



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB3974

Introduced 1/11/2012, by Rep. Elaine Nekritz

SYNOPSIS AS INTRODUCED:

220 ILCS 5/16-111.5

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

LRB097 16496 CEL 61664 b

1 AN ACT concerning regulation.

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

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

6 (220 ILCS 5/16-111.5)

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

8 (a) An electric utility that on December 31, 2005 served at
9 least 100,000 customers in Illinois shall procure power, energy
10 efficiency products, and energy for its eligible retail
11 customers in accordance with the applicable provisions set
12 forth in Section 1-75 of the Illinois Power Agency Act and this
13 Section. A small multi-jurisdictional electric utility that on
14 December 31, 2005 served less than 100,000 customers in
15 Illinois may elect to procure power and energy for all or a
16 portion of its eligible Illinois retail customers in accordance
17 with the applicable provisions set forth in this Section and
18 Section 1-75 of the Illinois Power Agency Act. This Section
19 shall not apply to a small multi-jurisdictional utility until
20 such time as a small multi-jurisdictional utility requests the
21 Illinois Power Agency to prepare a procurement plan for its
22 eligible retail customers. "Eligible retail customers" for the
23 purposes of this Section means those retail customers that

1 purchase power and energy from the electric utility under
2 fixed-price bundled service tariffs, other than those retail
3 customers whose service is declared or deemed competitive under
4 Section 16-113 and those other customer groups specified in
5 this Section, including self-generating customers, customers
6 electing hourly pricing, or those customers who are otherwise
7 ineligible for fixed-price bundled tariff service. Those
8 customers that are excluded from the definition of "eligible
9 retail customers" shall not be included in the procurement plan
10 load requirements, and the utility shall procure any supply
11 requirements, including capacity, ancillary services, energy
12 efficiency products, and hourly priced energy, in the
13 applicable markets as needed to serve those customers, provided
14 that the utility may include in its procurement plan load
15 requirements for the load that is associated with those retail
16 customers whose service has been declared or deemed competitive
17 pursuant to Section 16-113 of this Act to the extent that those
18 customers are purchasing power and energy during one of the
19 transition periods identified in subsection (b) of Section
20 16-113 of this Act.

21 (b) A procurement plan shall be prepared for each electric
22 utility consistent with the applicable requirements of the
23 Illinois Power Agency Act and this Section. For purposes of
24 this Section, Illinois electric utilities that are affiliated
25 by virtue of a common parent company are considered to be a
26 single electric utility. Small multi-jurisdictional utilities

1 may request a procurement plan for a portion of or all of its
2 Illinois load. Each procurement plan shall analyze the
3 projected balance of supply and demand for eligible retail
4 customers over a 5-year period with the first planning year
5 beginning on June 1 of the year following the year in which the
6 plan is filed. The plan shall specifically identify the
7 wholesale products to be procured following plan approval, and
8 shall follow all the requirements set forth in the Public
9 Utilities Act and all applicable State and federal laws,
10 statutes, rules, or regulations, as well as Commission orders.
11 Nothing in this Section precludes consideration of contracts
12 longer than 5 years and related forecast data. Unless specified
13 otherwise in this Section, in the procurement plan or in the
14 implementing tariff, any procurement occurring in accordance
15 with this plan shall be competitively bid through a request for
16 proposals process. Approval and implementation of the
17 procurement plan shall be subject to review and approval by the
18 Commission according to the provisions set forth in this
19 Section. A procurement plan shall include each of the following
20 components:

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

22 (i) multi-year historical analysis of hourly
23 loads;

24 (ii) switching trends and competitive retail
25 market analysis;

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

1 and

2 (iv) growth forecasts by customer class.

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

5 (i) the impact of demand response programs and
6 energy efficiency programs, both current and
7 projected; for small multi-jurisdictional utilities,
8 the impact of demand response and energy efficiency
9 programs approved pursuant to Section 8-408 of this
10 Act, both current and projected; and

11 (ii) supply side needs that are projected to be
12 offset by purchases of renewable energy resources, if
13 any.

