

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 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 and by adding  
8 Sections 1-76, 1-76.5, 1-77.5, 1-79, and 1-81 as follows:

9 (20 ILCS 3855/1-10)

10 Sec. 1-10. Definitions.

11 "Agency" means the Illinois Power Agency.

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

20 "Authority" means the Illinois Finance Authority.

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

1 renewable energy credit.

2 "Clean coal electricity buyer" means (1) each electric  
3 utility and (2) each alternative electric retail supplier that  
4 is subject to the requirements of subsection (d) of Section  
5 1-75 of this Act and paragraph (5) of subsection (d) of Section  
6 16-115 of the Public Utilities Act.

7 "Clean coal energy" means all energy produced by the  
8 initial clean coal facility.

9 "Clean coal facility" means an electric generating  
10 facility that uses primarily coal as a feedstock and that  
11 captures and sequesters carbon dioxide emissions at the  
12 following levels: at least 50% of the total carbon dioxide  
13 emissions that the facility would otherwise emit if, at the  
14 time construction commences, the facility is scheduled to  
15 commence operation before 2016, at least 70% of the total  
16 carbon dioxide emissions that the facility would otherwise emit  
17 if, at the time construction commences, the facility is  
18 scheduled to commence operation during 2016 or 2017, and at  
19 least 90% of the total carbon dioxide emissions that the  
20 facility would otherwise emit if, at the time construction  
21 commences, the facility is scheduled to commence operation  
22 after 2017. The power block of the clean coal facility shall  
23 not exceed allowable emission rates for sulfur dioxide,  
24 nitrogen oxides, carbon monoxide, particulates and mercury for  
25 a natural gas-fired combined-cycle facility the same size as  
26 and in the same location as the clean coal facility at the time

1 the clean coal facility obtains an approved air permit. All  
2 coal used by a clean coal facility shall have high volatile  
3 bituminous rank and greater than 1.7 pounds of sulfur per  
4 million btu content, unless the clean coal facility does not  
5 use gasification technology and was operating as a conventional  
6 coal-fired electric generating facility on June 1, 2009 (the  
7 effective date of Public Act 95-1027).

8 "Clean coal fraction" means, with respect to a clean coal  
9 electricity buyer for a month, a fraction, the numerator of  
10 which is such clean coal electricity buyer's retail market  
11 sales of electricity (expressed in kilowatthours sold) in the  
12 State during the third month preceding the applicable month and  
13 the denominator of which is the total retail market sales of  
14 electricity (expressed in kilowatthours sold) in the State by  
15 all clean coal electricity buyers during such third month  
16 preceding the applicable month, as such fraction may be  
17 adjusted pursuant to subparagraph (E) of paragraph (2) of  
18 subsection (d) of Section 1-75 of this Act.

19 "Clean coal SNG brownfield facility" means a facility that  
20 (1) has commenced construction by July 1, 2015 on an urban  
21 brownfield site in a municipality with at least 1,000,000  
22 residents; (2) uses a gasification process to produce  
23 substitute natural gas; (3) uses coal as at least 50% of the  
24 total feedstock over the term of any sourcing agreement with a  
25 utility and the remainder of the feedstock may be either  
26 petroleum coke or coal, with all such coal having a high

1 bituminous rank and greater than 1.7 pounds of sulfur per  
2 million Btu content unless the facility reasonably determines  
3 that it is necessary to use additional petroleum coke to  
4 deliver additional consumer savings, in which case the facility  
5 shall use coal for at least 35% of the total feedstock over the  
6 term of any sourcing agreement; and (4) captures and sequesters  
7 at least 85% of the total carbon dioxide emissions that the  
8 facility would otherwise emit.

9 "Clean coal SNG facility" means a facility that uses a  
10 gasification process to produce substitute natural gas, that  
11 sequesters at least 90% of the total carbon dioxide emissions  
12 that the facility would otherwise emit, that uses at least 90%  
13 coal as a feedstock, with all such coal having a high  
14 bituminous rank and greater than 1.7 pounds of sulfur per  
15 million btu content, and that has a valid and effective permit  
16 to construct emission sources and air pollution control  
17 equipment and approval with respect to the federal regulations  
18 for Prevention of Significant Deterioration of Air Quality  
19 (PSD) for the plant pursuant to the federal Clean Air Act;  
20 provided, however, a clean coal SNG brownfield facility shall  
21 not be a clean coal SNG facility.

22 "Commission" means the Illinois Commerce Commission.

23 "Costs incurred in connection with the development and  
24 construction of a facility" means:

25 (1) the cost of acquisition of all real property,  
26 fixtures, and improvements in connection therewith and

1 equipment, personal property, and other property, rights,  
2 and easements acquired that are deemed necessary for the  
3 operation and maintenance of the facility;

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

6 (3) all origination, commitment, utilization,  
7 facility, placement, underwriting, syndication, credit  
8 enhancement, and rating agency fees;

9 (4) engineering, design, procurement, consulting,  
10 legal, accounting, title insurance, survey, appraisal,  
11 escrow, trustee, collateral agency, interest rate hedging,  
12 interest rate swap, capitalized interest, contingency, as  
13 required by lenders, and other financing costs, and other  
14 expenses for professional services; and

15 (5) the costs of plans, specifications, site study and  
16 investigation, installation, surveys, other Agency costs  
17 and estimates of costs, and other expenses necessary or  
18 incidental to determining the feasibility of any project,  
19 together with such other expenses as may be necessary or  
20 incidental to the financing, insuring, acquisition, and  
21 construction of a specific project and starting up,  
22 commissioning, and placing that project in operation.

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

25 "Delivery services non-eligible retail customers" means  
26 the retail customers in an electric utility's service area for

1 which the electric utility provides delivery services, but  
2 which are not eligible retail customers as defined in  
3 subsection (a) of Section 1-75 of this Act.

4 "Department" means the Department of Commerce and Economic  
5 Opportunity.

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

7 "Demand-response" means measures that decrease peak  
8 electricity demand or shift demand from peak to off-peak  
9 periods.

10 "Distributed renewable energy generation device" means a  
11 device that is:

12 (1) powered by wind, solar thermal energy,  
13 photovoltaic cells and panels, biodiesel, crops and  
14 untreated and unadulterated organic waste biomass, tree  
15 waste, and hydropower that does not involve new  
16 construction or significant expansion of hydropower dams;

17 (2) interconnected at the distribution system level of  
18 either an electric utility as defined in this Section, an  
19 alternative retail electric supplier as defined in Section  
20 16-102 of the Public Utilities Act, a municipal utility as  
21 defined in Section 3-105 of the Public Utilities Act, or a  
22 rural electric cooperative as defined in Section 3-119 of  
23 the Public Utilities Act;

24 (3) located on the customer side of the customer's  
25 electric meter and is generally used to offset that  
26 customer's electricity load; and

1           (4) limited in nameplate capacity to no more than 2,000  
2           kilowatts.

3           "Energy efficiency" means measures that reduce the amount  
4 of electricity or natural gas required to achieve a given end  
5 use.

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

8           "Excluded renewable energy resources contract costs" means  
9 the amount by which the costs of renewable energy resources,  
10 purchased for a particular year to meet the renewable energy  
11 resources standards of paragraph (1) of subsection (c) of  
12 Section 1-75 of this Act applicable to the load of an electric  
13 utility's eligible retail customers pursuant to a contract with  
14 a term greater than one year that the electric utility entered  
15 into in a previous year in accordance with a procurement  
16 approved by the Commission pursuant to Section 16-111.5 of the  
17 Public Utilities Act, exceed the limitations imposed by  
18 paragraph (2) of subsection (c) of Section 1-75 of this Act for  
19 the particular year.

20           "Facility" means an electric generating unit or a  
21 co-generating unit that produces electricity along with  
22 related equipment necessary to connect the facility to an  
23 electric transmission or distribution system.

24           "Governmental aggregator" means one or more units of local  
25 government that individually or collectively procure  
26 electricity to serve residential retail electrical loads

1 located within its or their jurisdiction.

2 "Initial clean coal facility" means an electric generating  
3 facility using gasification technology that: (1) has a  
4 nameplate capacity of at least 500 MW; (2) irrevocably commits  
5 in its proposed sourcing agreement to use coal for at least 50%  
6 of the total feedstock over the term of a sourcing agreement,  
7 with all coal having high volatile bituminous rank and greater  
8 than 1.7 pounds of sulfur per million btu content; (3) is  
9 designed to capture and sequester at least 90% of the carbon  
10 dioxide emissions that the portion of the facility, if any,  
11 that produces SNG would otherwise emit and at least 50% of the  
12 total carbon dioxide emissions that the facility as a whole  
13 would otherwise emit; (4) absent an appeal of a permit or  
14 regulatory order, is reasonably capable of achieving  
15 commercial operation by no later than 5 years after the  
16 execution of the sourcing agreements; (5) has a feasible  
17 financing plan; (6) has a reliable and cost-effective  
18 transmission plan to deliver energy to Commonwealth Edison  
19 Company and Ameren Illinois; and (7) has a power block designed  
20 not to exceed allowable emission rates for sulfur dioxide,  
21 nitrogen oxides, carbon monoxide, particulates, and mercury  
22 for a natural gas-fired combined-cycle facility the same size  
23 as and in the same location as the electric generating facility  
24 at the time the electric generating facility obtains an  
25 approved air permit.

26 "Large electric customer" means a customer that (1) obtains



1 retail electric service in the State from an electric utility  
2 or an alternative retail electric supplier and (2) is not a  
3 small electric customer.

4 "Local government" means a unit of local government as  
5 defined in Article VII of Section 1 of the Illinois  
6 Constitution.

7 "Municipality" means a city, village, or incorporated  
8 town.

9 "Person" means any natural person, firm, partnership,  
10 corporation, either domestic or foreign, company, association,  
11 limited liability company, joint stock company, or association  
12 and includes any trustee, receiver, assignee, or personal  
13 representative thereof.

14 "Project" means the planning, bidding, and construction of  
15 a facility.

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

18 "Real property" means any interest in land together with  
19 all structures, fixtures, and improvements thereon, including  
20 lands under water and riparian rights, any easements,  
21 covenants, licenses, leases, rights-of-way, uses, and other  
22 interests, together with any liens, judgments, mortgages, or  
23 other claims or security interests related to real property.

24 "Renewable energy credit" means a tradable credit that  
25 represents the environmental attributes of a certain amount of  
26 energy produced from a renewable energy resource.

1 "Renewable energy resources" includes energy and its  
2 associated renewable energy credit or renewable energy credits  
3 from wind, solar thermal energy, photovoltaic cells and panels,  
4 biodiesel, anaerobic digestion, crops and untreated and  
5 unadulterated organic waste biomass, tree waste, hydropower  
6 that does not involve new construction or significant expansion  
7 of hydropower dams, and other alternative sources of  
8 environmentally preferable energy. For purposes of this Act,  
9 landfill gas produced in the State is considered a renewable  
10 energy resource. "Renewable energy resources" does not include  
11 the incineration or burning of tires, garbage, general  
12 household, institutional, and commercial waste, industrial  
13 lunchroom or office waste, landscape waste other than tree  
14 waste, railroad crossties, utility poles, or construction or  
15 demolition debris, other than untreated and unadulterated  
16 waste wood.

17 "Revenue bond" means any bond, note, or other evidence of  
18 indebtedness issued by the Authority, the principal and  
19 interest of which is payable solely from revenues or income  
20 derived from any project or activity of the Agency.

21 "Sequester" means permanent storage of carbon dioxide by  
22 injecting it into a saline aquifer, a depleted gas reservoir,  
23 or an oil reservoir, directly or through an enhanced oil  
24 recovery process that may involve intermediate storage,  
25 regardless of whether these activities are conducted by a clean  
26 coal facility, the initial clean coal facility, a clean coal

1 SNG facility, a clean coal SNG brownfield facility, or a party  
2 with which a clean coal facility, initial clean coal facility,  
3 ~~or~~ clean coal SNG facility, or clean coal SNG brownfield  
4 facility has contracted for such purposes.

5 "Service area" has the same definition as found in Section  
6 16-102 of the Public Utilities Act.

7 "Sourcing agreement" means (i) in the case of an electric  
8 utility, an agreement between the owner of a clean coal  
9 facility or initial clean coal facility and such electric  
10 utility, which agreement shall have terms and conditions  
11 meeting the requirements of paragraph (3) of subsection (d) of  
12 Section 1-75, (ii) in the case of an alternative retail  
13 electric supplier, an agreement between the owner of a clean  
14 coal facility or initial clean coal facility and such  
15 alternative retail electric supplier, which agreement shall  
16 have terms and conditions meeting the requirements of Section  
17 16-115(d) (5) of the Public Utilities Act, and (iii) in case of  
18 a gas utility, an agreement between the owner of a clean coal  
19 SNG brownfield facility and the gas utility, which agreement  
20 shall have the terms and conditions meeting the requirements of  
21 subsection (h-1) of Section 9-220 of the Public Utilities Act.

22 "Small electric customer" means a residential retail  
23 electric customer that obtains electric service in the State  
24 from an electric utility or an alternative retail electric  
25 supplier.

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. 96-33, eff. 7-10-09; 96-159, eff. 8-10-09;  
26 96-784, eff. 8-28-09; 96-1000, eff. 7-2-10; 97-96, eff.

1 7-13-11; 97-239, eff. 8-2-11; 97-491, eff. 8-22-11; revised  
2 9-7-11.)

3 (20 ILCS 3855/1-20)

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

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

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

1 non-eligible retail customers in such electric utilities'  
2 service areas.

3 (2) Conduct competitive procurement processes to  
4 procure the supply resources identified in the procurement  
5 plan, pursuant to Section 16-111.5 of the Public Utilities  
6 Act.

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

11 (4) Supply electricity from the Agency's facilities at  
12 cost to one or more of the following: municipal electric  
13 systems, governmental aggregators, or rural electric  
14 cooperatives in Illinois.

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

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

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

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

26 (4) To obtain and employ personnel and hire consultants

1           that are necessary to fulfill the Agency's purposes, and to  
2           make expenditures for that purpose within the  
3           appropriations for that purpose.

4           (5) To purchase, receive, take by grant, gift, devise,  
5           bequest, or otherwise, lease, or otherwise acquire, own,  
6           hold, improve, employ, use, and otherwise deal in and with,  
7           real or personal property whether tangible or intangible,  
8           or any interest therein, within the State.

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

17          (7) To sell, convey, lease, exchange, transfer,  
18          abandon, or otherwise dispose of, or mortgage, pledge, or  
19          create a security interest in, any of its assets,  
20          properties, or any interest therein, wherever situated.

21          (8) To purchase, take, receive, subscribe for, or  
22          otherwise acquire, hold, make a tender offer for, vote,  
23          employ, sell, lend, lease, exchange, transfer, or  
24          otherwise dispose of, mortgage, pledge, or grant a security  
25          interest in, use, and otherwise deal in and with, bonds and  
26          other obligations, shares, or other securities (or

1 interests therein) issued by others, whether engaged in a  
2 similar or different business or activity.

3 (9) To make and execute agreements, contracts, and  
4 other instruments necessary or convenient in the exercise  
5 of the powers and functions of the Agency under this Act,  
6 including contracts with any person, local government,  
7 State agency, or other entity; and all State agencies and  
8 all local governments are authorized to enter into and do  
9 all things necessary to perform any such agreement,  
10 contract, or other instrument with the Agency. No such  
11 agreement, contract, or other instrument shall exceed 40  
12 years.

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

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

25 (12) To enter into agreements with the Illinois Finance  
26 Authority to issue bonds whether or not the income



1           therefrom is exempt from federal taxation.

2           (13) To procure insurance against any loss in  
3 connection with its properties or operations in such amount  
4 or amounts and from such insurers, including the federal  
5 government, as it may deem necessary or desirable, and to  
6 pay any premiums therefor.

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

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

17           (16) To enter into management agreements for the  
18 operation of any of the property or facilities owned by the  
19 Agency.

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

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

5           (19) To maintain an office or offices at such place or  
6 places in the State as it may determine.

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

11           (21) To accept and expend appropriations.

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

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

21           (24) To establish and collect charges and fees as  
22 described in this Act.

23           (25) To conduct competitive gasification feedstock  
24 procurement processes to procure the feedstocks for the  
25 clean coal SNG brownfield facility in accordance with the  
26 requirements of Section 1-78 of this Act.

1           (26) To review, revise, and approve sourcing  
2 agreements and mediate and resolve disputes between gas  
3 utilities and the clean coal SNG brownfield facility  
4 pursuant to subsection (h-1) of Section 9-220 of the Public  
5 Utilities Act.

6           (27) To review, revise, and approve sourcing  
7 agreements and mediate and resolve disputes between  
8 electric utilities or alternative retail electric  
9 suppliers and the initial clean coal facility pursuant to  
10 paragraph (4) of subsection (d) of Section 1-75 of this  
11 Act.

12           (28) To conduct competitive gasification feedstock  
13 procurement processes to procure the feedstocks for the  
14 initial clean coal facility in accordance with the  
15 requirements of Section 1-79 of this Act.

16 (Source: P.A. 96-784, eff. 8-28-09; 96-1000, eff. 7-2-10;  
17 97-96, eff. 7-13-11; 97-325, eff. 8-12-11; revised 9-7-11.)

18           (20 ILCS 3855/1-56)

19           Sec. 1-56. Illinois Power Agency Renewable Energy  
20 Resources Fund.

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

23           (b) The Illinois Power Agency Renewable Energy Resources  
24 Fund shall be administered by the Agency to procure renewable  
25 energy resources. Prior to June 1, 2011, resources procured

1 pursuant to this Section shall be procured from facilities  
2 located in Illinois, provided the resources are available from  
3 those facilities. If resources are not available in Illinois,  
4 then they shall be procured in states that adjoin Illinois. If  
5 resources are not available in Illinois or in states that  
6 adjoin Illinois, then they may be purchased elsewhere.  
7 Beginning June 1, 2011, resources procured pursuant to this  
8 Section shall be procured from facilities located in Illinois  
9 or states that adjoin Illinois. If resources are not available  
10 in Illinois or in states that adjoin Illinois, then they may be  
11 procured elsewhere. To the extent available, at least 75% of  
12 these renewable energy resources shall come from wind  
13 generation. Of the renewable energy resources procured  
14 pursuant to this Section at least the following specified  
15 percentages shall come from photovoltaics on the following  
16 schedule: 0.5% by June 1, 2012; 1.5% by June 1, 2013; 3% by  
17 June 1, 2014; and 6% by June 1, 2015 and thereafter. Of the  
18 renewable energy resources procured pursuant to this Section at  
19 least the following percentages shall come from distributed  
20 renewable energy generation devices: 0.5% by June 1, 2013,  
21 0.75% by June 1, 2014, and 1% by June 1, 2015 and thereafter.  
22 To the extent available, half of the renewable energy resources  
23 procured from distributed renewable energy generation shall  
24 come from devices of less than 25 kilowatts in nameplate  
25 capacity. Renewable energy resources procured from distributed  
26 generation devices may also count towards the required

1 percentages for wind and solar photovoltaics. Procurement of  
2 renewable energy resources from distributed renewable energy  
3 generation devices shall be done on an annual basis through  
4 multi-year contracts of no less than 5 years, and shall consist  
5 solely of renewable energy credits.

