric supplier to use  
26 alternative compliance payments is subject to review by the



1 Commission under subsection (e) of this Section.

2 (3) An alternative retail electric supplier's  
3 alternative compliance payments shall be computed  
4 separately for each electric utility's service territory  
5 within which the alternative retail electric supplier  
6 provided retail service during the compliance period,  
7 provided that the electric utility was subject to  
8 subsection (c) of Section 1-75 of the Illinois Power Agency  
9 Act. For each service territory, the alternative retail  
10 electric supplier's alternative compliance payment shall  
11 be equal to (i) the actual alternative compliance payment  
12 rate established in item (1) of this subsection (d),  
13 multiplied by (ii) the actual amount of metered electricity  
14 delivered by the alternative retail electric supplier to  
15 retail customers within the service territory during the  
16 compliance period, multiplied by (iii) the result of one  
17 minus the ratios of the quantity of renewable energy  
18 resources used by the alternative retail electric supplier  
19 to comply with the requirements of this Section within the  
20 service territory to the product of the percentage of  
21 renewable energy resources required under item (3) of  
22 subsection (a) of this Section and the actual amount of  
23 metered electricity delivered by the alternative retail  
24 electric supplier to retail customers within the service  
25 territory during the compliance period.

26 (4) All alternative compliance payments by alternative

1 retail electric suppliers shall be deposited in the  
2 Illinois Power Agency Renewable Energy Resources Fund and  
3 used to purchase renewable energy credits, in accordance  
4 with Section 1-56 of the Illinois Power Agency Act.

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

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

1 alternative retail electric supplier may file commercially or  
2 financially sensitive information or trade secrets with the  
3 Commission as provided under the rules of the Commission. To be  
4 filed confidentially, the information shall be accompanied by  
5 an affidavit that sets forth both the reasons for the  
6 confidentiality and a public synopsis of the information.

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

16 (1) immediately comply with this Section; and

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

25 If an alternative retail electric supplier fails to comply  
26 with the renewable energy resource portfolio requirement in

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

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

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

24 If any such utility fails to comply with the renewable  
25 energy resource portfolio requirement in this Section more than  
26 once in a 5-year period, then the Commission shall order the

1 utility to cease all sales outside of the utility's service  
2 territory for a period of at least one year.

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

17 (i) The obligations of alternative electric suppliers and  
18 electric utilities operating outside their service territories  
19 to procure renewable energy resources, make alternative  
20 compliance payments, and file annual reports, and the  
21 obligations of the Commission to determine and post alternative  
22 compliance payment rates, shall terminate effective May 31,  
23 2012, provided that alternative electric suppliers and  
24 electric utilities operating outside their service territories  
25 shall be obligated to make all alternative compliance payments  
26 that they were obligated to pay for periods through and

1 including May 31, 2012, but were not paid as of that date. The  
2 Commission shall continue to enforce the payment of unpaid  
3 alternative compliance payments after May 31, 2012 in  
4 accordance with subsections (f) and (g) of this Section. All  
5 alternative compliance payments made after May 31, 2012 shall  
6 be deposited in the Illinois Power Agency Renewable Energy  
7 Resources Fund and used to purchase renewable energy credits,  
8 in accordance with Section 1-56 of the Illinois Power Agency  
9 Act.

10 (Source: P.A. 96-33, eff. 7-10-09; 96-159, eff. 8-10-09;  
11 96-1437, eff. 8-17-10.)

12 Section 900. Severability. The provisions of this Act are  
13 severable under Section 1.31 of the Statute on Statutes.

14 Section 999. Effective date. This Act takes effect upon  
15 becoming law.

1 INDEX

2 Statutes amended in order of appearance

3 20 ILCS 3855/1-10

4 20 ILCS 3855/1-20

5 20 ILCS 3855/1-56

6 20 ILCS 3855/1-75

7 220 ILCS 5/16-108

8 220 ILCS 5/16-111.5

9 220 ILCS 5/16-115D