14 (3) A plan for meeting the expected load requirements
15 that will not be met through preexisting contracts. This
16 plan shall include:

17 (i) definitions of the different Illinois retail
18 customer classes for which supply is being purchased;

19 (ii) the proposed mix of demand-response products
20 for which contracts will be executed during the next
21 year. For small multi-jurisdictional electric
22 utilities that on December 31, 2005 served fewer than
23 100,000 customers in Illinois, these shall be defined
24 as demand-response products offered in an energy
25 efficiency plan approved pursuant to Section 8-408 of
26 this Act. The cost-effective demand-response measures

1 shall be procured whenever the cost is lower than
2 procuring comparable capacity products, provided that
3 such products shall:

4 (A) be procured by a demand-response provider
5 from eligible retail customers;

6 (B) at least satisfy the demand-response
7 requirements of the regional transmission
8 organization market in which the utility's service
9 territory is located, including, but not limited
10 to, any applicable capacity or dispatch
11 requirements;

12 (C) provide for customers' participation in
13 the stream of benefits produced by the
14 demand-response products;

15 (D) provide for reimbursement by the
16 demand-response provider of the utility for any
17 costs incurred as a result of the failure of the
18 supplier of such products to perform its
19 obligations thereunder; and

20 (E) meet the same credit requirements as apply
21 to suppliers of capacity, in the applicable
22 regional transmission organization market;

23 (iii) the proposed energy efficiency products for
24 which contracts will be executed during the next year.
25 The cost effective energy efficiency measures shall be
26 procured whenever the cost is lower than procuring

1 comparable capacity products, supply products, or
2 both, provided that the energy efficiency products
3 shall:

4 (A) be procured by a energy efficiency
5 provider from eligible retail customers;

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

9 (C) provide for reimbursement by the energy
10 efficiency provider of the utility for any costs
11 incurred as a result of the failure of the supplier
12 of such products to perform its obligations
13 thereunder; and

14 (D) meet the same credit requirements as apply
15 to suppliers of capacity, in the applicable
16 regional transmission organization market;

17 (iv) ~~(iii)~~ monthly forecasted system supply
18 requirements, including expected minimum, maximum, and
19 average values for the planning period;

20 (v) ~~(iv)~~ the proposed mix and selection of standard
21 wholesale products for which contracts will be
22 executed during the next year, separately or in
23 combination, to meet that portion of its load
24 requirements not met through pre-existing contracts,
25 including but not limited to monthly 5 x 16 peak period
26 block energy, monthly off-peak wrap energy, monthly 7 x

1 24 energy, annual 5 x 16 energy, annual off-peak wrap
2 energy, annual 7 x 24 energy, monthly capacity, annual
3 capacity, peak load capacity obligations, capacity
4 purchase plan, energy efficiency products, and
5 ancillary services;

6 (vi) ~~(v)~~ proposed term structures for each
7 wholesale product type included in the proposed
8 procurement plan portfolio of products; and

9 (vii) ~~(vi)~~ an assessment of the price risk, load
10 uncertainty, and other factors that are associated
11 with the proposed procurement plan; this assessment,
12 to the extent possible, shall include an analysis of
13 the following factors: contract terms, time frames for
14 securing products or services, fuel costs, weather
15 patterns, transmission costs, market conditions, and
16 the governmental regulatory environment; the proposed
17 procurement plan shall also identify alternatives for
18 those portfolio measures that are identified as having
19 significant price risk.

20 (4) Proposed procedures for balancing loads. The
21 procurement plan shall include, for load requirements
22 included in the procurement plan, the process for (i)
23 hourly balancing of supply and demand and (ii) the criteria
24 for portfolio re-balancing in the event of significant
25 shifts in load.

26 (c) The procurement process set forth in Section 1-75 of

1 the Illinois Power Agency Act and subsection (e) of this
2 Section shall be administered by a procurement administrator
3 and monitored by a procurement monitor.