6 The Agency shall create credit requirements for suppliers  
7 of distributed renewable energy. In order to minimize the  
8 administrative burden on contracting entities, the Agency  
9 shall solicit the use of third-party organizations to aggregate  
10 distributed renewable energy into groups of no less than one  
11 megawatt in installed capacity. These third-party  
12 organizations shall administer contracts with individual  
13 distributed renewable energy generation device owners. An  
14 individual distributed renewable energy generation device  
15 owner shall have the ability to measure the output of his or  
16 her distributed renewable energy generation device.

17 (c) The Agency shall procure renewable energy resources at  
18 least once each year in conjunction with a procurement event  
19 for electric utilities required to comply with Section 1-75 of  
20 the Act and shall, whenever possible, enter into long-term  
21 contracts on an annual basis for a portion of the incremental  
22 requirement for the given procurement year.

23 (d) The price paid to procure renewable energy credits  
24 using monies from the Illinois Power Agency Renewable Energy  
25 Resources Fund shall not exceed the winning bid prices paid for  
26 like resources procured for electric utilities required to

1 comply with Section 1-75 of this Act.

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

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

8 (g) All disbursements from the Illinois Power Agency  
9 Renewable Energy Resources Fund shall be made only upon  
10 warrants of the Comptroller drawn upon the Treasurer as  
11 custodian of the Fund upon vouchers signed by the Director or  
12 by the person or persons designated by the Director for that  
13 purpose. The Comptroller is authorized to draw the warrant upon  
14 vouchers so signed. The Treasurer shall accept all warrants so  
15 signed and shall be released from liability for all payments  
16 made on those warrants.

17 (h) The Illinois Power Agency Renewable Energy Resources  
18 Fund shall not be subject to sweeps, administrative charges, or  
19 chargebacks, including, but not limited to, those authorized  
20 under Section 8h of the State Finance Act, that would in any  
21 way result in the transfer of any funds from this Fund to any  
22 other fund of this State or in having any such funds utilized  
23 for any purpose other than the express purposes set forth in  
24 this Section.

25 (i) The Illinois Power Agency Renewable Energy Resources  
26 Fund shall be terminated upon depletion of all funds therein

1 through the purchase of renewable energy credits.

2 (Source: P.A. 96-159, eff. 8-10-09; 96-1000, eff. 7-2-10;  
3 96-1437, eff. 8-17-10.)

4 (20 ILCS 3855/1-75)

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

8 (a) The Planning and Procurement Bureau shall each  
9 year, beginning in 2008, develop procurement plans and  
10 conduct competitive procurement processes in accordance  
11 with the requirements of Section 16-111.5 of the Public  
12 Utilities Act for the eligible retail customers of electric  
13 utilities that on December 31, 2005 provided electric  
14 service to at least 100,000 customers in Illinois, and for  
15 years beginning on and after June 1, 2012, for the  
16 procurement of renewable energy credits in respect of the  
17 kilowatthour usage of delivery services non-eligible  
18 retail customers in such electric utilities' service  
19 areas. The Planning and Procurement Bureau shall also  
20 develop procurement plans and conduct competitive  
21 procurement processes in accordance with the requirements  
22 of Section 16-111.5 of the Public Utilities Act for the  
23 eligible retail customers of small multi-jurisdictional  
24 electric utilities that (i) on December 31, 2005 served  
25 less than 100,000 customers in Illinois and (ii) request a

1 procurement plan for their Illinois jurisdictional load.  
2 This Section shall not apply to a small  
3 multi-jurisdictional utility until such time as a small  
4 multi-jurisdictional utility requests the Agency to  
5 prepare a procurement plan for their Illinois  
6 jurisdictional load. For the purposes of this Section, the  
7 term "eligible retail customers" has the same definition as  
8 found in Section 16-111.5(a) of the Public Utilities Act.

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

15 (A) direct previous experience assembling  
16 large-scale power supply plans or portfolios for  
17 end-use customers;

18 (B) an advanced degree in economics,  
19 mathematics, engineering, risk management, or a  
20 related area of study;

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

23 (D) expertise in wholesale electricity market  
24 rules, including those established by the Federal  
25 Energy Regulatory Commission and regional  
26 transmission organizations;



1 (E) expertise in credit protocols and  
2 familiarity with contract protocols;

3 (F) adequate resources to perform and fulfill  
4 the required functions and responsibilities; and

5 (G) the absence of a conflict of interest and  
6 inappropriate bias for or against potential  
7 bidders or the affected electric utilities.

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

14 (A) direct previous experience administering a  
15 large-scale competitive procurement process;

16 (B) an advanced degree in economics,  
17 mathematics, engineering, or a related area of  
18 study;

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

21 (D) expertise in wholesale electricity market  
22 rules, including those established by the Federal  
23 Energy Regulatory Commission and regional  
24 transmission organizations;

25 (E) expertise in credit and contract  
26 protocols;

1 (F) adequate resources to perform and fulfill  
2 the required functions and responsibilities; and

3 (G) the absence of a conflict of interest and  
4 inappropriate bias for or against potential  
5 bidders or the affected electric utilities.

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

23 (A) failure to satisfy qualification criteria;

24 (B) identification of a conflict of interest;

25 or

26 (C) evidence of inappropriate bias for or

1           against potential bidders or the affected  
2           utilities.

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

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

18           (5) The Agency shall select an expert or expert  
19 consulting firm to develop procurement plans based on  
20 the proposals submitted and shall award one-year  
21 contracts to those selected with an option for the  
22 Agency for a one-year renewal.

23           (6) The Agency shall select an expert or expert  
24 consulting firm, with approval of the Commission, to  
25 serve as procurement administrator based on the  
26 proposals submitted. If the Commission rejects, within

1           5 days, the Agency's selection, the Agency shall submit  
2           another recommendation within 3 days based on the  
3           proposals submitted. The Agency shall award a one-year  
4           contract to the expert or expert consulting firm so  
5           selected with Commission approval with an option for  
6           the Agency for a one-year renewal.

7           (a-5) The Planning and Procurement Bureau shall at least  
8           every 5 years beginning in 2012 develop feedstock procurement  
9           plans and conduct competitive feedstock procurement processes  
10           in accordance with the requirements of Section 1-79 of this  
11           Act.

12           (1) The Agency shall, at least once every 5 years  
13           beginning in 2012, issue a request for qualifications for  
14           experts or expert consulting firms to develop the feedstock  
15           procurement plans in accordance with Section 1-79 of this  
16           Act. In order to qualify, an expert or, in the case of an  
17           expert consulting firm, the individual who shall be  
18           directly responsible for the work, must have:

19           (A) direct previous experience assembling large  
20           scale feedstock supply plans or portfolios involving  
21           coal and natural gas for industrial customers;

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

25           (C) ten years of experience in the energy sector,  
26           including coal and gas procurement and managing fuel

1           supply risk;

2           (D) expertise in the feedstock markets, which may  
3           be particularized to the specific type of feedstock to  
4           be purchased in that procurement event;

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

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

9           (G) the absence of a conflict of interest and  
10           inappropriate bias for or against potential bidders or  
11           the initial clean coal facility.

12           (2) The Agency shall at least every 5 years beginning  
13           in 2012, as needed, issue a request for qualifications for  
14           a feedstock procurement administrator to conduct the  
15           competitive feedstock procurement processes in accordance  
16           with Section 1-79 of this Act. In order to qualify, an  
17           expert or, in the case of an expert consulting firm, the  
18           individual who shall be directly responsible for the work,  
19           must have:

20           (A) direct previous experience administering a  
21           large scale competitive feedstock procurement process  
22           involving coal and natural gas;

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

25           (C) ten years of experience in the energy sector,  
26           including coal and gas procurement and managing fuel

1           supply risk;

2           (D) expertise in feedstock market rules and  
3           practices, which may be particularized to the specific  
4           type of feedstock to be purchased in that procurement  
5           event;

6           (E) expertise in credit and contract protocols;

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

9           (G) the absence of a conflict of interest and  
10          inappropriate bias for or against potential bidders or  
11          the initial clean coal facility.

12          (3) The Agency shall provide the initial clean coal  
13          facility and other interested parties with the lists of  
14          qualified experts or expert consulting firms identified  
15          through the request for qualifications processes that are  
16          under consideration to develop the feedstock procurement  
17          plans and to serve as the feedstock procurement  
18          administrator. The Agency shall also provide the initial  
19          clean coal facility and other interested parties with each  
20          qualified expert's or expert consulting firm's response to  
21          the request for qualifications. All information provided  
22          under this subparagraph (3) shall also be provided to the  
23          Commission. The Agency may provide by rule for fees  
24          associated with supplying the information to the initial  
25          clean coal facility and other interested parties. The  
26          initial clean coal facility and other interested parties

1 shall, within 5 business days after receiving the lists and  
2 information, notify the Agency in writing if they object to  
3 any experts or expert consulting firms on the lists.

4 Objections shall be based on:

5 (A) failure to satisfy qualification criteria;

6 (B) identification of a conflict of interest; or

7 (C) evidence of inappropriate bias for or against  
8 potential bidders or the initial clean coal facility.

9 The Agency shall remove experts or expert consulting  
10 firms from the lists within 10 days after receiving the  
11 objections if there is a reasonable basis for an objection  
12 and provide the updated lists to the initial clean coal  
13 facility and other interested parties. If the Agency fails  
14 to remove an expert or expert consulting firm from a list,  
15 then an 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 10  
18 days. There is no right of appeal of the Commission's  
19 ruling.

20 (4) The Agency shall issue requests for proposals to  
21 the qualified experts or expert consulting firms to develop  
22 a feedstock procurement plan for the initial clean coal  
23 facility and to serve as feedstock procurement  
24 administrator.

25 (5) The Agency shall select an expert or expert  
26 consulting firm to develop feedstock procurement plans

1 based on the proposals submitted and shall award at least  
2 one-year contracts to those selected with an option for the  
3 Agency for renewal for an additional length of time equal  
4 to the term of the contract.

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

16 (b) The experts or expert consulting firms retained by  
17 the Agency under subsection (a) of this Section shall, as  
18 appropriate, prepare procurement plans, and conduct a  
19 competitive procurement process as prescribed in Section  
20 16-111.5 of the Public Utilities Act, to ensure adequate,  
21 reliable, affordable, efficient, and environmentally  
22 sustainable electric service at the lowest total cost over  
23 time, taking into account any benefits of price stability,  
24 for eligible retail customers of electric utilities that on  
25 December 31, 2005 provided electric service to at least  
26 100,000 customers in the State of Illinois, and for



1 eligible Illinois retail customers of small  
2 multi-jurisdictional electric utilities that (i) on  
3 December 31, 2005 served less than 100,000 customers in  
4 Illinois and (ii) request a procurement plan for their  
5 Illinois jurisdictional load.

6 (b-5) The experts or expert consulting firms retained by  
7 the Agency pursuant to subsection (a-5) of this Section shall,  
8 as appropriate, prepare feedstock procurement plans and  
9 conduct a competitive feedstock procurement process as  
10 prescribed in Section 1-79 of this Act to ensure adequate,  
11 reliable, affordable feedstocks, taking into account any  
12 benefits of price stability, for the initial clean coal  
13 facility.

14 (c) Renewable portfolio standard.

15 (1) The procurement plans under subsection (a) of  
16 this Section shall include cost-effective renewable  
17 energy resources. A minimum percentage of each  
18 utility's total supply to serve the load of eligible  
19 retail customers, as defined in Section 16-111.5(a) of  
20 the Public Utilities Act, procured for each of the  
21 following years shall be generated from cost-effective  
22 renewable energy resources: at least 2% by June 1,  
23 2008; at least 4% by June 1, 2009; at least 5% by June  
24 1, 2010; at least 6% by June 1, 2011; at least 7% by  
25 June 1, 2012; at least 8% by June 1, 2013; at least 9%  
26 by June 1, 2014; at least 10% by June 1, 2015; and

1 increasing by at least 1.5% each year thereafter to at  
2 least 25% by June 1, 2025. For periods beginning on and  
3 after June 1, 2012, the procurement plans shall include  
4 the procurement of cost-effective renewable energy  
5 credits equal to the projected kilowatthour usage of  
6 the delivery services non-eligible retail customers  
7 within the service area of the electric utility times  
8 the applicable renewable energy resource percentage  
9 for that year as set forth under this paragraph (1). To  
10 the extent that it is available, at least 75% of the  
11 renewable energy resources used to meet these  
12 standards shall come from wind generation and,  
13 beginning on June 1, 2011, at least the following  
14 percentages of the renewable energy resources used to  
15 meet these standards shall come from photovoltaics on  
16 the following schedule: 0.5% by June 1, 2012, 1.5% by  
17 June 1, 2013; 3% by June 1, 2014; and 6% by June 1,  
18 2015 and thereafter. Of the renewable energy resources  
19 procured pursuant to this Section at least the  
20 following percentages shall come from distributed  
21 renewable energy generation devices: 0.5% by June 1,  
22 2013, 0.75% by June 1, 2014, and 1% by June 1, 2015 and  
23 thereafter. To the extent available, half of the  
24 renewable energy resources procured from distributed  
25 renewable energy generation shall come from devices of  
26 less than 25 kilowatts in nameplate capacity.

1           Renewable energy resources procured from distributed  
2           generation devices may also count towards the required  
3           percentages for wind and solar photovoltaics.  
4           Procurement of renewable energy resources from  
5           distributed renewable energy generation devices shall  
6           be done on an annual basis through multi-year contracts  
7           of no less than 5 years, and shall consist solely of  
8           renewable energy credits.

9           The Agency shall create credit requirements for  
10          suppliers of distributed renewable energy. In order to  
11          minimize the administrative burden on contracting  
12          entities, the Agency shall solicit the use of third-party  
13          organizations to aggregate distributed renewable energy  
14          into groups of no less than one megawatt in installed  
15          capacity. These third-party organizations shall administer  
16          contracts with individual distributed renewable energy  
17          generation device owners. An individual distributed  
18          renewable energy generation device owner shall have the  
19          ability to measure the output of his or her distributed  
20          renewable energy generation device. For purposes of this  
21          subsubsection (c), "cost-effective" means that the costs of  
22          procuring renewable energy resources to serve the load of  
23          the electric utility's eligible retail customers and the  
24          costs of procuring renewable energy credits with respect to  
25          the kilowatthour usage of the delivery services  
26          non-eligible retail customers within the electric

1        utility's service area do not cause the applicable limits  
2        ~~limit~~ stated in paragraph (2) of this subsection (c) to be  
3        exceeded and do not exceed benchmarks based on market  
4        prices for renewable energy resources in the region, which  
5        shall be developed by the procurement administrator, in  
6        consultation with the Commission staff, Agency staff, and  
7        the procurement monitor and shall be subject to Commission  
8        review and approval.

9                (2) For purposes of this subsection (c), the  
10              required procurement of cost-effective renewable  
11              energy resources to serve the load of the electric  
12              utility's eligible retail customers for a particular  
13              year shall be measured as a percentage of the actual  
14              amount of electricity (megawatt-hours) supplied by the  
15              electric utility to eligible retail customers in the  
16              planning year ending immediately prior to the  
17              procurement and, for periods beginning on and after  
18              June 1, 2012, the required procurement of  
19              cost-effective renewable energy credits with respect  
20              to the delivery services non-eligible retail customers  
21              of the electric utility shall be based on the actual  
22              amount of electricity (megawatt-hours) delivered by  
23              the electric utility to delivery services non-eligible  
24              retail customers in its service area in the planning  
25              year ending immediately prior to the procurement. For  
26              purposes of this subsection (c), the amount paid per

1 kilowatthour means the total amount paid for electric  
2 service expressed on a per kilowatthour basis. For  
3 purposes of this subsection (c), the total amount paid  
4 for electric service includes without limitation  
5 amounts paid for supply, transmission, distribution,  
6 surcharges, and add-on taxes.

7 Notwithstanding the requirements of this  
8 subsection (c), the total of renewable energy  
9 resources procured pursuant to the procurement plan  
10 with respect to the load of the electric utility's  
11 eligible retail customers for any single year shall be  
12 reduced by an amount necessary to limit the annual  
13 estimated average net increase due to the costs of  
14 these resources included in the amounts paid by  
15 eligible retail customers in connection with electric  
16 service to:

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

20 (B) in 2009, the greater of an additional 0.5%  
21 of the amount paid per kilowatthour by those  
22 customers during the year ending May 31, 2008 or 1%  
23 of the amount paid per kilowatthour by those  
24 customers during the year ending May 31, 2007;

25 (C) in 2010, the greater of an additional 0.5%  
26 of the amount paid per kilowatthour by those

1 customers during the year ending May 31, 2009 or  
2 1.5% of the amount paid per kilowatthour by those  
3 customers during the year ending May 31, 2007;

4 (D) in 2011, the greater of an additional 0.5%  
5 of the amount paid per kilowatthour by those  
6 customers during the year ending May 31, 2010 or 2%  
7 of the amount paid per kilowatthour by those  
8 customers during the year ending May 31, 2007; and

9 (E) thereafter, the amount of renewable energy  
10 resources procured pursuant to the procurement  
11 plan for any single year shall be reduced by an  
12 amount necessary to limit the estimated average  
13 net increase due to the cost of these resources  
14 included in the amounts paid by eligible retail  
15 customers in connection with electric service to  
16 no more than the greater of 2.015% of the amount  
17 paid per kilowatthour by those customers during  
18 the year ending May 31, 2007 or the incremental  
19 amount per kilowatthour paid for these resources  
20 in 2011.

21 For periods beginning on and after June 1, 2012,  
22 any excluded renewable energy resources contract costs  
23 shall be recoverable by the electric utility through  
24 its tariffed charges for delivery services pursuant to  
25 Section 16-108 of the Public Utilities Act to its  
26 residential class delivery services non-eligible

1           retail customers.

2           Notwithstanding the requirements of this  
3           subsection (c), for years beginning on and after June  
4           1, 2012, the total amount of renewable energy credits  
5           procured pursuant to the procurement plan with respect  
6           to the kilowatthour usage of the delivery services  
7           non-eligible retail customers in the electric  
8           utility's service area shall be reduced by an amount  
9           necessary to limit the cost of renewable energy credits  
10           and excluded renewable energy resources costs included  
11           in the electric utility's charges per kilowatthour for  
12           delivery services to its delivery services  
13           non-eligible retail customers to an amount equal to no  
14           more than 2.015% of the amount paid by the electric  
15           utility's eligible retail customers per kilowatthour  
16           for electric service during the year ended May 31,  
17           2007.

18           No later than June 30, 2011, the Commission shall  
19           review the limitation on the amount of renewable energy  
20           resources procured pursuant to this subsection (c) and  
21           report to the General Assembly its findings as to  
22           whether that limitation unduly constrains the  
23           procurement of cost-effective renewable energy  
24           resources.

25           (3) (Blank). ~~Through June 1, 2011, renewable~~  
26           ~~energy resources shall be counted for the purpose of~~

1 ~~meeting the renewable energy standards set forth in~~  
2 ~~paragraph (1) of this subsection (c) only if they are~~  
3 ~~generated from facilities located in the State,~~  
4 ~~provided that cost effective renewable energy~~  
5 ~~resources are available from those facilities. If~~  
6 ~~those cost effective resources are not available in~~  
7 ~~Illinois, they shall be procured in states that adjoin~~  
8 ~~Illinois and may be counted towards compliance. If~~  
9 ~~those cost effective resources are not available in~~  
10 ~~Illinois or in states that adjoin Illinois, they shall~~  
11 ~~be purchased elsewhere and shall be counted towards~~  
12 ~~compliance. After June 1, 2011, cost effective~~  
13 ~~renewable energy resources located in Illinois and in~~  
14 ~~states that adjoin Illinois may be counted towards~~  
15 ~~compliance with the standards set forth in paragraph~~  
16 ~~(1) of this subsection (c). If those cost effective~~  
17 ~~resources are not available in Illinois or in states~~  
18 ~~that adjoin Illinois, they shall be purchased~~  
19 ~~elsewhere and shall be counted towards compliance.~~

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

23 (5) Beginning with the year commencing June 1,  
24 2010, and ending with the year commencing June 1, 2011,  
25 an electric utility subject to this subsection (c)  
26 shall apply the lesser of the maximum alternative



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

1           utility's hourly pricing tariff or tariffs shall be  
2           considered usage of delivery services non-eligible  
3           retail customers.

4           (6) Each annual procurement plan for periods beginning  
5           on and after June 1, 2012 shall include (i) the procurement  
6           of electricity from cost-effective renewable energy  
7           resources to meet the renewable energy resource  
8           requirements specified in paragraph (2) of this subsection  
9           (c) with respect to the load of the electric utility's  
10           eligible retail customers and (ii) the procurement of  
11           renewable energy credits to meet the renewable energy  
12           resource requirements specified in paragraph (2) of this  
13           subsection (c) with respect to the kilowatthour usage of  
14           the electric utility's delivery services non-eligible  
15           retail customers; provided that the electric utility's  
16           obligation to purchase renewable energy credits with  
17           respect to the kilowatthour usage of delivery services  
18           non-eligible retail customers shall be reduced by the  
19           amount of any purchases of renewable energy credits by the  
20           Agency for the year in respect of the electric utility's  
21           service area pursuant to Section 1-56 of this Act using the  
22           Illinois Power Agency Renewable Energy Resources Fund. All  
23           procurements of bundled renewable energy resources and  
24           renewable energy credits in the procurement plans of the  
25           electric utilities shall be pursuant to competitive  
26           bidding processes and shall be approved by the Commission

1 pursuant to Section 16-111.5 of the Public Utilities Act.  
2 Procurements of bundled renewable energy resources shall  
3 be used to secure supply from renewable energy assets that  
4 can provide monthly energy quantity guarantees for peak and  
5 off-peak wrap periods. Projects shall be chosen based on  
6 the value of the energy procured. The value of the energy  
7 shall be determined by the Agency by utilizing a "time of  
8 day" methodology to evaluate the energy profile of each  
9 project.

10 (d) Clean coal portfolio standard.

11 (1) The General Assembly finds that there are abundant  
12 and cost-effective supplies of high volatile rank  
13 bituminous coal with a sulfur content of at least 1.7  
14 pounds per million btu energy content, and that it is  
15 technologically feasible to produce electric energy using  
16 such coal supplies reliably. The General Assembly further  
17 finds that state-of-the-art gasification systems are  
18 available to convert coal supplies with the foregoing  
19 characteristics into gas and that it is feasible to use  
20 such gas to generate electric energy without exceeding  
21 allowable emission rates for sulfur dioxide, nitrogen  
22 oxides, carbon monoxide, particulates, and mercury for a  
23 natural gas-fired combined-cycle facility of the same size  
24 as and in the same location as a clean coal facility  
25 incorporating a gasification system and a combined cycle  
26 power block. The General Assembly also finds that it is

1 feasible to engineer and construct systems designed to  
2 capture and sequester the percentages of the carbon dioxide  
3 emissions from clean coal facilities as specified in this  
4 Act. Accordingly, the General Assembly finds it necessary  
5 for the health, safety, welfare, and prosperity of Illinois  
6 citizens to require Illinois electric utilities and  
7 alternative retail electric suppliers to contract with the  
8 initial clean coal facility to meet a portion of the needs  
9 of each such electric utility's and alternative retail  
10 electric supplier's retail load on the terms and conditions  
11 described under this Act.

12 The procurement plans under subsection (a) of this  
13 Section shall include electricity generated using clean  
14 coal. Each electric utility shall enter into one or more  
15 sourcing agreements with the initial clean coal facility,  
16 as provided in paragraph (3) of this subsection (d),  
17 covering electricity generated by the initial clean coal  
18 facility representing (A) at least 5% of that ~~each~~  
19 utility's ~~total supply to serve the~~ load of eligible retail  
20 customers in the immediately preceding year 2015 and each  
21 ~~year thereafter~~, as described in paragraph (3) of this  
22 subsection (d), or (B) such lesser amount as may be  
23 available from the initial clean coal facility, reduced by  
24 ~~subject to~~ the limits on the amount of power to be  
25 purchased specified in paragraph (2) of this subsection  
26 (d). It is the goal of the State that by January 1, 2025,

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

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

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

25                 (C) A utility shall be deemed to have complied with  
26                 the clean coal portfolio standard specified in this

1 subsection (d) if the utility enters into a sourcing  
2 agreement as required by this subsection (d).

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

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

25 (A) in 2010, no more than 0.5% of the amount  
26 paid per kilowatthour by those customers during

1 the year ending May 31, 2009;

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

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

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

17 (E) thereafter:

18 (i) A calculation shall be made for each year  
19 to determine whether ~~, the total amount paid under~~  
20 ~~sourcing agreements with clean coal facilities~~  
21 ~~pursuant to the procurement plan for any single~~  
22 ~~year shall be reduced by an amount necessary to~~  
23 ~~limit~~ the estimated average net per kilowatthour  
24 increase due to the cost of electric power  
25 purchased under sourcing agreements and these  
26 ~~resources~~ included in the amounts paid by small

1            electric ~~eligible retail~~ customers in connection  
2            with electric service exceeds ~~to no more than~~ the  
3            greater of (i) 2.015% of the amount paid per  
4            kilowatthour by eligible retail ~~those~~ customers  
5            during the year ending May 31, 2009 or (ii) the  
6            incremental amount per kilowatthour paid for these  
7            resources in 2013. These requirements may be  
8            altered only as provided by statute. For purposes  
9            of such calculation, such average net per  
10           kilowatthour increase in rates of small electric  
11           customers that are not eligible retail customers  
12           shall be deemed to be equal to such average net per  
13           kilowatthour increase in rates of eligible retail  
14           customers.

15            (ii) If for any year the small customer rate  
16            impact would exceed the limitation described in  
17            item (i) of this subparagraph (E), the clean coal  
18            fraction for each clean coal electricity buyer  
19            shall be adjusted for such year in a manner that  
20            will result in (a) the quantity of electric power  
21            projected to be purchased by each clean coal  
22            electricity buyer being reduced by an amount  
23            sufficient to result in such deemed rate impact on  
24            all small electric customers (whether served by  
25            electric utilities or alternative retail electric  
26            suppliers) being equal to such limitation for such



1           year and (b) any such reductions in amounts  
2           allocated to the clean coal electricity buyers in  
3           order to achieve the objective described in clause  
4           (a) of this item (ii) being allocated to, and  
5           purchased and paid for by, the clean coal  
6           electricity buyers in proportion to their retail  
7           sales to large electric customers.

8           (iii) Each year, after taking account of the  
9           adjustment, if any, provided for in item (ii) of  
10           this subparagraph (E), a calculation shall be made  
11           to determine whether the large customer deemed  
12           rate impact for such year exceeds \$0.005 per  
13           kilowatthour. The "large customer deemed rate  
14           impact" for any year is the projected increase in  
15           electric rates of large electric customers  
16           (whether served by electric utilities or  
17           alternative retail electric suppliers) due to the  
18           cost of electric power purchased under sourcing  
19           agreements to the extent it is based on each clean  
20           coal electricity buyer's retail sales to large  
21           electric customers, which shall be calculated in  
22           substantially the same manner as the calculation  
23           of rate impact on small electric customers, and  
24           shall assume that such cost of purchases under  
25           sourcing agreements is passed through  
26           proportionally by the clean coal electricity

1 buyers to their large electric customers. The  
2 calculation of the large customer deemed rate  
3 impact shall (a) assume that the total retail sales  
4 (expressed in kilowatthours sold) to large  
5 electric customers by all clean coal electricity  
6 buyers for any year is the greater of the actual  
7 amount of such sales in such year and the amount of  
8 such sales in 2009 and (b) exclude from the  
9 calculation any actual costs for such year  
10 incurred by the initial clean coal facility to the  
11 extent such costs exceed the corresponding amount  
12 assumed in the "reference case" of the facility  
13 cost report for the initial clean coal facility for  
14 such year and are not principally within the  
15 reasonable control of the initial clean coal  
16 facility.

17 Any operating costs or revenues deviating from  
18 the corresponding costs assumed in the "reference  
19 case" of the facility cost report for the initial  
20 clean coal facility as a result of changes in  
21 market prices, including, but not limited to,  
22 prices of coal, natural gas, electricity,  
23 by-products, and emissions allowances, shall be  
24 deemed to be outside of the reasonable control of  
25 the initial clean coal facility and excluded from  
26 the calculation.

1           Any costs exceeding the corresponding costs  
2           assumed in the "reference case" of the facility  
3           cost report for the initial clean coal facility as  
4           a result of changes in capital costs, fixed  
5           operating costs, variable operating costs,  
6           operating efficiency, and availability, except in  
7           each case to the extent resulting from a change in  
8           market prices, as described in the immediately  
9           preceding paragraph, or from a change in law, as  
10           defined in subsection (b) of Section 1-76 of this  
11           Act, shall be deemed to be within the reasonable  
12           control of the initial clean coal facility and  
13           included in the calculation.

14           (iv) If for any year the large customer deemed  
15           rate impact would exceed the limitation described  
16           in item (iii) of this subparagraph (E), the  
17           quantity of electric power required to be  
18           purchased by each clean coal electricity buyer  
19           that serves large electric customers under its  
20           sourcing agreement for such year shall be reduced  
21           by such amount as will result in the large customer  
22           deemed rate impact being equal to such limitation  
23           for such year, and the clean coal fractions of each  
24           clean coal electricity buyer that serves large  
25           electric customers shall be adjusted for such year  
26           to reflect this reduction; provided, however, that

1           the reduction under this item (iv) shall not exceed  
2           in any year an amount that would result in revenues  
3           under the sourcing agreements being reduced by  
4           more than \$50,000,000 in the aggregate for such  
5           year. Any quantities of electric power not  
6           required to be purchased pursuant to the operation  
7           of the immediately preceding sentence may be  
8           disposed of by the initial clean coal facility for  
9           its own account, and the proceeds of any sales of  
10           such electric power shall not be included in the  
11           formula rate.

12           (v) The details of the calculations  
13           contemplated by this subparagraph (E) shall be set  
14           forth in the sourcing agreements.

15           (vi) No later than June 30, 2016 2015, the  
16           Commission shall review the limitation on the  
17           total amount purchased ~~paid~~ under sourcing  
18           agreements, if any, with the initial clean coal  
19           facility ~~facilities~~ pursuant to this subsection  
20           (d) and report to the General Assembly its findings  
21           as to the effect of the ~~whether that~~ limitation on  
22           the initial clean coal facility, electric  
23           utilities, alternative retail electric suppliers,  
24           and customers of the electric utilities and the  
25           alternative retail electric suppliers ~~unduly~~  
26           ~~constrains the amount of electricity generated by~~

1 ~~cost effective clean coal facilities that is~~  
2 ~~covered by sourcing agreements.~~

3 (3) Initial clean coal facility. In order to promote  
4 the use development of clean coal electric power facilities  
5 in Illinois, each electric utility subject to this Section  
6 shall execute a sourcing agreement to source electricity  
7 from the initial clean coal facility. The Agency shall  
8 accept applications to be designated the initial clean coal  
9 facility for a period of 30 days after the effective date  
10 of this amendatory Act of the 97th General Assembly. Each  
11 application shall include a proposed sourcing agreement in  
12 accordance with the requirements of this paragraph (3) and  
13 information showing that the applicant meets the other  
14 criteria set out in the definition of initial clean coal  
15 facility provided in Section 1-10 of this Act. In the event  
16 that only one proposed initial clean coal facility that  
17 meets each of the requirements submits a proposed sourcing  
18 agreement to the Agency within that time period, the Agency  
19 shall select such proposed initial clean coal facility as  
20 the initial clean coal facility. In the event that more  
21 than one proposed initial clean coal facility that meets  
22 each of the requirements submit a proposed sourcing  
23 agreement to the Agency within that time period, the Agency  
24 shall select as the initial clean coal facility the  
25 electric generating facility that the Agency determines  
26 best promotes the needs and interests of the citizens of

1 the State of Illinois. In making such determination, the  
2 Agency shall take into account for each proposed initial  
3 clean coal facility the technical and economic feasibility  
4 of such facility, including access to capital and the  
5 financeability of the facility based upon the proposed  
6 sourcing agreement, the projected environmental  
7 performance of such facility, the ability of such facility  
8 to be dispatched to support the transmission grid's  
9 capability to integrate with wind, solar, and other  
10 intermittent resources, and the reliability and cost of  
11 electric transmission service from the facility to the  
12 electric utilities. The Agency shall announce the  
13 designation of the initial clean coal facility within 45  
14 days after the effective date of this amendatory Act of the  
15 97th General Assembly. a proposed clean coal facility in  
16 Illinois (the "initial clean coal facility") that will have  
17 a nameplate capacity of at least 500 MW when commercial  
18 operation commences, that has a final Clean Air Act permit  
19 on the effective date of this amendatory Act of the 95th  
20 General Assembly, and that will meet the definition of  
21 clean coal facility in Section 1-10 of this Act when  
22 commercial operation commences. The sourcing agreements  
23 with this initial clean coal facility shall be subject to  
24 both approval of the initial clean coal facility by the  
25 General Assembly and satisfaction of the requirements of  
26 paragraph (4) of this subsection (d) and shall be executed

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

8 (A) provisions governing the price paid for  
9 electricity generated by the initial clean coal  
10 facility, which shall be determined according to  
11 clause (iv) of subparagraph (B) of this paragraph (3);  
12 ~~a formula contractual price (the "contract price")~~  
13 ~~approved pursuant to paragraph (4) of this subsection~~  
14 ~~(d), which shall:~~

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

25 ~~(ii) provide that all miscellaneous net~~  
26 ~~revenue, including but not limited to net revenue~~

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

14 (B) power purchase provisions, which shall:

15 (i) provide that the utility party to the  
16 sourcing agreement shall pay the contract price  
17 under such sourcing agreement determined pursuant  
18 to subparagraph (A);

19 (ii) require delivery of electricity by the  
20 initial clean coal facility to the regional  
21 transmission organization market of the utility  
22 party to the sourcing agreement;

23 (iii) require the utility party to the  
24 sourcing agreement to buy from the initial clean  
25 coal facility in each hour an amount of energy  
26 equal to all clean coal energy made available from



1 the initial clean coal facility during such hour  
2 times the clean coal fraction for such utility for  
3 the applicable month, provided that the amount  
4 purchased by the utility in any year will be  
5 limited by paragraph (2) of this subsection (d);

6 (iv) require the utility party to the sourcing  
7 agreement to pay to the initial clean coal facility  
8 for each month the following: the electric  
9 generation variable charge multiplied by the  
10 quantity of energy required to be purchased by such  
11 utility in such month plus the product of the sum  
12 of the fuel charge plus the fixed monthly charge,  
13 based on the MW of nameplate capacity of the  
14 initial clean coal facility's power block, for  
15 such month, multiplied by the fraction determined  
16 for the utility for such month according to clause  
17 (iii) of this subparagraph (B); for purposes of  
18 this clause (iv), "electric generation variable  
19 charge", "fuel charge", and "fixed monthly charge"  
20 shall each have the meaning ascribed to the term in  
21 subsection (a) of Section 1-76 of this Act; and

22 (v) be considered pre-existing contracts in  
23 the utility's procurement plans for eligible  
24 retail customers; the provisions of this  
25 subparagraph (B) are severable under Section 1.31  
26 of the Statute on Statutes.