4 (1) The procurement administrator shall:

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

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

14 (iii) serve as the interface between the electric
15 utility and suppliers;

16 (iv) manage the bidder pre-qualification and
17 registration process;

18 (v) obtain the electric utilities' agreement to
19 the final form of all supply contracts and credit
20 collateral agreements;

21 (vi) administer the request for proposals process;

22 (vii) have the discretion to negotiate to
23 determine whether bidders are willing to lower the
24 price of bids that meet the benchmarks approved by the
25 Commission; any post-bid negotiations with bidders
26 shall be limited to price only and shall be completed

1 within 24 hours after opening the sealed bids and shall
2 be conducted in a fair and unbiased manner; in
3 conducting the negotiations, there shall be no
4 disclosure of any information derived from proposals
5 submitted by competing bidders; if information is
6 disclosed to any bidder, it shall be provided to all
7 competing bidders;

8 (viii) maintain confidentiality of supplier and
9 bidding information in a manner consistent with all
10 applicable laws, rules, regulations, and tariffs;

11 (ix) submit a confidential report to the
12 Commission recommending acceptance or rejection of
13 bids;

14 (x) notify the utility of contract counterparties
15 and contract specifics; and

16 (xi) administer related contingency procurement
17 events.

18 (2) The procurement monitor, who shall be retained by
19 the Commission, shall:

20 (i) monitor interactions among the procurement
21 administrator, suppliers, and utility;

22 (ii) monitor and report to the Commission on the
23 progress of the procurement process;

24 (iii) provide an independent confidential report
25 to the Commission regarding the results of the
26 procurement event;

1 (iv) assess compliance with the procurement plans
2 approved by the Commission for each utility that on
3 December 31, 2005 provided electric service to a least
4 100,000 customers in Illinois and for each small
5 multi-jurisdictional utility that on December 31, 2005
6 served less than 100,000 customers in Illinois;

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

10 (vi) provide expert advice to the Commission and
11 consult with the procurement administrator regarding
12 issues related to procurement process design, rules,
13 protocols, and policy-related matters; and

14 (vii) consult with the procurement administrator
15 regarding the development and use of benchmark
16 criteria, standard form contracts, credit policies,
17 and bid documents.

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

20 (1) Beginning in 2008, each Illinois utility procuring
21 power pursuant to this Section shall annually provide a
22 range of load forecasts to the Illinois Power Agency by
23 July 15 of each year, or such other date as may be required
24 by the Commission or Agency. The load forecasts shall cover
25 the 5-year procurement planning period for the next
26 procurement plan and shall include hourly data

1 representing a high-load, low-load and expected-load
2 scenario for the load of the eligible retail customers. The
3 utility shall provide supporting data and assumptions for
4 each of the scenarios.

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

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

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

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

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

25 (1) Solicitation, pre-qualification, and registration
26 of bidders. The procurement administrator shall

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

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

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

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

1 confidential but shall be provided to, and will be subject
2 to Commission review and approval, prior to a procurement
3 event.

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

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

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

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

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

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

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

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

25 (f) Within 2 business days after opening the sealed bids,
26 the procurement administrator shall submit a confidential

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

16 (g) Within 3 business days after the Commission decision
17 approving the results of a procurement event, the utility shall
18 enter into binding contractual arrangements with the winning
19 suppliers using the standard form contracts; except that the
20 utility shall not be required either directly or indirectly to
21 execute the contracts if a tariff that is consistent with
22 subsection (1) of this Section has not been approved and placed
23 into effect for that utility.

24 (h) The names of the successful bidders and the load
25 weighted average of the winning bid prices for each contract
26 type and for each contract term shall be made available to the

1 public at the time of Commission approval of a procurement
2 event. The Commission, the procurement monitor, the
3 procurement administrator, the Illinois Power Agency, and all
4 participants in the procurement process shall maintain the
5 confidentiality of all other supplier and bidding information
6 in a manner consistent with all applicable laws, rules,
7 regulations, and tariffs. Confidential information, including
8 the confidential reports submitted by the procurement
9 administrator and procurement monitor pursuant to subsection
10 (f) of this Section, shall not be made publicly available and
11 shall not be discoverable by any party in any proceeding,
12 absent a compelling demonstration of need, nor shall those
13 reports be admissible in any proceeding other than one for law
14 enforcement purposes.

15 (i) Within 2 business days after a Commission decision
16 approving the results of a procurement event or such other date
17 as may be required by the Commission from time to time, the
18 utility shall file for informational purposes with the
19 Commission its actual or estimated retail supply charges, as
20 applicable, by customer supply group reflecting the costs
21 associated with the procurement and computed in accordance with
22 the tariffs filed pursuant to subsection (l) of this Section
23 and approved by the Commission.