1 ~~(B) power purchase provisions, which shall:~~

2 ~~(i) provide that the utility party to such~~  
3 ~~sourcing agreement shall pay the contract price~~  
4 ~~for electricity delivered under such sourcing~~  
5 ~~agreement;~~

6 ~~(ii) require delivery of electricity to the~~  
7 ~~regional transmission organization market of the~~  
8 ~~utility that is party to such sourcing agreement;~~

9 ~~(iii) require the utility party to such~~  
10 ~~sourcing agreement to buy from the initial clean~~  
11 ~~coal facility in each hour an amount of energy~~  
12 ~~equal to all clean coal energy made available from~~  
13 ~~the initial clean coal facility during such hour~~  
14 ~~times a fraction, the numerator of which is such~~  
15 ~~utility's retail market sales of electricity~~  
16 ~~(expressed in kilowatthours sold) in the State~~  
17 ~~during the prior calendar month and the~~  
18 ~~denominator of which is the total retail market~~  
19 ~~sales of electricity (expressed in kilowatthours~~  
20 ~~sold) in the State by utilities during such prior~~  
21 ~~month and the sales of electricity (expressed in~~  
22 ~~kilowatthours sold) in the State by alternative~~  
23 ~~retail electric suppliers during such prior month~~  
24 ~~that are subject to the requirements of this~~  
25 ~~subsection (d) and paragraph (5) of subsection (d)~~  
26 ~~of Section 16 115 of the Public Utilities Act,~~

1 ~~provided that the amount purchased by the utility~~  
2 ~~in any year will be limited by paragraph (2) of~~  
3 ~~this subsection (d); and~~

4 ~~(iv) be considered pre-existing contracts in~~  
5 ~~such utility's procurement plans for eligible~~  
6 ~~retail customers;~~

7 (C) contract for differences provisions, which  
8 shall:

9 (i) require the utility party to such sourcing  
10 agreement to contract with the initial clean coal  
11 facility in each hour with respect to an amount of  
12 energy equal to all clean coal energy made  
13 available from the initial clean coal facility  
14 during such hour times the clean coal a fraction  
15 for such utility for applicable month, ~~the~~  
16 ~~numerator of which is such utility's retail market~~  
17 ~~sales of electricity (expressed in kilowatthours~~  
18 ~~sold) in the utility's service territory in the~~  
19 ~~State during the prior calendar month and the~~  
20 ~~denominator of which is the total retail market~~  
21 ~~sales of electricity (expressed in kilowatthours~~  
22 ~~sold) in the State by utilities during such prior~~  
23 ~~month and the sales of electricity (expressed in~~  
24 ~~kilowatthours sold) in the State by alternative~~  
25 ~~retail electric suppliers during such prior month~~  
26 ~~that are subject to the requirements of this~~

1 ~~subsection (d) and paragraph (5) of subsection (d)~~  
2 ~~of Section 16-115 of the Public Utilities Act,~~  
3 provided that the amount purchased ~~paid~~ by the  
4 utility in any year will be limited by paragraph  
5 (2) of this subsection (d);

6 (ii) provide that the utility's payment  
7 obligation in respect of the quantity of  
8 electricity determined pursuant to the preceding  
9 clause (i) for any month shall be ~~limited to an~~  
10 ~~amount~~ equal to ~~(1)~~ the difference of the electric  
11 generation variable charge, the fuel charge, and  
12 the fixed monthly charge, that would be payable by  
13 the utility for such month based on such quantity  
14 of electricity between the contract price  
15 ~~determined~~ pursuant to clause (iv) of subparagraph  
16 (B) (A) of this paragraph (3), minus the product of  
17 (1) of this subsection (d) and the day-ahead price  
18 for electricity delivered to the regional  
19 transmission organization market of the electric  
20 utility that is party to such sourcing agreement  
21 (or any successor delivery point at which such  
22 utility's supply obligations are financially  
23 settled on an hourly basis) (the "reference  
24 price") on the day preceding the day on which the  
25 electricity is delivered to the initial clean coal  
26 facility busbar, multiplied by (2) the quantity of

1 electricity determined pursuant to the preceding  
2 clause (i), calculated for each hour in such month;  
3 and

4 (iii) not require the utility to take physical  
5 delivery of the electricity produced by the  
6 facility;

7 (D) general provisions, which shall:

8 (i) specify a term of no more than 30 years,  
9 commencing on the commercial operation date of the  
10 facility;

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

19 (iii) provide that all costs associated with  
20 the initial clean coal facility will be  
21 periodically reported to the Federal Energy  
22 Regulatory Commission and to purchasers in  
23 accordance with applicable laws governing  
24 cost-based wholesale power contracts;

25 (iv) permit the Illinois Power Agency, if it is  
26 so authorized by law, to assume ownership of the

1 initial clean coal facility, without monetary  
2 consideration and otherwise on reasonable terms  
3 acceptable to the Agency, if the Agency so requests  
4 no less than 3 years prior to the end of the stated  
5 contract term;

6 (v) require the owner of the initial clean coal  
7 facility to comply with provisions reflecting  
8 those set forth in Section 1-76.5 of this Act;  
9 ~~provide documentation to the Commission each year,~~  
10 ~~starting in the facility's first year of~~  
11 ~~commercial operation, accurately reporting the~~  
12 ~~quantity of carbon emissions from the facility~~  
13 ~~that have been captured and sequestered and report~~  
14 ~~any quantities of carbon released from the site or~~  
15 ~~sites at which carbon emissions were sequestered~~  
16 ~~in prior years, based on continuous monitoring of~~  
17 ~~such sites. If, in any year after the first year of~~  
18 ~~commercial operation, the owner of the facility~~  
19 ~~fails to demonstrate that the initial clean coal~~  
20 ~~facility captured and sequestered at least 50% of~~  
21 ~~the total carbon emissions that the facility would~~  
22 ~~otherwise emit or that sequestration of emissions~~  
23 ~~from prior years has failed, resulting in the~~  
24 ~~release of carbon dioxide into the atmosphere, the~~  
25 ~~owner of the facility must offset excess~~  
26 ~~emissions. Any such carbon offsets must be~~

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

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

7           (vi) ~~include limits on, and accordingly~~  
8           provide for a reduction ~~modification~~ of~~7~~ the  
9           amount the utility is required to source under the  
10          sourcing agreement consistent with paragraph (2)  
11          of this subsection (d);

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



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

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

14           (ix) provide that each electric utility shall  
15           have the right to determine whether the  
16           obligations of the utility party under the  
17           sourcing agreement shall be governed by the power  
18           purchase provisions or the contract for  
19           differences provisions before entering into the  
20           sourcing agreements; the provisions of this item  
21           (ix) are severable under Section 1.31 of the  
22           Statute on Statutes;

23           ~~(x) provide that the owner or owners of the~~  
24           ~~initial clean coal facility, which is the~~  
25           ~~counterparty to such sourcing agreement, shall~~  
26           ~~have the right from time to time to elect whether~~

1 ~~the obligations of the utility party thereto shall~~  
2 ~~be governed by the power purchase provisions or the~~  
3 ~~contract for differences provisions;~~

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

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

17 (xii) ~~(xiii)~~ conform with customary lender  
18 requirements in power purchase agreements used as  
19 the basis for financing non-utility generators; ~~and~~

20 (xiii) provide for performance incentives  
21 regarding availability, efficiency, and by-product  
22 quantities, with premium performance and  
23 shortfalls in performance to result in positive  
24 and negative adjustments, respectively, to the  
25 rate of return approved by the Commission,  
26 provided that such rate of return in any year shall

1 not be decreased by more than \$25,000,000 or  
2 increased by more than \$12,500,000 as a result of  
3 such performance incentives. Such performance  
4 incentives shall be structured so that any  
5 increases in the rate of return as a result of such  
6 performance incentives are designed not to exceed  
7 the projected benefits to the buyers resulting  
8 from the initial clean coal facility's achievement  
9 of that performance incentive;

10 (xiv) include forecasting and scheduling  
11 obligations that take account of the requirements  
12 of the applicable regional transmission  
13 organizations;

14 (xv) include operating guidelines relating to  
15 the operating configuration and dispatch of the  
16 initial clean coal facility, which guidelines  
17 shall be subject to change from time to time with  
18 input from a committee consisting of  
19 representatives of the electric utilities and  
20 alternative retail electric suppliers that are  
21 parties to sourcing agreements with the initial  
22 clean coal facility; such operating guidelines  
23 shall take account the initial clean coal  
24 facility's obligations under any agreement for the  
25 purchase of SNG entered into pursuant to item (xvi)  
26 of this subparagraph (D) and shall be based on

1 principles of economic dispatch and the assumption  
2 that the variable cost of SNG purchased pursuant to  
3 such agreement is equal to the market price of  
4 natural gas delivered to the initial clean coal  
5 facility; any actions taken or not taken by the  
6 owner of the initial clean coal facility in  
7 compliance with such operating guidelines shall be  
8 deemed to be prudent, and the prudence of the costs  
9 resulting from the action shall be evaluated in  
10 light of the fact that the initial clean coal  
11 facility is required to comply with such operating  
12 guidelines; and

13 (xvi) authorize the initial clean coal  
14 facility to enter into an agreement with a clean  
15 coal SNG facility or a clean coal SNG brownfield  
16 facility for the purchase by the initial clean coal  
17 facility during all or part of the term of the  
18 sourcing agreement a quantity of SNG produced by  
19 such clean coal SNG facility or clean coal SNG  
20 brownfield facility each year up to the lesser of  
21 (x) the initial clean coal facility's requirements  
22 for imported methane in such year and (y) 16% of  
23 the SNG produced by such clean coal SNG facility or  
24 clean coal SNG brownfield facility during such  
25 year at a delivered price to be set forth in such  
26 agreement; such agreement shall provide for the

1           timing of gas deliveries in a manner that  
2           reasonably accommodates the initial clean coal  
3           facility's fuel requirements and generation  
4           schedule; the parties to such agreement may, if  
5           they mutually agree, structure such agreement as a  
6           financial settlement arrangement for the  
7           quantities of SNG set forth above, and such  
8           arrangement shall be deemed to be an agreement  
9           contemplated by this item (xvi); the form for such  
10           agreement shall be subject to approval by the  
11           Agency pursuant to a procedure substantially the  
12           same as that provided in paragraph (4) of this  
13           subsection (d) for the sourcing agreements, with  
14           the clean coal SNG facility or clean coal SNG  
15           brownfield facility participating in place of each  
16           electric utility, and pursuant to a schedule to be  
17           proposed by the initial clean coal facility and  
18           approved by the Agency.

19           (4) Effective date of sourcing agreements with the  
20           initial clean coal facility. No later than 30 days after  
21           the effective date of this amendatory Act of the 97th  
22           General Assembly, the initial clean coal facility shall  
23           submit a draft sourcing agreement to the Agency and each  
24           electric utility required to enter into such agreements  
25           pursuant to paragraph (3) of this subsection and the  
26           initial clean coal facility and each such electric utility

1 shall promptly and diligently negotiate in good faith over  
2 the terms of the sourcing agreement. Within 30 days after  
3 receipt of the draft sourcing agreement, each such electric  
4 utility shall provide the Agency and the owner of the  
5 initial clean coal facility with its comments and  
6 recommended revisions to the draft sourcing agreement.  
7 Within 15 days after the receipt of the electric utility's  
8 comments and recommended revisions, the owner of the  
9 initial clean coal facility shall submit its responsive  
10 comments and a further revised draft of the sourcing  
11 agreement to the Agency. The Agency shall review the draft  
12 sourcing agreement and comments and retain an independent,  
13 qualified, and experienced mediator to mediate disputes  
14 over the draft sourcing agreement's terms. The mediator  
15 shall not own or control any direct or indirect interest in  
16 the initial clean coal facility and shall have no  
17 contractual relationship with the initial clean coal  
18 facility. The mediator shall have knowledge of the energy  
19 industry.

20 If the parties to the sourcing agreement do not agree  
21 on the terms in the sourcing agreement within 15 days after  
22 receiving the owner's responsive comments and further  
23 revised draft, then the mediator retained by the Agency  
24 shall mediate the dispute between the parties. If the  
25 parties are in agreement on the terms of the sourcing  
26 agreement, then the Agency shall approve the final draft

1 sourcing agreement within 30 days after the parties reach  
2 agreement and notify the Commission of that agreement. If,  
3 within 30 days after the commencement of mediation, the  
4 parties have failed to come to agreement, then the Agency  
5 shall, with assistance, as appropriate, from the mediator  
6 retained pursuant to this paragraph (4), review and revise  
7 the draft sourcing agreement as necessary.

8 The Agency may approve a sourcing agreement only after  
9 it finds the sourcing agreement is consistent with the  
10 provisions of this Act and contains only terms that are  
11 balanced and equitable and fairly protect the interests of  
12 the parties to the sourcing agreement, with such approval  
13 to occur no later than 60 days after the commencement of  
14 the mediation. The Agency shall not withhold or condition  
15 its approval of the sourcing agreement based upon least  
16 cost resource principles or whether or not it would be  
17 prudent for buyers to enter into such an agreement if there  
18 were no legal requirement to do so, nor shall the  
19 resolution of open issues be based on these principles.

20 If the sourcing agreement is approved, then each  
21 electric utility required to enter into a sourcing  
22 agreement shall have 30 days after either the Agency's  
23 approval or the issuance of any necessary approval by the  
24 Federal Energy Regulatory Commission, whichever is later,  
25 to enter into the sourcing agreement. The Agency shall  
26 submit the approved sourcing agreement to the Commission

1 within 15 days after approval. Each electric utility and  
2 the initial clean coal facility shall pay a reasonable fee  
3 as required by the Agency for its services under this  
4 paragraph (4) and shall pay the mediator's reasonable fees,  
5 if any. The Agency shall adopt and make public a policy  
6 detailing the process for retaining a mediator under this  
7 paragraph (4).

8 ~~(4) Effective date of sourcing agreements with the~~  
9 ~~initial clean coal facility.~~ Any proposed sourcing  
10 agreement with the initial clean coal facility shall not  
11 become effective unless a facility cost report and  
12 Commission report, as described in this paragraph (4), ~~the~~  
13 ~~following reports~~ are prepared and submitted, whether  
14 prepared and submitted before or after the effective date  
15 of this amendatory Act of the 97th General Assembly. ~~and~~  
16 ~~authorizations and approvals obtained:~~

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



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

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

25 ~~(iii) General Assembly approval. The proposed~~  
26 ~~sourcing agreements shall not take effect unless,~~

1 ~~based on the facility cost report and the~~  
2 ~~Commission's report, the General Assembly enacts~~  
3 ~~authorizing legislation approving (A) the~~  
4 ~~projected price, stated in cents per kilowatthour,~~  
5 ~~to be charged for electricity generated by the~~  
6 ~~initial clean coal facility, (B) the projected~~  
7 ~~impact on residential and small business~~  
8 ~~customers' bills over the life of the sourcing~~  
9 ~~agreements, and (C) the maximum allowable return~~  
10 ~~on equity for the project; and~~

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

23 ~~The facility cost report shall be prepared as follows:~~

24 (A) The facility cost report shall be prepared by  
25 duly licensed engineering and construction firms  
26 detailing the estimated capital costs payable to one or

1 more contractors or suppliers for the engineering,  
2 procurement and construction of the components  
3 comprising the initial clean coal facility and the  
4 estimated costs of operation and maintenance of the  
5 facility. The facility cost report shall include:

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

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

23 In the facility cost report, the ~~The~~ quoted  
24 construction costs shall be expressed in nominal  
25 dollars as of the date that the quote is prepared and  
26 shall include ~~(1)~~ capitalized financing costs during

1 construction, ~~(2)~~ taxes, insurance, and other owner's  
2 costs, and ~~(3)~~ an assumed escalation in materials and  
3 labor beyond the date as of which the construction cost  
4 quote is expressed.

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

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

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

22 ~~(b)~~ The balance of the operating and  
23 maintenance cost quote, excluding delivered fuel  
24 costs, l will be developed based on the inputs  
25 provided by duly licensed engineering and  
26 construction firms performing the construction

1 cost quote, potential vendors under long-term  
2 service agreements and plant operating agreements,  
3 or recognized third party plant operator or  
4 operators.

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

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

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

25 (5) Re-powering and retrofitting coal-fired power  
26 plants previously owned by Illinois utilities to qualify as

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

1 facilities during the term of any such contract.

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

8 (e) The draft procurement plans are subject to public  
9 comment, as required by Section 16-111.5 of the Public  
10 Utilities Act and Section 1-78 of this Act.

11 (f) The Agency shall submit the final procurement plan  
12 to the Commission. The Agency shall revise a procurement  
13 plan if the Commission determines that it does not meet the  
14 standards set forth in Section 16-111.5 of the Public  
15 Utilities Act and Section 1-78 of this Act.

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

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

22 (i) The Agency shall assess fees to the initial clean  
23 coal facility to recover the costs incurred in preparation  
24 of each procurement plan for the initial clean coal  
25 facility.

26 (j) The General Assembly finds that enterprises owned

1 by minorities, women, and persons with disabilities are  
2 under-represented in sales of goods and services used in  
3 the construction of energy projects and accordingly deems  
4 it a prudent business practice that is in the interests of  
5 the People of the State of Illinois to develop and promote  
6 economic opportunities for enterprises owned by  
7 minorities, women, and persons with disabilities in the  
8 energy production industry.

9 The initial clean coal facility, any clean coal  
10 facility, any clean coal SNG brownfield facility, and any  
11 clean coal SNG facility shall include in any agreement to  
12 sell electric power or SNG entered into pursuant to this  
13 Act provisions that require the owner of the facility to  
14 make a good faith effort to ensure that an amount equal to  
15 not less than 15% of the value of its prime construction  
16 contract for the facility shall be established as a goal to  
17 be awarded to minority owned businesses, female owned  
18 businesses, and businesses owned by a person with a  
19 disability; provided that at least 75% of the amount of  
20 such total goal shall be for minority owned businesses.

21 "Minority owned business", "female owned business",  
22 and "business owned by a person with a disability" shall  
23 have the meanings ascribed to them in Section 2 of the  
24 Business Enterprise for Minorities, Females, and Persons  
25 with Disabilities Act.

26 (k) Any clean coal SNG facility or clean coal SNG



1 brownfield facility shall be authorized to enter into an  
2 SNG purchase agreement with the initial clean coal facility  
3 as described in item (xvi) of subparagraph (D) of paragraph  
4 (3) of subsection (d) of this Section.

5 (Source: P.A. 96-159, eff. 8-10-09; 96-1437, eff. 8-17-10;  
6 97-325, eff. 8-12-11.)

7 (20 ILCS 3855/1-76 new)

8 Sec. 1-76. Costs and revenue recoverable by the initial  
9 clean coal facility.

10 (a) The price paid for electricity generated by the initial  
11 clean coal facility shall be based on a formula rate using a  
12 cost of service methodology applicable to wholesale electric  
13 power contracts employing a level or deferred capital component  
14 and in accordance with the Uniform System of Accounts, subject  
15 to and as specifically limited by the provisions set forth in  
16 this Section.

17 The formula rate shall determine 3 components of the price  
18 under the sourcing agreements: (1) a fuel charge, (2) an  
19 electric generation variable charge, and (3) a fixed monthly  
20 charge. The fuel charge for any month shall be stated in  
21 dollars per month and shall consist of the total actual fuel  
22 costs incurred, after taking account of the subtraction of  
23 miscellaneous net revenue as provided in subsection (d) of this  
24 Section. The electric generation variable charge for any period  
25 shall be stated in dollars per MWh and shall consist of all

1 costs incurred by the initial clean coal facility, other than  
2 fuel costs, associated with production of electric energy by  
3 the initial clean coal facility's power block, which costs vary  
4 directly with the level of production of electric energy. The  
5 fixed monthly charge shall be stated in dollars per month per  
6 MW of nameplate capacity of the initial clean coal facility's  
7 power block and shall consist of all costs incurred by the  
8 initial clean coal facility that are described in, and as  
9 limited by the provisions of, subsections (b), (c), (d), (e),  
10 (f), and (g) of this Section, other than the costs incorporated  
11 into the calculation of the fuel charge and the electric  
12 generation variable charge.

13 No later than 30 days after the approval of the sourcing  
14 agreement by the Agency pursuant to paragraph (4) of subsection  
15 (d) of Section 1-75 of this Act, the initial clean coal  
16 facility shall provide to the Commission projections of its  
17 costs for the term of the sourcing agreements. Within 90 days  
18 thereafter, the Commission shall, based upon such projections  
19 and the provisions of this Section, determine the projected  
20 components of the price for each year for the initial clean  
21 coal facility. No later than 6 months before the expected  
22 commencement of commercial operation of the initial clean coal  
23 facility and the commencement of each operating year  
24 thereafter, the initial clean coal facility shall submit to the  
25 Commission projections of its costs and dispatch levels for the  
26 upcoming year. Within 120 days after the receipt of the initial

1 clean coal facility's projections of its costs and dispatch  
2 levels for the upcoming year, the Commission shall calculate a  
3 fixed monthly charge and an electric generation variable charge  
4 for the upcoming year using the inputs to the formula rate  
5 under the provisions of this Section. If the Commission does  
6 not calculate such components of the price for any year as of  
7 the beginning of such year, then the initial clean coal  
8 facility shall calculate such components of the price based  
9 upon its projections and the provisions of this Section, with  
10 any subsequent cost disallowance by the Commission to be  
11 reflected through a true-up of costs in the next year. If at  
12 any time the Commission, acting in accordance with this  
13 Section, disallows any cost, then the amount of such  
14 disallowance shall be incorporated as a deduction into the  
15 calculation of the fixed monthly charge and the electric  
16 generation variable charge, as applicable, for the next year.

17 (b) Capital costs set by the Commission according to this  
18 subsection (b) shall be included in the formula rate. "Capital  
19 costs" means costs for the purchase of land, buildings,  
20 construction, and equipment to be used in the production of  
21 electricity, and other costs recorded in the Electric Plant  
22 Accounts and other applicable Balance Sheet Accounts of the  
23 Uniform System of Accounts for the initial clean coal facility.  
24 The Capital Development Board shall calculate a range of  
25 capital costs that it believes would be a reasonable cost for  
26 the initial clean coal facility. The Capital Development Board

1 shall commence performing its responsibilities under this  
2 subsection (b) within 30 days after the effective date of this  
3 amendatory Act of the 97th General Assembly. In determining a  
4 range of capital costs, the Capital Development Board shall  
5 base its evaluation and judgment on professional engineering  
6 and regulatory accounting principles and include any cost  
7 information and update on costs that may be provided by the  
8 initial clean coal facility and shall not employ least cost  
9 resource principles. In addition, the Capital Development  
10 Board may:

11 (1) include in its consideration the information in a  
12 facility cost report, if any, that was prepared and  
13 submitted by the initial clean coal facility to the  
14 Commission in accordance with paragraph (4) of subsection  
15 (d) of Section 1-75 of this Act;

16 (2) consult as much as it deems necessary with the  
17 initial clean coal facility;

18 (3) conduct whatever research and investigation it  
19 deems necessary; and

20 (4) retain third parties to assist in its  
21 determination, provided that such third parties shall not  
22 own or control any direct or indirect interest in the  
23 initial clean coal facility and shall have no contractual  
24 relationship with the initial clean coal facility.

25 The initial clean coal facility shall cooperate with the  
26 Capital Development Board in any investigation it deems

1 necessary.

2 The Capital Development Board shall make its final  
3 determination of the range of capital costs confidentially and  
4 shall submit that range to the Commission in a confidential  
5 filing no later than 90 days after the Capital Development  
6 Board is required to commence performing its responsibilities  
7 under this subsection (b). The initial clean coal facility  
8 shall submit to the Commission its estimate of the capital  
9 costs to be included in the formula rate. Only after the  
10 initial clean coal facility has submitted this estimate shall  
11 the Commission publicly announce the range of capital costs  
12 submitted by the Capital Development Board. In the event that  
13 the estimate submitted by the initial clean coal facility is  
14 within or below the range submitted by the Capital Development  
15 Board, the initial clean coal facility's estimate shall be  
16 approved by the Commission as the amount of pre-approved  
17 capital costs.

18 In the event that the estimate submitted by the initial  
19 clean coal facility is above the range submitted by the Capital  
20 Development Board, the amount of capital costs at the lowest  
21 end of the range submitted by the Capital Development Board  
22 shall be approved by the Commission as the amount of  
23 pre-approved capital costs. "Pre-approved capital costs" means  
24 the amount of capital costs that will be included in the  
25 formula rate to the extent such costs are actually incurred,  
26 with no further review or approval with respect to whether they

1 are prudently incurred. The Commission's determination of  
2 pre-approved capital costs shall be made within 15 days after  
3 the initial clean coal facility submits its capital cost  
4 estimate. The Commission's decision regarding pre-approved  
5 capital costs shall be final and shall not be subject to  
6 judicial or administrative review.

7 Once made, the Commission's determination of the amount of  
8 pre-approved capital costs may not be increased unless the  
9 Commission determines that the incremental costs are  
10 reasonable, in which case one-third of such reasonable  
11 incremental costs shall be included in the formula rate and  
12 recoverable by the initial clean coal facility and two-thirds  
13 of such costs shall be borne by the initial clean coal facility  
14 and its contractors, provided that to the extent such  
15 reasonable incremental costs are the result of change in law or  
16 non-insurable force majeure, all of such costs shall be  
17 included in the formula rate and recoverable by the initial  
18 clean coal facility.

19 "Change in law" means any change, including any enactment,  
20 repeal, or amendment, in a law, ordinance, rule, regulation,  
21 interpretation, permit, license, consent or order, including  
22 those relating to taxes or to environmental matters, or in the  
23 interpretation or application thereof by any governmental  
24 authority occurring after May 31, 2011.

25 "Non-insurable force majeure" means events outside of the  
26 reasonable control of the owner of the initial clean coal

1 facility and its contractors, subcontractors, and agents that  
2 are not included on a list, to be attached to the sourcing  
3 agreement and subject to the procedures set forth in paragraph  
4 (4) of subsection (d) of Section 1-75 of this Act, of events  
5 that are customarily covered by builder's risk insurance  
6 policies for the construction of electric generating plants and  
7 other large process plants in the United States. "Non-insurable  
8 force majeure" shall not include changes in prices or other  
9 changes in market conditions.

10 Any rebates, refunds, or other payments received by the  
11 owner of the initial clean coal facility from any of its  
12 contractors with respect to the contractor bearing risk for  
13 capital cost overruns shall be excluded from miscellaneous net  
14 revenue and shall not otherwise reduce the costs of the owner  
15 of the initial clean coal facility for purposes of the formula  
16 rate. For purposes of this subsection (b), "reasonable" means  
17 that the decisions, construction, and supervision of  
18 construction by the owner of the initial clean coal facility  
19 and its contractors underlying the initial capital cost and  
20 significant additions to the initial capital cost of the  
21 initial clean coal facility resulted in efficient, economical,  
22 and timely construction. In determining the reasonableness of  
23 the capital costs of the initial clean coal facility, the  
24 Commission shall consider the knowledge and circumstances  
25 prevailing at the time of each relevant decision or action of  
26 the owner of the initial clean coal facility and its

1 contractors.

2 The Commission may determine that the amount of  
3 pre-approved capital costs may be increased only after notice  
4 and a hearing. At that hearing, the Capital Development Board  
5 shall submit a report recommending whether the incremental  
6 costs should be approved in full or in part or rejected. The  
7 Commission may approve in whole or in part or reject the  
8 incremental capital costs based on whether they are reasonable.  
9 At the request of the owner of the initial clean coal facility  
10 made not more often than once every 12 months during the  
11 construction period of the initial clean coal facility, the  
12 Commission shall conduct interim reviews to determine whether  
13 capital costs specified in such request and incurred or to be  
14 incurred by the owner of the initial clean coal facility are  
15 reasonable.

16 The Capital Development Board shall monitor the  
17 construction of the initial clean coal facility for the full  
18 duration of construction. The Capital Development Board, in its  
19 discretion, may retain third parties to facilitate such  
20 monitoring, provided that such third parties shall not own or  
21 control any direct or indirect interest in the initial clean  
22 coal facility and shall have no contractual relationship with  
23 the initial clean coal facility. The initial clean coal  
24 facility shall pay a reasonable fee as required by the Capital  
25 Development Board for the Capital Development Board's services  
26 under this subsection (b), and such fee shall not be passed



1 through to a utility or its customers. If a third party is  
2 retained by the Capital Development Board for the determination  
3 of a range of capital costs or monitoring of construction, the  
4 initial clean coal facility must pay for the third party's  
5 reasonable fees, and such costs may not be passed through to a  
6 utility or its customers.

7 The provisions of this subsection (b) shall apply to the  
8 capital costs for the initial construction of the initial clean  
9 coal facility and not to capital costs incurred beyond the  
10 initial construction, including costs for replacement of  
11 equipment and capital improvements, which capital costs shall  
12 be subject to review by the Commission and included in the  
13 formula rate to the extent they are determined to be prudently  
14 incurred.

15 (c) Operations and maintenance costs set by the Commission  
16 according to this subsection (c) shall be included in the  
17 formula rate. Operations and maintenance costs mean costs  
18 incurred for the administration, supervision, operation,  
19 maintenance, preservation, and protection of the initial clean  
20 coal facility's physical plant and other costs recorded in the  
21 Operation and Maintenance Expense Accounts and other  
22 applicable Income Statement Accounts of the Uniform System of  
23 Accounts for the initial clean coal facility. The Commission  
24 shall assess the prudence of the operations and maintenance  
25 costs for the initial clean coal facility and shall allow the  
26 initial clean coal facility to include in the formula rate only

1 those costs the Commission deems to be prudent. The Commission  
2 may in its discretion retain an expert to assist in its review  
3 of operations and maintenance costs. The initial clean coal  
4 facility shall pay for the expert's fees if an expert is  
5 retained by the Commission, and such costs may not be passed  
6 through to a utility or its customers. The Commission's  
7 determination regarding the amount of operations and  
8 maintenance costs that may be included in the formula rate for  
9 each year shall be made in accordance with this Section.

10 (d) Actual fuel costs shall be set by the Agency through a  
11 SNG feedstock procurement, pursuant to Section 1-79 of this  
12 Act, to be performed at least every 5 years, and purchased by  
13 the initial clean coal facility pursuant to a reasonable fuel  
14 supply plan, with coal comprising at least 50% of the total  
15 feedstock over the term of a sourcing agreement with all coal  
16 having high volatile bituminous rank and greater than 1.7  
17 pounds of sulfur per million btu content, SNG derived from coal  
18 comprising at least 50% of the fuel to generate electricity,  
19 SNG derived from biomass comprising up to 10% of the fuel to  
20 generate electricity with the approval of the Commission, and  
21 natural gas comprising the remainder of the fuel to generate  
22 electricity. Actual fuel costs shall consist of all costs  
23 associated with the procurement of fuel, including, but not  
24 limited to, commodity costs, transportation costs,  
25 administrative costs, and costs relating to the procurement  
26 process. Actual fuel costs, as so determined, shall be reduced

1 by miscellaneous net revenue received by the owner of the  
2 initial clean coal facility, including, but not limited to, net  
3 revenue from the sale of emission allowances, if any,  
4 substitute natural gas, if any, grants or other support  
5 provided by the State of Illinois or the United States  
6 Government, firm transmission rights, if any, by-products  
7 produced by the facility, any capacity derived from the  
8 facility and bid into the capacity markets or otherwise sold  
9 and any energy generated as a result of such capacity being  
10 called, whether generated from synthesis gas derived from coal,  
11 from SNG, or from natural gas, less non-generation variable  
12 costs. "Non-generation variable costs" means all costs, other  
13 than fuel costs, associated with the production of SNG that is  
14 not consumed by the initial clean coal facility's power block,  
15 which costs vary directly with the level of production of SNG.  
16 Actual fuel costs shall be calculated pursuant to this  
17 subsection (d) and included in the formula rate without any  
18 determination by the Commission as to prudence.

19 (e) Sequestration costs set by the Commission according to  
20 this subsection (e) shall be included in the formula rate.

21 "Sequestration costs" means costs incurred to (1) capture  
22 carbon dioxide; (2) compress carbon dioxide; (3) build,  
23 operate, and maintain a sequestration site in which carbon  
24 dioxide may be injected; (4) build, operate, and maintain a  
25 carbon dioxide pipeline, which is owned by the initial clean  
26 coal facility; (5) transport the carbon dioxide to a

1 sequestration site or a pipeline; and (6) perform monitoring,  
2 verification and other activities associated with carbon  
3 capture and sequestration.

4 "Sequestration capital costs" means sequestration costs  
5 recorded in the Electric Plant Accounts and other applicable  
6 Balance Sheet Accounts of the Uniform System of Accounts for  
7 the initial clean coal facility.

8 "Sequestration operations and maintenance costs" means  
9 sequestration costs that are recorded in the Operation and  
10 Maintenance Expense Accounts and other applicable Income  
11 Statement Accounts of the Uniform System of Accounts for the  
12 initial clean coal facility and shall include maintenance,  
13 monitoring, and verification costs.

14 The Capital Development Board shall calculate an estimate  
15 of sequestration capital costs that it believes would be a  
16 reasonable cost for the initial clean coal facility's  
17 sequestration facilities and an estimate of average annual  
18 sequestration operations and maintenance costs that it  
19 believes would be a reasonable average annual operation and  
20 maintenance cost for the initial clean coal facility's carbon  
21 capture and sequestration activities. The Capital Development  
22 Board shall commence performing its responsibilities under  
23 this subsection (e) within 30 days after the effective date of  
24 this amendatory Act of the 97th General Assembly. In  
25 determining sequestration capital costs and sequestration  
26 operations and maintenance costs, the Capital Development

1 Board shall base its evaluation and judgment on professional  
2 engineering and regulatory accounting principles and include  
3 any cost information and update on costs that may be provided  
4 by the initial clean coal facility and shall not employ least  
5 cost resource principles. In addition, the Capital Development  
6 Board may: (A) include in its consideration cost estimate  
7 information in a facility cost report, if any, that was  
8 prepared and submitted by the initial clean coal facility to  
9 the Commission in accordance with paragraph (4) of subsection  
10 (d) of Section 1-75 of this Act; (B) consult as much as it  
11 deems necessary with the initial clean coal facility; (C)  
12 conduct whatever research and investigation it deems  
13 necessary; and (D) retain third parties to assist in its  
14 determination, provided that such third parties shall not own  
15 or control any direct or indirect interest in the initial clean  
16 coal facility and shall have no contractual relationship with  
17 the initial clean coal facility. The initial clean coal  
18 facility shall cooperate with the Capital Development Board in  
19 any investigation it deems necessary.

20 The Capital Development Board shall make its final  
21 determination of sequestration capital costs and sequestration  
22 operations and maintenance costs and submit such determination  
23 to the Commission no later than 90 days after the Capital  
24 Development Board is required to commence performing its  
25 responsibilities under this subsection (e). The Capital  
26 Development Board shall monitor construction of the

1 sequestration facilities in the same manner, and with the same  
2 rights to retain an expert and recover the costs thereof, as  
3 set forth in subsection (b) of this Section.

4 "Actual sequestration costs" means for any year the sum of:  
5 (i) the annual amortized portion of sequestration capital  
6 costs, based on level amortization from the later of the date  
7 such costs are incurred and the commercial operation date until  
8 the end of the term of the sourcing agreements; (ii) the rate  
9 of return approved by the Commission pursuant to subsection (f)  
10 of this Section applied to sequestration capital costs; and  
11 (iii) the sequestration operations and maintenance costs  
12 incurred in such year.

13 "Target sequestration costs" means the sum of: (i) the  
14 annual amortized portion of the estimated sequestration  
15 capital costs determined by the Capital Development Board,  
16 based on level amortization from the later of the date such  
17 costs are incurred and the commercial operation date until the  
18 end of the term of the sourcing agreements; (ii) the rate of  
19 return approved by the Commission pursuant to subsection (f) of  
20 this Section applied to the estimated sequestration capital  
21 costs determined by the Capital Development Board; (iii) the  
22 estimate of average annual sequestration operations and  
23 maintenance costs determined by the Capital Development Board,  
24 escalated in accordance with an escalation factor to be  
25 provided in the sourcing agreement from the date of the Capital  
26 Development Board's determination to the mid-point of the

1 applicable year; (iv) the sequestration cost underrun, if any,  
2 for the immediately preceding year, except to the extent  
3 applied to allow recovery of a sequestration cost overrun from  
4 a prior year; and (v) any sequestration costs that are the  
5 result of a change in law or non-insurable force majeure.

6 "Sequestration cost underrun" means for any year the  
7 excess, if any, of target sequestration costs for such year  
8 over actual sequestration costs for such year.

9 "Sequestration cost overrun" means for any year the excess,  
10 if any, of actual sequestration costs for such year over target  
11 sequestration costs for such year.

12 For any year in which there is a sequestration cost  
13 underrun, all actual sequestration costs shall be conclusively  
14 deemed to be prudent and shall be included in the formula rate  
15 with no further review or approval in respect of whether they  
16 are prudently incurred. The Commission shall review the costs  
17 to ensure they are mathematically correct.

18 For any year in which there is a sequestration cost  
19 overrun, the Commission shall determine whether all or a  
20 portion of such sequestration cost overrun was prudently  
21 incurred, except that the rate of return shall not be subject  
22 to review. If the Commission determines that the sequestration  
23 cost overrun was prudently incurred, one-third of such  
24 sequestration cost overrun shall be included in the formula  
25 rate and recoverable by the initial clean coal facility and  
26 two-thirds of such sequestration cost overrun shall be borne by

1 the initial clean coal facility and not passed through to a  
2 utility, an alternative retail electric supplier, or the  
3 customers of a utility unless and until there is a  
4 sequestration cost underrun for a subsequent year, in which  
5 event the sequestration cost overrun will be included in the  
6 formula rate and recoverable by the initial clean coal facility  
7 up to the amount of the sequestration cost underrun; provided,  
8 however, that if for any year two-thirds of such sequestration  
9 cost overrun exceeds the difference of \$20,000,000 minus the  
10 amount of penalty, if any, payable by the initial clean coal  
11 facility pursuant to Section 1-76.5 with respect to that year,  
12 the amount of such excess shall also be included in the formula  
13 rate and recoverable by the initial clean coal facility. The  
14 detailed procedures for implementing this provision shall be  
15 set forth in the sourcing agreements, which procedures shall  
16 include a mechanism for equitably adjusting target  
17 sequestration costs for any year in which the quantity of  
18 carbon dioxide actually captured and sequestered by the initial  
19 clean coal facility is greater than the quantity assumed in  
20 calculating the estimated costs for such year.

21 "Change in law" means any change, including any enactment,  
22 repeal, or amendment, in a law, ordinance, rule, regulation,  
23 interpretation, permit, license, consent or order, including  
24 those relating to taxes or to environmental matters, or in the  
25 interpretation or application thereof by any governmental  
26 authority occurring after May 31, 2011.



1       "Non-insurable force majeure" means events outside of the  
2 reasonable control of the owner of the initial clean coal  
3 facility and its contractors, subcontractors, and agents that  
4 are not included on a list, to be attached to the sourcing  
5 agreement and subject to the procedures set forth in paragraph  
6 (4) of subsection (d) of Section 1-75 of this Act, of events  
7 that are customarily covered by builder's risk insurance  
8 policies for the construction of electric generating plants and  
9 other large process plants in the United States. "Non-insurable  
10 force majeure" shall not include changes in prices or other  
11 changes in market conditions.

12       (f) The Commission shall determine within 120 days after  
13 the effective date of this amendatory Act of the 97th General  
14 Assembly or 120 days after the owner of the initial clean coal  
15 facility files initial direct testimony regarding rate of  
16 return with the Commission, whichever is later, the total rate  
17 of return on invested capital for the initial clean coal  
18 facility following notice and a public hearing. At the hearing,  
19 all interested parties, including utilities, alternative  
20 retail electric suppliers, the Attorney General, the Agency,  
21 and customers, shall be given an opportunity to be heard. In  
22 determining the rate of return, the Commission shall select a  
23 sufficient return on investment so as to enable the initial  
24 clean coal facility to attract capital in financial markets at  
25 competitive rates. The Commission shall consider the rates of  
26 return received by developers of facilities similar to the

1 initial clean coal facility inside or outside Illinois, the  
2 need to balance an incentive for clean-coal technology with the  
3 need to protect Illinois ratepayers from high electricity  
4 costs, and any other information the Commission deems relevant.