24 (j) Within 60 days following the effective date of this
25 amendatory Act, each electric utility that on December 31, 2005
26 provided electric service to at least 100,000 customers in

1 Illinois shall prepare and file with the Commission an initial
2 procurement plan, which shall conform in all material respects
3 to the requirements of the procurement plan set forth in
4 subsection (b); provided, however, that the Illinois Power
5 Agency Act shall not apply to the initial procurement plan
6 prepared pursuant to this subsection. The initial procurement
7 plan shall identify the portfolio of power and energy products
8 to be procured and delivered for the period June 2008 through
9 May 2009, and shall identify the proposed procurement
10 administrator, who shall have the same experience and expertise
11 as is required of a procurement administrator hired pursuant to
12 Section 1-75 of the Illinois Power Agency Act. Copies of the
13 procurement plan shall be posted and made publicly available on
14 the Commission's website. The initial procurement plan may
15 include contracts for renewable resources that extend beyond
16 May 2009.

17 (i) Within 14 days following filing of the initial
18 procurement plan, any person may file a detailed objection
19 with the Commission contesting the procurement plan
20 submitted by the electric utility. All objections to the
21 electric utility's plan shall be specific, supported by
22 data or other detailed analyses. The electric utility may
23 file a response to any objections to its procurement plan
24 within 7 days after the date objections are due to be
25 filed. Within 7 days after the date the utility's response
26 is due, the Commission shall determine whether a hearing is

1 necessary. If it determines that a hearing is necessary, it
2 shall require the hearing to be completed and issue an
3 order on the procurement plan within 60 days after the
4 filing of the procurement plan by the electric utility.

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

14 (k) In order to promote price stability for residential and
15 small commercial customers during the transition to
16 competition in Illinois, and notwithstanding any other
17 provision of this Act, each electric utility subject to this
18 Section shall enter into one or more multi-year financial swap
19 contracts that become effective on the effective date of this
20 amendatory Act. These contracts may be executed with generators
21 and power marketers, including affiliated interests of the
22 electric utility. These contracts shall be for a term of no
23 more than 5 years and shall, for each respective utility or for
24 any Illinois electric utilities that are affiliated by virtue
25 of a common parent company and that are thereby considered a
26 single electric utility for purposes of this subsection (k),

1 not exceed in the aggregate 3,000 megawatts for any hour of the
2 year. The contracts shall be financial contracts and not energy
3 sales contracts. The contracts shall be executed as
4 transactions under a negotiated master agreement based on the
5 form of master agreement for financial swap contracts sponsored
6 by the International Swaps and Derivatives Association, Inc.
7 and shall be considered pre-existing contracts in the
8 utilities' procurement plans for residential and small
9 commercial customers. Costs incurred pursuant to a contract
10 authorized by this subsection (k) shall be deemed prudently
11 incurred and reasonable in amount and the electric utility
12 shall be entitled to full cost recovery pursuant to the tariffs
13 filed with the Commission.

14 (k-5) In order to promote price stability for residential
15 and small commercial customers during the infrastructure
16 investment program described in subsection (b) of Section
17 16-108.5 of this Act, and notwithstanding any other provision
18 of this Act or the Illinois Power Agency Act, for each electric
19 utility that serves more than one million retail customers in
20 Illinois, the Illinois Power Agency shall conduct a procurement
21 event within 120 days after October 26, 2011 (the effective
22 date of Public Act 97-616) ~~this amendatory Act of the 97th~~
23 ~~General Assembly~~ and may procure contracts for energy and
24 renewable energy credits for the period June 1, 2013 through
25 December 31, 2017 that satisfy the requirements of this
26 subsection (k-5), including the benchmarks described in this

1 subsection. These contracts shall be entered into as the result
2 of a competitive procurement event, and, to the extent that any
3 provisions of this Section or the Illinois Power Agency Act do
4 not conflict with this subsection (k-5), such provisions shall
5 apply to the procurement event. The energy contracts shall be
6 for 24 hour by 7 day supply over a term that runs from the first
7 delivery year through December 31, 2017. For a utility that
8 serves over 2 million customers, the energy contracts shall be
9 multi-year with pricing escalating at 2.5% per annum. The
10 energy contracts may be designed as financial swaps or may
11 require physical delivery.

12 Within 30 days of October 26, 2011 (the effective date of
13 Public Act 97-616) ~~this amendatory Act of the 97th General~~
14 ~~Assembly~~, each such utility shall submit to the Agency updated
15 load forecasts for the period June 1, 2013 through December 31,
16 2017. The megawatt volume of the contracts shall be based on
17 the updated load forecasts of the minimum monthly on-peak or
18 off-peak average load requirements shown in the forecasts,
19 taking into account any existing energy contracts in effect as
20 well as the expected migration of the utility's customers to
21 alternative retail electric suppliers. The renewable energy
22 credit volume shall be based on the number of credits that
23 would satisfy the requirements of subsection (c) of Section
24 1-75 of the Illinois Power Agency Act, subject to the rate
25 impact caps and other provisions of subsection (c) of Section
26 1-75 of the Illinois Power Agency Act. The evaluation of

1 contract bids in the competitive procurement events for energy
2 and for renewable energy credits shall incorporate price
3 benchmarks set collaboratively by the Agency, the procurement
4 administrator, the staff of the Commission, and the procurement
5 monitor. If the contracts are swap contracts, then they shall
6 be executed as transactions under a negotiated master agreement
7 based on the form of master agreement for financial swap
8 contracts sponsored by the International Swaps and Derivatives
9 Association, Inc. Costs incurred pursuant to a contract
10 authorized by this subsection (k-5) shall be deemed prudently
11 incurred and reasonable in amount and the electric utility
12 shall be entitled to full cost recovery pursuant to the tariffs
13 filed with the Commission.

14 The cost of administering the procurement event described
15 in this subsection (k-5) shall be paid by the winning supplier
16 or suppliers to the procurement administrator through a
17 supplier fee. In the event that there is no winning supplier
18 for a particular utility, such utility will pay the procurement
19 administrator for the costs associated with the procurement
20 event, and those costs shall not be a recoverable expense.
21 Nothing in this subsection (k-5) is intended to alter the
22 recovery of costs for any other procurement event.

23 (1) An electric utility shall recover its costs incurred
24 under this Section, including, but not limited to, the costs of
25 procuring power, energy efficiency products, and energy
26 demand-response resources under this Section. The utility

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

1 to December 31, 2006. All such costs shall be deemed to have
2 been prudently incurred. The pass-through tariffs that are
3 filed and approved pursuant to this Section shall not be
4 subject to review under, or in any way limited by, Section
5 16-111(i) of this Act.

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

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

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

24 (p) An electric utility subject to this Section may propose
25 to invest, lease, own, or operate an electric generation
26 facility as part of its procurement plan, provided the utility

1 demonstrates that such facility is the least-cost option to
2 provide electric service to eligible retail customers. If the
3 facility is shown to be the least-cost option and is included
4 in a procurement plan prepared in accordance with Section 1-75
5 of the Illinois Power Agency Act and this Section, then the
6 electric utility shall make a filing pursuant to Section 8-406
7 of this Act, and may request of the Commission any statutory
8 relief required thereunder. If the Commission grants all of the
9 necessary approvals for the proposed facility, such supply
10 shall thereafter be considered as a pre-existing contract under
11 subsection (b) of this Section. The Commission shall in any
12 order approving a proposal under this subsection specify how
13 the utility will recover the prudently incurred costs of
14 investing in, leasing, owning, or operating such generation
15 facility through just and reasonable rates charged to eligible
16 retail customers. Cost recovery for facilities included in the
17 utility's procurement plan pursuant to this subsection shall
18 not be subject to review under or in any way limited by the
19 provisions of Section 16-111(i) of this Act. Nothing in this
20 Section is intended to prohibit a utility from filing for a
21 fuel adjustment clause as is otherwise permitted under Section
22 9-220 of this Act.

23 (Source: P.A. 97-325, eff. 8-12-11; 97-616, eff. 10-26-11;
24 revised 11-10-11.)