5 The Agency shall recommend a rate of return to the  
6 Commission utilizing the criteria in this subsection (f). The  
7 Commission shall further take into account the recommendation  
8 of the Agency, but shall not be bound by it. The rate of return  
9 shall be no lower than 75 basis points lower than the weighted  
10 average authorized total rates of return of the electric  
11 utilities in accordance with original cost rate base for their  
12 electric distribution assets as of January 1, 2011.  
13 Notwithstanding the minimum rate of return established in the  
14 preceding sentence, the rate of return shall be no greater than  
15 the total rate of return on invested capital that the initial  
16 clean coal facility would achieve based on an assumed 55% debt  
17 and 45% equity capital structure, with the cost of debt being  
18 the actual average cost, including all associated costs and  
19 fees, of the initial clean coal facility's debt and the cost of  
20 equity being 11.5%. The Commission's determination of the rate  
21 of return shall include a mechanism providing for a one-time  
22 adjustment at or about the commencement of commercial operation  
23 of the initial clean coal facility to adjust for changes in  
24 applicable Treasury yield rates between the date of its  
25 provisional determination of the rate of return and the dates  
26 of construction period borrowing by the initial clean coal

1 facility, which adjustment shall apply to 55% of total capital.

2 The Commission's decision shall be final and not subject to  
3 any rehearing or administrative or judicial review. The rate of  
4 return determined by the Commission pursuant to this subsection  
5 (f) shall apply for the term of the sourcing agreements and  
6 shall not be subject to change, except for the one-time  
7 adjustment to reflect Treasury yield rate changes as expressly  
8 contemplated by this subsection (f) and as otherwise expressly  
9 provided in subsection (b) of Section 1-76.5 of this Act.

10 (g) The following shall not be included in determining the  
11 formula rate: advertising expenses that do not meet the  
12 requirements of Sections 9-225 and 9-226 of the Public  
13 Utilities Act, political activity or lobbying expenses as  
14 defined by Section 9-224 of the Public Utilities Act, social  
15 club dues, or charitable contributions, to the extent, in each  
16 case, that a utility would not be permitted to recover such  
17 costs.

18 (h) Except as otherwise provided in subsections (b) and (f)  
19 of this Section 1-76, within 30 days after a decision of the  
20 Commission on recoverable costs under this Section, any  
21 interested party to the Commission's decision may apply for a  
22 rehearing with respect to the decision. The Commission shall  
23 receive and consider such application for rehearing and shall  
24 grant or deny the application in whole or in part within 20  
25 days from the date of the receipt thereof by the Commission. If  
26 no rehearing is applied for within the required 30 days or an

1 application for rehearing is denied, the Commission decision  
2 shall be final.

3 If an application for rehearing is granted, the Commission  
4 shall hold a rehearing within 30 days after granting the  
5 application. The decision of the Commission upon rehearing  
6 shall be final. Except as otherwise provided in subsections (b)  
7 and (f) of this Section 1-76, any person affected by a decision  
8 of the Commission under this Section 1-76 may have the decision  
9 reviewed only under and in accordance with the Administrative  
10 Review Law. Except as otherwise provided in subsections (b) and  
11 (f) of this Section 1-76, the provisions of the Administrative  
12 Review Law, all amendments and modifications thereof and the  
13 rules adopted pursuant thereto, shall apply to and govern all  
14 proceedings for the judicial review of final administrative  
15 decisions of the Commission under this subsection (h). The term  
16 "administrative decision" is defined as in Section 3-101 of the  
17 Code of Civil Procedure.

18 (i) The Capital Development Board shall adopt and make  
19 public a policy detailing the process for retaining third  
20 parties under this Section. Any third parties retained to  
21 assist with calculating the capital costs or sequestration  
22 costs shall be retained no later than 45 days after the  
23 effective date of this amendatory Act of the 97th General  
24 Assembly.

1       Sec. 1-76.5. Capture and sequestration requirements for  
2       initial clean coal facility.

3       (a) The initial clean coal facility shall provide  
4       documentation to the Commission each year of commercial  
5       operation accurately reporting the quantity of carbon  
6       emissions from the facility that have been captured and  
7       sequestered and report any quantities of carbon released from  
8       the site or sites at which carbon emissions were sequestered in  
9       prior years, based on continuous monitoring of such sites. If,  
10      in any year, the owner of the facility fails to demonstrate  
11      that (1) the portion of the facility that produces SNG captured  
12      and sequestered at least 90% of the carbon dioxide it would  
13      otherwise emit and (2) the initial clean coal facility as a  
14      whole captured and sequestered at least 50% of the total carbon  
15      emissions that the facility would otherwise emit or if the  
16      sequestration of emissions from prior years has failed,  
17      resulting in the release of carbon dioxide into the atmosphere,  
18      or both, then the owner of the initial clean coal facility must  
19      pay a penalty of \$20,000,000, which shall be deposited into the  
20      Energy Efficiency Trust Fund and distributed pursuant to  
21      subsection (b) of Section 6-6 of the Renewable Energy, Energy  
22      Efficiency, and Coal Resources Development Law of 1997.

23      If during the first 12 months of commercial operation of  
24      the initial clean coal facility, there are more than 4 stops  
25      and starts of the portion of the facility that produces SNG,  
26      with each stop and start of an individual unit constituting one

1 stop and start, then the calculation of the quantities  
2 described in this subsection (a) shall not take into account  
3 any carbon dioxide emissions from the portion of the facility  
4 that produces SNG occurring during the stop and start-up  
5 periods, including related periods of non-steady state  
6 operation, associated with such excess stops and starts. The  
7 penalty resulting from the failure to capture and sequester at  
8 least the minimum amount of carbon dioxide shall not be passed  
9 through to a utility, an alternative retail electric supplier,  
10 or the customers of a utility. The initial clean coal facility  
11 shall not forfeit its designation as the initial clean coal  
12 facility if the facility fails to fully comply with the  
13 applicable carbon sequestration requirements in any given  
14 year, provided the requisite penalties are complied with.

15 (b) In addition to any penalty for the initial clean coal  
16 facility's failure to capture and sequester at least its  
17 minimum sequestration requirement, the Attorney General, on  
18 behalf of the People of the State of Illinois, shall  
19 specifically enforce the facility's sequestration requirement  
20 and the other terms of this contract provision. Such action may  
21 be filed in any circuit court in Illinois. By entering into a  
22 sourcing agreement pursuant to subsection (d) of Section 1-75  
23 of this Act, the initial clean coal facility agrees to waive  
24 any objections to venue or to the jurisdiction of the court  
25 with regard to the Attorney General's action for specific  
26 performance under this Section. The Commission may reduce the

1 recoverable rate of return approved pursuant to Section 1-76 of  
2 this Act for the facility if the facility willfully fails to  
3 comply with the carbon capture and sequestration requirements  
4 set forth in this Section.

5 (c) Compliance with the capture and sequestration  
6 requirements of this Section shall be assessed annually by the  
7 Commission, which may in its discretion retain an expert to  
8 facilitate its assessment. The initial clean coal facility  
9 shall pay for the expert's reasonable fees if an expert is  
10 retained by the Commission, and such costs shall not be passed  
11 through to a utility, an alternative retail electric supplier,  
12 or the customers of a utility. The Commission shall adopt and  
13 make public a policy detailing the process for retaining an  
14 expert under this Section.

15 (d) Responsibility for compliance with the capture and  
16 sequestration requirements specified in this Section for the  
17 initial clean coal facility shall reside solely with the  
18 initial clean coal facility regardless of whether the facility  
19 has contracted with another party to capture, transport, or  
20 sequester carbon dioxide.

21 (20 ILCS 3855/1-77.5 new)

22 Sec. 1-77.5. Sequestration permitting, oversight, and  
23 investigations.

24 (a) No clean coal facility, initial clean coal facility,  
25 clean coal SNG brownfield facility, or clean coal SNG facility

1 may transport or sequester carbon dioxide unless the Commission  
2 approves the method of carbon dioxide transportation or  
3 sequestration as provided in this Section. Approval shall be  
4 required regardless of whether the facility has contracted with  
5 another party to transport or sequester the carbon dioxide.  
6 Nothing in this subsection (a) shall release the owner or  
7 operator of a carbon dioxide sequestration site or carbon  
8 dioxide pipeline from any other permitting requirements under  
9 applicable State and federal laws, statutes, rules, or  
10 regulations.

11 (b) No later than 3 months prior to the date upon which the  
12 company intends to commence construction of the facility, the  
13 owner of the facility shall file with the Commission a carbon  
14 dioxide transportation or sequestration plan. The Commission  
15 shall review proposed carbon dioxide transportation and  
16 sequestration methods and shall approve those methods it deems  
17 reasonable and cost-effective. For purposes of this review,  
18 "cost-effective" means a commercially reasonable price for  
19 similar carbon dioxide transportation or sequestration  
20 techniques. In determining whether sequestration through  
21 injection is reasonable and cost-effective, the Commission may  
22 consult with the Illinois State Geological Survey.

23 The Commission shall hold a public hearing within 30 days  
24 after receipt of the facility's carbon dioxide transportation  
25 or sequestration plan. The Commission shall post notice of the  
26 review on its website upon submission of a carbon dioxide



1 transportation or sequestration method and shall accept  
2 written public comments. The Commission shall take the comments  
3 into account when making its decision. However, the Commission  
4 shall not approve a carbon dioxide sequestration method if the  
5 owner or operator of the sequestration site has not received  
6 (1) an Underground Injection Control permit from the Illinois  
7 Environmental Protection Agency or the United States  
8 Environmental Protection Agency pursuant to the Environmental  
9 Protection Act, (2) an Underground Injection Control permit  
10 from the Illinois Department of Natural Resources pursuant to  
11 the Illinois Oil and Gas Act, or (3) any applicable permit from  
12 the state in which the sequestration site is located if the  
13 sequestration shall take place outside of Illinois. The  
14 Commission shall approve or deny the carbon dioxide  
15 transportation or sequestration method within 90 days after the  
16 receipt of all required information.

17 (c) At least annually, the Illinois Environmental  
18 Protection Agency shall inspect all carbon dioxide  
19 sequestration sites in Illinois to ensure the safety and  
20 feasibility of those sequestration sites. However, the  
21 Illinois Environmental Protection Agency may, as often as  
22 deemed necessary, monitor and conduct investigations of those  
23 sites. The owner or operator of the sequestration site must  
24 cooperate with the Illinois Environmental Protection Agency  
25 investigations of carbon dioxide sequestration sites. If the  
26 Illinois Environmental Protection Agency determines at any

1 time a site creates conditions that warrant the issuance of a  
2 seal order under Section 34 of the Environmental Protection  
3 Act, then the Illinois Environmental Protection Agency shall  
4 seal the site pursuant to the Environmental Protection Act. If  
5 the Illinois Environmental Protection Agency determines at any  
6 time a carbon dioxide sequestration site creates conditions  
7 that warrant the institution of a civil action for an  
8 injunction under Section 43 of the Environmental Protection  
9 Act, then the Illinois Environmental Protection Agency shall  
10 request the State's Attorney or the Attorney General to  
11 institute such action. The Illinois Environmental Protection  
12 Agency shall provide notice of any such actions as soon as  
13 possible on its website.

14 (d) At least annually, the Commission shall inspect all  
15 carbon dioxide pipelines in Illinois that transport carbon  
16 dioxide to ensure the safety and feasibility of those  
17 pipelines. However, the Commission may, as often as deemed  
18 necessary, monitor and conduct investigations of those  
19 pipelines. The owner or operator of the pipeline must cooperate  
20 with the Commission investigations of the carbon dioxide  
21 pipelines. If the Commission determines at any time that a  
22 carbon dioxide pipeline creates conditions that warrant the  
23 issuance of a seal order under Section 34 of the Environmental  
24 Protection Act, then the Commission shall notify the Illinois  
25 Environmental Protection Agency of such conditions. In  
26 circumstances in which the carbon dioxide pipeline creates a

1 substantial danger to the environment or public health or to  
2 the welfare of persons when the danger is to the livelihood of  
3 those persons, the State's Attorney or Attorney General may,  
4 upon the request of the Commission or on his or her own motion,  
5 institute a civil action for an immediate injunction to halt  
6 any discharge or other activity causing or contributing to the  
7 danger or require any other action as may be necessary. The  
8 Court may issue an ex parte order and shall schedule a hearing  
9 on the matter no later than 3 business days after the date of  
10 the injunction. The Commission shall provide notice of any such  
11 actions as soon as possible on its website.

12 (20 ILCS 3855/1-79 new)

13 Sec. 1-79. Feedstock procurement.

14 (a) A feedstock procurement plan shall, every 5 years, or  
15 more frequently with respect to feedstock that cannot  
16 reasonably be procured for a 5-year period on acceptable terms,  
17 be prepared for the initial clean coal facility based on the  
18 initial clean coal facility's projection of feedstock usage and  
19 ratios, and consistent with the applicable requirements of this  
20 Act. The plan shall specifically identify the feedstock  
21 products to be procured following plan approval and shall  
22 follow all the requirements set forth in this Act and all  
23 applicable State and federal laws, statutes, rules, or  
24 regulations, as well as Commission orders. Nothing in this  
25 Section precludes consideration of contracts longer than 5

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

9 (1) Daily generation analysis. This analysis shall  
10 include:

11 (A) multi-year historical analysis of hourly  
12 generation; and

13 (B) known or projected changes to future  
14 generation.

15 (2) Determination of the fuel specifications required  
16 for the initial clean coal facility, including:

17 (A) feedstock mix, as set by the initial clean coal  
18 facility with coal having high volatile bituminous  
19 rank and greater than 1.7 pounds of sulfur per million  
20 btu content and comprising at least 50% of the total  
21 feedstock over the term of the sourcing agreement;

22 (B) volume of each feedstock required;

23 (C) quality standards of each feedstock;

24 (D) transportation and delivery requirements and  
25 associated costs and impacts on the performance,  
26 availability, and reliability of the initial clean

1 coal facility;

2 (E) technical specifications of the initial clean  
3 coal facility for its feedstocks; and

4 (F) appropriate testing of any proposed feedstock  
5 before it is incorporated into the feedstock  
6 procurement plan or process to determine the effect of  
7 such feedstock on the performance, availability, and  
8 reliability of the initial clean coal facility.

9 (b) The feedstock procurement process shall be  
10 administered by a feedstock procurement administrator and  
11 monitored by a feedstock procurement monitor.

12 (1) The feedstock procurement administrator shall:

13 (A) design the final feedstock procurement process  
14 in accordance with subsection (d) of this Section  
15 following Commission approval of the feedstock  
16 procurement plan;

17 (B) develop feedstock benchmarks in accordance  
18 with paragraph (3) of subsection (d) of this Section to  
19 be used to evaluate bids; these benchmarks shall be  
20 submitted to the Commission for review and approval on  
21 a confidential basis prior to the feedstock  
22 procurement event;

23 (C) serve as the interface between the initial  
24 clean coal facility and feedstock suppliers regarding  
25 bidding and contract negotiations;

26 (D) manage the bidder pre-qualification and

1           registration process;

2           (E) obtain the initial clean coal facility's  
3           agreement to the final form of all supply contracts and  
4           credit collateral agreements;

5           (F) administer the request for feedstock proposals  
6           process;

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

18          (H) maintain confidentiality of supplier and  
19          bidding information in a manner consistent with all  
20          applicable laws, rules, regulations, and tariffs;

21          (I) submit a confidential report to the Commission  
22          recommending acceptance or rejection of bids;

23          (J) notify the facility of contract counterparties  
24          and contract specifics; and

25          (K) administer related contingency feedstock  
26          procurement events.

1           (2) The feedstock procurement monitor, who shall be  
2           retained by the Commission, shall:

3           (A) monitor interactions among the feedstock  
4           procurement administrator, suppliers, and the initial  
5           clean coal facility;

6           (B) monitor and report to the Commission on the  
7           progress of the feedstock procurement process;

8           (C) provide an independent confidential report to  
9           the Commission regarding the results of the feedstock  
10           procurement event;

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

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

19           (F) consult with the feedstock procurement  
20           administrator regarding the development and use of  
21           benchmark criteria, standard form contracts, credit  
22           policies, and bid documents; and

23           (G) assess compliance with the procurement plans  
24           approved by the Commission.

25           (c) The feedstock procurement process shall be conducted as  
26           follows:

1           (1) Beginning in 2012, the initial clean coal facility  
2           shall annually provide a range of feedstock requirement  
3           forecasts to the Agency by July 15 of each year, or such  
4           other date as may be required by the Commission or Agency.  
5           The feedstock requirement forecasts shall cover the 5-year  
6           feedstock procurement planning period for the next  
7           feedstock procurement plan, or such other longer period  
8           that the Agency or the Commission may require, and shall  
9           include daily data representing a high generation, low  
10           generation and expected generation scenario for the  
11           initial clean coal facility. The initial clean coal  
12           facility shall provide supporting data and assumptions for  
13           each of the scenarios.

14           (2) Beginning in 2012, the Agency shall at least every  
15           5 years prepare a feedstock procurement plan by August 15th  
16           of the applicable year, or such other date as may be  
17           required by the Commission. The feedstock procurement plan  
18           shall identify the portfolio of feedstocks to be procured.  
19           Copies of the feedstock procurement plan shall be posted  
20           and made publicly available on the Agency's and  
21           Commission's websites, and copies shall also be provided to  
22           the initial clean coal facility. The initial clean coal  
23           facility shall have 30 days following the date of posting  
24           to provide comment to the Agency on the feedstock  
25           procurement plan. Other interested entities also may  
26           comment on the feedstock procurement plan. All comments



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

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

22 (4) The Commission shall approve the feedstock  
23 procurement plan, including expressly the forecast used in  
24 the feedstock procurement plan, if the Commission  
25 determines that it shall ensure adequate, reliable,  
26 affordable, and environmentally sustainable feedstocks to

1 the initial clean coal facility at the lowest total cost  
2 over time, taking into account any benefits of price  
3 stability and other criteria set forth in this Section.

4 (d) The feedstock procurement process shall include each of  
5 the following components:

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

26 (2) Standard contract forms and credit terms and

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

22 (3) Establishment of a market-based price benchmark.  
23 As part of the development of the feedstock procurement  
24 process, the feedstock procurement administrator, in  
25 consultation with the Commission staff, Agency staff, and  
26 the feedstock procurement monitor, shall establish

1 benchmarks for evaluating the final prices in the contracts  
2 for each of the feedstocks that shall be procured through  
3 the feedstock procurement process. The benchmarks shall be  
4 based on price data for similar feedstocks for the same  
5 delivery period and similar delivery points, or other  
6 delivery points after adjusting for that difference. The  
7 price benchmarks may also be adjusted to take into account  
8 differences between the information reflected in the  
9 underlying data sources and the specific feedstocks and  
10 gasification feedstock procurement process being used to  
11 procure for the initial clean coal facility. The benchmarks  
12 shall be confidential but shall be provided to the  
13 Commission, and shall be subject to Commission review and  
14 approval, prior to a feedstock procurement event.

15 (4) Request for proposals. The feedstock procurement  
16 administrator shall design and issue a request for  
17 proposals to supply coal or natural gas in accordance with  
18 the initial clean coal facility's usage plan, as approved  
19 by the Commission. The request for proposals shall set  
20 forth a procedure for sealed, binding commitment bidding  
21 with pay-as-bid settlement, and provision for selection of  
22 bids on the basis of price.

23 (5) A plan for implementing contingencies in the event  
24 of supplier default or failure of the feedstock procurement  
25 process to fully meet the expected generation requirement  
26 due to insufficient supplier participation, Commission

1 rejection of results, or any other cause. The plan must be  
2 specific to the initial clean coal facility's feedstock  
3 specifications and requirements.

4 The feedstock procurement process described in this  
5 subsection (d) is exempt from the requirements of the Illinois  
6 Procurement Code pursuant to Section 20-10 of the Illinois  
7 Procurement Code.

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

1       (f) Within 3 business days after the Commission decision  
2 approving the results of a feedstock procurement event, the  
3 initial clean coal facility shall enter into binding  
4 contractual arrangements with the winning suppliers using  
5 standard form contracts.

6       (g) The names of the successful bidders and the amount of  
7 feedstock to be delivered for each contract type and for each  
8 contract term shall be made available to the public at the time  
9 of Commission approval of a feedstock procurement event. The  
10 Commission, the feedstock procurement monitor, the feedstock  
11 procurement administrator, the Agency, and all participants in  
12 the feedstock 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 feedstock  
17 procurement administrator and feedstock procurement monitor  
18 pursuant to subsection (e) of this Section, shall not be made  
19 publicly available and shall not be discoverable by any party  
20 in any proceeding, absent a compelling demonstration of need,  
21 nor shall those reports be admissible in any proceeding other  
22 than one for law enforcement purposes.

23       (h) Within 2 business days after a Commission decision  
24 approving the results of a feedstock procurement event or such  
25 other date as may be required by the Commission from time to  
26 time, the initial clean coal facility shall file for

1 informational purposes with the Commission its actual or  
2 estimated feedstock costs reflecting the costs associated with  
3 the feedstock procurement.

4 (i) The initial clean coal facility shall pay for  
5 reasonable costs incurred by the Agency in administering the  
6 feedstock procurement events. The Agency shall determine the  
7 amount owed for each feedstock procurement event, and the  
8 initial clean coal facility shall pay that amount to the Agency  
9 within 30 days after being informed by the Agency of the amount  
10 owed. Those funds shall be deposited into the Agency Operations  
11 Fund, pursuant to Section 1-55 of this Act, to be used to  
12 reimburse expenses related to the feedstock procurement.

13 (j) The Commission has the authority to adopt rules to  
14 carry out the provisions of this Section. For the public  
15 interest, safety, and welfare, the Commission also has the  
16 authority to adopt rules to carry out the provisions of this  
17 Section on an emergency basis.

18 (k) On or before April 1 of each year, the Commission may,  
19 hold an informal hearing for the purpose of receiving comments  
20 on the prior year's feedstock procurement process and any  
21 recommendations for change.

22 (l) For all purposes of this Section 1-79 and subsection  
23 (a-5) of Section 1-75 of this Act, (i) feedstock procurement  
24 shall be deemed to include transportation of the feedstock  
25 products to the initial clean coal facility (including the  
26 acquisition by the initial clean coal facility, as appropriate,

1 of trucks, railcars or other transportation equipment), (ii)  
2 feedstock procurement shall not be deemed to include day-to-day  
3 performance and administration of feedstock procurement and  
4 transportation arrangements, including scheduling, weighing,  
5 quality determination, acceptance or rejection of shipments,  
6 price adjustments, documentation and related activities, all  
7 of which shall be performed by the owner of the initial clean  
8 coal facility, and (iii) feedstock supplier shall be deemed to  
9 include feedstock transporters and providers of feedstock  
10 transportation equipment.

11 (m) Any agreement for the purchase of SNG entered into by  
12 the initial clean coal facility pursuant to item (xvi) of  
13 subparagraph (D) of paragraph (3) of subsection (d) of Section  
14 1-75 of this Act shall be deemed for all purposes, including,  
15 but not limited to, the inclusion of costs under such agreement  
16 being included as part of the initial clean coal facility's  
17 actual fuel costs pursuant to subsection (d) of Section 1-76 of  
18 this Act, to have been entered into pursuant to the procurement  
19 process set forth in this Section 1-79, even though such  
20 agreement shall not be subject to competitive bidding. The  
21 Agency, the feedstock procurement administrator, and the  
22 feedstock procurement monitor shall take account of the initial  
23 clean coal facility's obligations under any such agreement in  
24 determining the feedstock procurement arrangements that may be  
25 entered into by the initial clean coal facility pursuant to  
26 this Section 1-79, as well as the implementation and



1 administration of such feedstock procurement arrangements.

2 (20 ILCS 3855/1-81 new)

3 Sec. 1-81. Limited non-impairment.

4 (a) The State of Illinois pledges that the State shall not  
5 enact any law or take any action to:

6 (1) break, or repeal the authority for, sourcing  
7 agreements in a form approved by the Agency and entered  
8 into between electric utilities and the initial clean coal  
9 facility pursuant to subsection (d) of Section 1-75 of this  
10 Act;

11 (2) break, or repeal the authority for, sourcing  
12 agreements in a form approved by the Agency and entered  
13 into between alternative retail electric suppliers and the  
14 initial clean coal facility;

15 (3) deny electric utilities full cost recovery for  
16 their costs incurred under those sourcing agreements;

17 (4) deny the initial clean coal facility full cost  
18 recovery under those sourcing agreements for costs that are  
19 recoverable under Section 1-76 of this Act.

20 (5) repeal or remove the requirement that electric  
21 utilities shall enter into sourcing agreements with the  
22 initial clean coal facility under paragraph (3) of  
23 subsection (d) of Section 1-75 of this Act or subsection  
24 (c) of Section 16-116 of the Public Utilities Act; or

25 (6) repeal or remove the requirement that alternative

1 retail electric suppliers shall enter into sourcing  
2 agreements with the initial clean coal facility under item  
3 (iv) of paragraph (5) of subsection (d) of Section 16-115  
4 of the Public Utilities Act.

5 These pledges are for the benefit of the parties to those  
6 sourcing agreements and the issuers and holders of bonds or  
7 other obligations issued or incurred to finance or refinance  
8 the initial clean coal facility. The initial clean coal  
9 facility is authorized to include and refer to these pledges in  
10 any financing agreement into which it may enter in regard to  
11 those sourcing agreements.

12 (b) The State of Illinois retains and reserves all other  
13 rights to enact new or amendatory legislation or take any other  
14 action, without impairment of the right of the initial clean  
15 coal facility to recover prudently incurred costs resulting  
16 from the new or amendatory legislation or other action as  
17 approved by the Commission, including, but not limited to,  
18 legislation or other action that would: (1) directly or  
19 indirectly raise the costs that the initial clean coal facility  
20 must incur; (2) directly or indirectly place additional  
21 restrictions, regulations, or requirements on the initial  
22 clean coal facility; (3) prohibit sequestration in general or  
23 prohibit a specific sequestration method or project; or (4)  
24 increase minimum sequestration requirements for the initial  
25 clean coal facility to a technically feasible extent.

1 Section 10. The Illinois Procurement Code is amended by  
2 changing Sections 1-10 and 20-10 as follows:

3 (30 ILCS 500/1-10)

4 Sec. 1-10. Application.

5 (a) This Code applies only to procurements for which  
6 contractors were first solicited on or after July 1, 1998. This  
7 Code shall not be construed to affect or impair any contract,  
8 or any provision of a contract, entered into based on a  
9 solicitation prior to the implementation date of this Code as  
10 described in Article 99, including but not limited to any  
11 covenant entered into with respect to any revenue bonds or  
12 similar instruments. All procurements for which contracts are  
13 solicited between the effective date of Articles 50 and 99 and  
14 July 1, 1998 shall be substantially in accordance with this  
15 Code and its intent.

16 (b) This Code shall apply regardless of the source of the  
17 funds with which the contracts are paid, including federal  
18 assistance moneys. This Code shall not apply to:

19 (1) Contracts between the State and its political  
20 subdivisions or other governments, or between State  
21 governmental bodies except as specifically provided in  
22 this Code.

23 (2) Grants, except for the filing requirements of  
24 Section 20-80.

25 (3) Purchase of care.

1           (4) Hiring of an individual as employee and not as an  
2 independent contractor, whether pursuant to an employment  
3 code or policy or by contract directly with that  
4 individual.

5           (5) Collective bargaining contracts.

6           (6) Purchase of real estate, except that notice of this  
7 type of contract with a value of more than \$25,000 must be  
8 published in the Procurement Bulletin within 7 days after  
9 the deed is recorded in the county of jurisdiction. The  
10 notice shall identify the real estate purchased, the names  
11 of all parties to the contract, the value of the contract,  
12 and the effective date of the contract.

13           (7) Contracts necessary to prepare for anticipated  
14 litigation, enforcement actions, or investigations,  
15 provided that the chief legal counsel to the Governor shall  
16 give his or her prior approval when the procuring agency is  
17 one subject to the jurisdiction of the Governor, and  
18 provided that the chief legal counsel of any other  
19 procuring entity subject to this Code shall give his or her  
20 prior approval when the procuring entity is not one subject  
21 to the jurisdiction of the Governor.

22           (8) Contracts for services to Northern Illinois  
23 University by a person, acting as an independent  
24 contractor, who is qualified by education, experience, and  
25 technical ability and is selected by negotiation for the  
26 purpose of providing non-credit educational service

1 activities or products by means of specialized programs  
2 offered by the university.

3 (9) Procurement expenditures by the Illinois  
4 Conservation Foundation when only private funds are used.

5 (10) Procurement expenditures by the Illinois Health  
6 Information Exchange Authority involving private funds  
7 from the Health Information Exchange Fund. "Private funds"  
8 means gifts, donations, and private grants.

9 (11) Public-private agreements entered into according  
10 to the procurement requirements of Section 20 of the  
11 Public-Private Partnerships for Transportation Act and  
12 design-build agreements entered into according to the  
13 procurement requirements of Section 25 of the  
14 Public-Private Partnerships for Transportation Act.

15 (c) This Code does not apply to the electric power  
16 procurement process provided for under Section 1-75 of the  
17 Illinois Power Agency Act and Section 16-111.5 of the Public  
18 Utilities Act.

19 (d) Except for Section 20-160 and Article 50 of this Code,  
20 and as expressly required by Section 9.1 of the Illinois  
21 Lottery Law, the provisions of this Code do not apply to the  
22 procurement process provided for under Section 9.1 of the  
23 Illinois Lottery Law.

24 (e) This Code does not apply to the process used by the  
25 Capital Development Board to retain a person or entity to  
26 assist the Capital Development Board with its duties related to

1 the determination of costs of a clean coal SNG brownfield  
2 facility, as defined by Section 1-10 of the Illinois Power  
3 Agency Act, as required in subsection (h-3) of Section 9-220 of  
4 the Public Utilities Act, including calculating the range of  
5 capital costs, the range of operating and maintenance costs, or  
6 the sequestration costs or monitoring the construction of clean  
7 coal SNG brownfield facility for the full duration of  
8 construction.

9 (f) This Code does not apply to the process used by the  
10 Illinois Power Agency to retain a mediator to mediate sourcing  
11 agreement disputes between gas utilities and the clean coal SNG  
12 brownfield facility, as defined in Section 1-10 of the Illinois  
13 Power Agency Act, as required under subsection (h-1) of Section  
14 9-220 of the Public Utilities Act.

15 (g) ~~(e)~~ This Code does not apply to the processes used by  
16 the Illinois Power Agency to retain a mediator to mediate  
17 contract disputes between gas utilities and the clean coal SNG  
18 facility and to retain an expert to assist in the review of  
19 contracts under subsection (h) of Section 9-220 of the Public  
20 Utilities Act. This Code does not apply to the process used by  
21 the Illinois Commerce Commission to retain an expert to assist  
22 in determining the actual incurred costs of the clean coal SNG  
23 facility and the reasonableness of those costs as required  
24 under subsection (h) of Section 9-220 of the Public Utilities  
25 Act.

26 (h) This Code does not apply to the process used by the

1 Capital Development Board to retain a person or entity to  
2 assist the Capital Development Board with its duties related to  
3 the determination of costs of an initial clean coal facility,  
4 as defined under Section 1-10 of the Illinois Power Agency Act,  
5 as required under Section 1-76 of the Illinois Power Agency  
6 Act, including calculating the range of capital costs or the  
7 sequestration costs or monitoring the construction of initial  
8 clean coal facility for the full duration of construction.

9 (i) This Code does not apply to the process used by the  
10 Illinois Power Agency to retain a mediator to mediate sourcing  
11 agreement disputes between electric utilities or alternative  
12 retail electric suppliers and the initial clean coal facility,  
13 as defined under Section 1-10 of the Illinois Power Agency Act,  
14 as required under paragraph (4) of subsection (d) of Section  
15 1-75 of the Illinois Power Agency Act. This Code does not apply  
16 to the process used by the Illinois Commerce Commission to  
17 retain an expert to assist the Commission with its duties  
18 related to the determination of the costs of an initial clean  
19 coal facility, as defined under Section 1-10 of the Illinois  
20 Power Agency Act, as required under Section 1-76 of the  
21 Illinois Power Agency Act, including determining the initial  
22 clean coal facility's operations and maintenance costs, or  
23 compliance with capture and sequestration requirements.

24 (Source: P.A. 96-840, eff. 12-23-09; 96-1331, eff. 7-27-10;  
25 97-96, eff. 7-13-11; 97-239, eff. 8-2-11; 97-502, eff. 8-23-11;  
26 revised 9-7-11.)

1 (30 ILCS 500/20-10)

2 (Text of Section from P.A. 96-159, 96-588, 97-96, and  
3 97-198)

4 Sec. 20-10. Competitive sealed bidding; reverse auction.

5 (a) Conditions for use. All contracts shall be awarded by  
6 competitive sealed bidding except as otherwise provided in  
7 Section 20-5.

8 (b) Invitation for bids. An invitation for bids shall be  
9 issued and shall include a purchase description and the  
10 material contractual terms and conditions applicable to the  
11 procurement.

12 (c) Public notice. Public notice of the invitation for bids  
13 shall be published in the Illinois Procurement Bulletin at  
14 least 14 days before the date set in the invitation for the  
15 opening of bids.

16 (d) Bid opening. Bids shall be opened publicly in the  
17 presence of one or more witnesses at the time and place  
18 designated in the invitation for bids. The name of each bidder,  
19 the amount of each bid, and other relevant information as may  
20 be specified by rule shall be recorded. After the award of the  
21 contract, the winning bid and the record of each unsuccessful  
22 bid shall be open to public inspection.

23 (e) Bid acceptance and bid evaluation. Bids shall be  
24 unconditionally accepted without alteration or correction,  
25 except as authorized in this Code. Bids shall be evaluated



1 based on the requirements set forth in the invitation for bids,  
2 which may include criteria to determine acceptability such as  
3 inspection, testing, quality, workmanship, delivery, and  
4 suitability for a particular purpose. Those criteria that will  
5 affect the bid price and be considered in evaluation for award,  
6 such as discounts, transportation costs, and total or life  
7 cycle costs, shall be objectively measurable. The invitation  
8 for bids shall set forth the evaluation criteria to be used.

9 (f) Correction or withdrawal of bids. Correction or  
10 withdrawal of inadvertently erroneous bids before or after  
11 award, or cancellation of awards of contracts based on bid  
12 mistakes, shall be permitted in accordance with rules. After  
13 bid opening, no changes in bid prices or other provisions of  
14 bids prejudicial to the interest of the State or fair  
15 competition shall be permitted. All decisions to permit the  
16 correction or withdrawal of bids based on bid mistakes shall be  
17 supported by written determination made by a State purchasing  
18 officer.

19 (g) Award. The contract shall be awarded with reasonable  
20 promptness by written notice to the lowest responsible and  
21 responsive bidder whose bid meets the requirements and criteria  
22 set forth in the invitation for bids, except when a State  
23 purchasing officer determines it is not in the best interest of  
24 the State and by written explanation determines another bidder  
25 shall receive the award. The explanation shall appear in the  
26 appropriate volume of the Illinois Procurement Bulletin.

1 (h) Multi-step sealed bidding. When it is considered  
2 impracticable to initially prepare a purchase description to  
3 support an award based on price, an invitation for bids may be  
4 issued requesting the submission of unpriced offers to be  
5 followed by an invitation for bids limited to those bidders  
6 whose offers have been qualified under the criteria set forth  
7 in the first solicitation.

8 (i) Alternative procedures. Notwithstanding any other  
9 provision of this Act to the contrary, the Director of the  
10 Illinois Power Agency may create alternative bidding  
11 procedures to be used in procuring professional services under  
12 subsections ~~subsection~~ (a) and (a-5) of Section 1-75 and  
13 subsection (d) of Section 1-78 and subsection (d) of Section  
14 1-79 of the Illinois Power Agency Act and Section 16-111.5(c)  
15 of the Public Utilities Act and to procure renewable energy  
16 resources under Section 1-56 of the Illinois Power Agency Act.  
17 These alternative procedures shall be set forth together with  
18 the other criteria contained in the invitation for bids, and  
19 shall appear in the appropriate volume of the Illinois  
20 Procurement Bulletin.

21 (j) Reverse auction. Notwithstanding any other provision  
22 of this Section and in accordance with rules adopted by the  
23 Director of Central Management Services as chief procurement  
24 officer, a State purchasing officer under that chief  
25 procurement officer's jurisdiction may procure supplies or  
26 services through a competitive electronic auction bidding

1 process after the purchasing officer explains in writing to the  
2 chief procurement officer his or her determination that the use  
3 of such a process will be in the best interest of the State.  
4 The chief procurement officer shall publish that determination  
5 in his or her next volume of the Illinois Procurement Bulletin.

6 An invitation for bids shall be issued and shall include  
7 (i) a procurement description, (ii) all contractual terms,  
8 whenever practical, and (iii) conditions applicable to the  
9 procurement, including a notice that bids will be received in  
10 an electronic auction manner.

11 Public notice of the invitation for bids shall be given in  
12 the same manner as provided in subsection (c).

13 Bids shall be accepted electronically at the time and in  
14 the manner designated in the invitation for bids. During the  
15 auction, a bidder's price shall be disclosed to other bidders.  
16 Bidders shall have the opportunity to reduce their bid prices  
17 during the auction. At the conclusion of the auction, the  
18 record of the bid prices received and the name of each bidder  
19 shall be open to public inspection.

20 After the auction period has terminated, withdrawal of bids  
21 shall be permitted as provided in subsection (f).

22 The contract shall be awarded within 60 days after the  
23 auction by written notice to the lowest responsible bidder, or  
24 all bids shall be rejected except as otherwise provided in this  
25 Code. Extensions of the date for the award may be made by  
26 mutual written consent of the State purchasing officer and the

1 lowest responsible bidder.

2 This subsection does not apply to (i) procurements of  
3 professional and artistic services, including but not limited  
4 to telecommunications services, communications services,  
5 Internet services, and information services, and (ii)  
6 contracts for construction projects.

7 (Source: P.A. 95-481, eff. 8-28-07; 96-159, eff. 8-10-09;  
8 96-588, eff. 8-18-09; 97-96, eff. 7-13-11.)

9 (Text of Section from P.A. 96-159, 96-795, 97-96, and  
10 97-198)

11 Sec. 20-10. Competitive sealed bidding; reverse auction.

12 (a) Conditions for use. All contracts shall be awarded by  
13 competitive sealed bidding except as otherwise provided in  
14 Section 20-5.

15 (b) Invitation for bids. An invitation for bids shall be  
16 issued and shall include a purchase description and the  
17 material contractual terms and conditions applicable to the  
18 procurement.

19 (c) Public notice. Public notice of the invitation for bids  
20 shall be published in the Illinois Procurement Bulletin at  
21 least 14 days before the date set in the invitation for the  
22 opening of bids.

23 (d) Bid opening. Bids shall be opened publicly in the  
24 presence of one or more witnesses at the time and place  
25 designated in the invitation for bids. The name of each bidder,

1 the amount of each bid, and other relevant information as may  
2 be specified by rule shall be recorded. After the award of the  
3 contract, the winning bid and the record of each unsuccessful  
4 bid shall be open to public inspection.

5 (e) Bid acceptance and bid evaluation. Bids shall be  
6 unconditionally accepted without alteration or correction,  
7 except as authorized in this Code. Bids shall be evaluated  
8 based on the requirements set forth in the invitation for bids,  
9 which may include criteria to determine acceptability such as  
10 inspection, testing, quality, workmanship, delivery, and  
11 suitability for a particular purpose. Those criteria that will  
12 affect the bid price and be considered in evaluation for award,  
13 such as discounts, transportation costs, and total or life  
14 cycle costs, shall be objectively measurable. The invitation  
15 for bids shall set forth the evaluation criteria to be used.

16 (f) Correction or withdrawal of bids. Correction or  
17 withdrawal of inadvertently erroneous bids before or after  
18 award, or cancellation of awards of contracts based on bid  
19 mistakes, shall be permitted in accordance with rules. After  
20 bid opening, no changes in bid prices or other provisions of  
21 bids prejudicial to the interest of the State or fair  
22 competition shall be permitted. All decisions to permit the  
23 correction or withdrawal of bids based on bid mistakes shall be  
24 supported by written determination made by a State purchasing  
25 officer.

26 (g) Award. The contract shall be awarded with reasonable

1 promptness by written notice to the lowest responsible and  
2 responsive bidder whose bid meets the requirements and criteria  
3 set forth in the invitation for bids, except when a State  
4 purchasing officer determines it is not in the best interest of  
5 the State and by written explanation determines another bidder  
6 shall receive the award. The explanation shall appear in the  
7 appropriate volume of the Illinois Procurement Bulletin. The  
8 written explanation must include:

9 (1) a description of the agency's needs;

10 (2) a determination that the anticipated cost will be  
11 fair and reasonable;

12 (3) a listing of all responsible and responsive  
13 bidders; and

14 (4) the name of the bidder selected, pricing, and the  
15 reasons for selecting that bidder.

16 Each chief procurement officer may adopt guidelines to  
17 implement the requirements of this subsection (g).

18 The written explanation shall be filed with the Legislative  
19 Audit Commission and the Procurement Policy Board and be made  
20 available for inspection by the public within 30 days after the  
21 agency's decision to award the contract.

22 (h) Multi-step sealed bidding. When it is considered  
23 impracticable to initially prepare a purchase description to  
24 support an award based on price, an invitation for bids may be  
25 issued requesting the submission of unpriced offers to be  
26 followed by an invitation for bids limited to those bidders

1 whose offers have been qualified under the criteria set forth  
2 in the first solicitation.

3 (i) Alternative procedures. Notwithstanding any other  
4 provision of this Act to the contrary, the Director of the  
5 Illinois Power Agency may create alternative bidding  
6 procedures to be used in procuring professional services under  
7 subsections ~~subsection~~ (a) and (a-5) of Section 1-75, ~~and~~  
8 subsection (d) of Section 1-78, and subsection (d) of Section  
9 1-79 of the Illinois Power Agency Act and Section 16-111.5(c)  
10 of the Public Utilities Act and to procure renewable energy  
11 resources under Section 1-56 of the Illinois Power Agency Act.  
12 These alternative procedures shall be set forth together with  
13 the other criteria contained in the invitation for bids, and  
14 shall appear in the appropriate volume of the Illinois  
15 Procurement Bulletin.

16 (j) Reverse auction. Notwithstanding any other provision  
17 of this Section and in accordance with rules adopted by the  
18 chief procurement officer, that chief procurement officer may  
19 procure supplies or services through a competitive electronic  
20 auction bidding process after the chief procurement officer  
21 determines that the use of such a process will be in the best  
22 interest of the State. The chief procurement officer shall  
23 publish that determination in his or her next volume of the  
24 Illinois Procurement Bulletin.

25 An invitation for bids shall be issued and shall include  
26 (i) a procurement description, (ii) all contractual terms,

1 whenever practical, and (iii) conditions applicable to the  
2 procurement, including a notice that bids will be received in  
3 an electronic auction manner.

4 Public notice of the invitation for bids shall be given in  
5 the same manner as provided in subsection (c).

6 Bids shall be accepted electronically at the time and in  
7 the manner designated in the invitation for bids. During the  
8 auction, a bidder's price shall be disclosed to other bidders.  
9 Bidders shall have the opportunity to reduce their bid prices  
10 during the auction. At the conclusion of the auction, the  
11 record of the bid prices received and the name of each bidder  
12 shall be open to public inspection.

13 After the auction period has terminated, withdrawal of bids  
14 shall be permitted as provided in subsection (f).

15 The contract shall be awarded within 60 days after the  
16 auction by written notice to the lowest responsible bidder, or  
17 all bids shall be rejected except as otherwise provided in this  
18 Code. Extensions of the date for the award may be made by  
19 mutual written consent of the State purchasing officer and the  
20 lowest responsible bidder.

21 This subsection does not apply to (i) procurements of  
22 professional and artistic services, (ii) telecommunications  
23 services, communication services, and information services,  
24 and (iii) contracts for construction projects.

25 (Source: P.A. 96-159, eff. 8-10-09; 96-795, eff. 7-1-10 (see  
26 Section 5 of P.A. 96-793 for the effective date of changes made



1 by P.A. 96-795); 97-96, eff. 7-13-11.)

2 Section 15. The Public Utilities Act is amended by changing  
3 Sections 16-107.5, 16-108, 16-111.5, 16-115, 16-115D, and  
4 16-116 as follows:

5 (220 ILCS 5/16-107.5)

6 Sec. 16-107.5. Net electricity metering.

7 (a) The Legislature finds and declares that a program to  
8 provide net electricity metering, as defined in this Section,  
9 for eligible customers can encourage private investment in  
10 renewable energy resources, stimulate economic growth, enhance  
11 the continued diversification of Illinois' energy resource  
12 mix, and protect the Illinois environment.

13 (b) As used in this Section, (i) "eligible customer" means  
14 a retail customer that owns or operates a solar, wind, or other  
15 eligible renewable electrical generating facility with a rated  
16 capacity of not more than 2,000 kilowatts that is located on  
17 the customer's premises or is interconnected to the  
18 distribution grid of the customer's electricity provider or  
19 alternative retail electric supplier and is intended primarily  
20 to offset the customer's own electrical requirements; (ii)  
21 "electricity provider" means an electric utility or  
22 alternative retail electric supplier; (iii) "eligible  
23 renewable electrical generating facility" means a generator  
24 powered by solar electric energy, wind, dedicated crops grown

1 for electricity generation, agricultural residues, untreated  
2 and unadulterated wood waste, landscape trimmings, livestock  
3 manure, anaerobic digestion of livestock or food processing  
4 waste, fuel cells or microturbines powered by renewable fuels,  
5 or hydroelectric energy; and (iv) "net electricity metering"  
6 (or "net metering") means the measurement, during the billing  
7 period applicable to an eligible customer, of the net amount of  
8 electricity supplied by an electricity provider to the  
9 customer's premises or provided to the electricity provider by  
10 the customer.

11 (c) A net metering facility shall be equipped with metering  
12 equipment that can measure the flow of electricity in both  
13 directions at the same rate. For eligible ~~residential~~  
14 customers, this shall typically be accomplished through use of  
15 a single, bi-directional meter. If the eligible customer's  
16 existing electric revenue meter does not meet this requirement,  
17 the electricity provider shall arrange for the local electric  
18 utility or a meter service provider to install and maintain a  
19 new revenue meter at the electricity provider's expense. ~~For~~  
20 ~~non-residential customers, the electricity provider may~~  
21 ~~arrange for the local electric utility or a meter service~~  
22 ~~provider to install and maintain metering equipment capable of~~  
23 ~~measuring the flow of electricity both into and out of the~~  
24 ~~customer's facility at the same rate and ratio, typically~~  
25 ~~through the use of a dual channel meter. For generators with a~~  
26 ~~nameplate rating of 40 kilowatts and below, the costs of~~

~~installing such equipment shall be paid for by the electricity provider. For generators with a nameplate rating over 40 kilowatts and up to 2,000 kilowatts capacity, the costs of installing such equipment shall be paid for by the customer. Any subsequent revenue meter change necessitated by any eligible customer shall be paid for by the customer.~~

(d) An electricity provider shall measure and charge or credit for the net electricity supplied to eligible customers or provided by eligible customers in the following manner:

(1) If the amount of electricity used by the customer during the billing period exceeds the amount of electricity produced by the customer, the electricity provider shall charge the customer for the net electricity supplied to and used by the customer as provided in subsection (e) of this Section.

(2) If the amount of electricity produced by a customer during the billing period exceeds the amount of electricity used by the customer during that billing period, the electricity provider supplying that customer shall apply a 1:1 kilowatt-hour credit to a subsequent bill for service to the customer for the net electricity supplied to the electricity provider. The electricity provider shall continue to carry over any excess kilowatt-hour credits earned and apply those credits to subsequent billing periods to offset any customer-generator consumption in those billing periods until all credits are used or until

1 ~~service is terminated or until the end of the annualized~~  
2 ~~period.~~

3 (3) ~~In~~ In ~~At the end of the year or annualized over the~~  
4 ~~period that service is supplied by means of net metering,~~  
5 ~~or in~~ the event that the retail customer terminates service  
6 with the electricity provider ~~prior to the end of the year~~  
7 ~~or the annualized period,~~ any remaining credits in the  
8 customer's account shall expire.

9 (e) An electricity provider shall provide to net metering  
10 customers electric service at non-discriminatory rates that  
11 are identical, with respect to rate structure, retail rate  
12 components, and any monthly charges, to the rates that the  
13 customer would be charged if not a net metering customer. An  
14 electricity provider shall not charge net metering customers  
15 any fee or charge or require additional equipment, insurance,  
16 or any other requirements not specifically authorized by  
17 interconnection standards authorized by the Commission, unless  
18 the fee, charge, or other requirement would apply to other  
19 similarly situated customers who are not net metering  
20 customers. The customer will remain responsible for all taxes,  
21 fees, and utility delivery charges that would otherwise be  
22 applicable to the net amount of electricity used by the  
23 customer. Subsections (c) through (e) of this Section shall not  
24 be construed to prevent an arms-length agreement between an  
25 electricity provider and an eligible customer that sets forth  
26 different prices, terms, and conditions for the provision of

1 net metering service, including, but not limited to, the  
2 provision of the appropriate metering equipment for  
3 non-residential customers.

4 ~~(f) Notwithstanding the requirements of subsections (c)~~  
5 ~~through (e) of this Section, an electricity provider must~~  
6 ~~require dual channel metering for non residential customers~~  
7 ~~operating eligible renewable electrical generating facilities~~  
8 ~~with a nameplate rating over 40 kilowatts and up to 2,000~~  
9 ~~kilowatts. In such cases, electricity charges and credits shall~~  
10 ~~be determined as follows:~~

11 ~~(1) The electricity provider shall assess and the~~  
12 ~~customer remains responsible for all taxes, fees, and~~  
13 ~~utility delivery charges that would otherwise be~~  
14 ~~applicable to the gross amount of kilowatt hours supplied~~  
15 ~~to the eligible customer by the electricity provider.~~

16 ~~(2) Each month that service is supplied by means of~~  
17 ~~dual channel metering, the electricity provider shall~~  
18 ~~compensate the eligible customer for any excess~~  
19 ~~kilowatt hour credits at the electricity provider's~~  
20 ~~avoided cost of electricity supply over the monthly period~~  
21 ~~or as otherwise specified by the terms of a power purchase~~  
22 ~~agreement negotiated between the customer and electricity~~  
23 ~~provider.~~

24 ~~(3) For all eligible net metering customers taking~~  
25 ~~service from an electricity provider under contracts or~~  
26 ~~tariffs employing time of use rates, any monthly~~

1 consumption of electricity shall be calculated according  
2 to the terms of the contract or tariff to which the same  
3 customer would be assigned to or be eligible for if the  
4 customer was not a net metering customer. When those same  
5 customer-generators are net generators during any discrete  
6 time of use period, the net kilowatt-hours produced shall  
7 be valued at the same price per kilowatt-hour as the  
8 electric service provider would charge for retail  
9 kilowatt-hour sales during that same time of use period.

10 (g) For purposes of federal and State laws providing  
11 renewable energy credits or greenhouse gas credits, the  
12 eligible customer shall be treated as owning and having title  
13 to the renewable energy attributes, renewable energy credits,  
14 and greenhouse gas emission credits related to any electricity  
15 produced by the qualified generating unit. The electricity  
16 provider may not condition participation in a net metering  
17 program on the signing over of a customer's renewable energy  
18 credits; provided, however, this subsection (g) shall not be  
19 construed to prevent an arms-length agreement between an  
20 electricity provider and an eligible customer that sets forth  
21 the ownership or title of the credits.

22 (h) Within 120 days after the effective date of this  
23 amendatory Act of the 95th General Assembly, the Commission  
24 shall establish standards for net metering and, if the  
25 Commission has not already acted on its own initiative,  
26 standards for the interconnection of eligible renewable

1 generating equipment to the utility system. The  
2 interconnection standards shall address any procedural  
3 barriers, delays, and administrative costs associated with the  
4 interconnection of customer-generation while ensuring the  
5 safety and reliability of the units and the electric utility  
6 system. The Commission shall consider the Institute of  
7 Electrical and Electronics Engineers (IEEE) Standard 1547 and  
8 the issues of (i) reasonable and fair fees and costs, (ii)  
9 clear timelines for major milestones in the interconnection  
10 process, (iii) nondiscriminatory terms of agreement, and (iv)  
11 any best practices for interconnection of distributed  
12 generation.

13 (i) All electricity providers shall begin to offer net  
14 metering no later than April 1, 2008.

15 (j) An electricity provider shall provide net metering to  
16 eligible customers until the load of its net metering customers  
17 equals 5% ~~1%~~ of the total peak demand supplied by that  
18 electricity provider during the previous year. Electricity  
19 providers are authorized to offer net metering beyond the 5% ~~1%~~  
20 level if they so choose. ~~The number of new eligible customers~~  
21 ~~with generators that have a nameplate rating of 40 kilowatts~~  
22 ~~and below will be limited to 200 total new billing accounts for~~  
23 ~~the utilities (Ameren Companies, ComEd, and MidAmerican) for~~  
24 ~~the period of April 1, 2008 through March 31, 2009.~~

25 (k) Each electricity provider shall maintain records and  
26 report annually to the Commission the total number of net

1 metering customers served by the provider, as well as the type,  
2 capacity, and energy sources of the generating systems used by  
3 the net metering customers. Nothing in this Section shall limit  
4 the ability of an electricity provider to request the redaction  
5 of information deemed by the Commission to be confidential  
6 business information. Each electricity provider shall notify  
7 the Commission when the total generating capacity of its net  
8 metering customers is equal to or in excess of the 1% cap  
9 specified in subsection (j) of this Section.

10 (1) Notwithstanding the definition of "eligible customer"  
11 in item (i) of subsection (b) of this Section, each electricity  
12 provider shall ~~consider whether to~~ allow meter aggregation for  
13 the purposes of net metering on:

14 (1) properties owned or leased by multiple customers  
15 that contribute to the operation of an eligible renewable  
16 electrical generating facility, such as a community-owned  
17 wind project, a community-owned biomass project, a  
18 community-owned solar project, or a community methane  
19 digester processing livestock waste from multiple sources;  
20 ~~and~~

21 (2) individual units, apartments, or properties owned  
22 or leased by multiple customers and collectively served by  
23 a common eligible renewable electrical generating  
24 facility, such as an apartment building served by  
25 photovoltaic panels on the roof; and ~~and~~

26 (3) multiple meters that are located on an eligible



1 customer's contiguous property and are used to measure only  
2 electricity used for the eligible customer's requirements.

3 For the purposes of this subsection (l), "meter  
4 aggregation" means the combination of reading and billing on a  
5 pro rata basis for the types of eligible customers described in  
6 this Section such as to allocate benefits of participation onto  
7 the customers' monthly electric bills. Meter aggregation shall  
8 be allowed whether the eligible renewable energy generating  
9 device is located on the premises of the eligible customer or  
10 is interconnected to the distribution grid of the eligible  
11 customer's electricity provider or alternative retail electric  
12 supplier. Such meter aggregation shall be subject to the terms  
13 and conditions approved by the Commission in a proceeding  
14 establishing the rules applicable to meter aggregation under  
15 this subsection (l), which shall commence no less than 180 days  
16 after the effective date of this amendatory Act of the 97th  
17 General Assembly and be completed within 365 days after the  
18 effective date of this amendatory Act of the 97th General  
19 Assembly.

20 (m) Nothing in this Section shall affect the right of an  
21 electricity provider to continue to provide, or the right of a  
22 retail customer to continue to receive service pursuant to a  
23 contract for electric service between the electricity provider  
24 and the retail customer in accordance with the prices, terms,  
25 and conditions provided for in that contract. Either the  
26 electricity provider or the customer may require compliance

1 with the prices, terms, and conditions of the contract.

2 (Source: P.A. 95-420, eff. 8-24-07.)

3 (220 ILCS 5/16-108)

4 Sec. 16-108. Recovery of costs associated with the  
5 provision of delivery services.

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

25 (b) The Commission shall enter an order approving, or

1 approving as modified, the delivery services tariff no later  
2 than 30 days prior to the date on which the electric utility  
3 must commence offering such services. The Commission may  
4 subsequently modify such tariff pursuant to this Act.

5 (c) The electric utility's tariffs shall define the classes  
6 of its customers for purposes of delivery services charges.  
7 Delivery services shall be priced and made available to all  
8 retail customers electing delivery services in each such class  
9 on a nondiscriminatory basis regardless of whether the retail  
10 customer chooses the electric utility, an affiliate of the  
11 electric utility, or another entity as its supplier of electric  
12 power and energy. Charges for delivery services shall be cost  
13 based, and shall allow the electric utility to recover the  
14 costs of providing delivery services through its charges to its  
15 delivery service customers that use the facilities and services  
16 associated with such costs. Such costs shall include the costs  
17 of owning, operating and maintaining transmission and  
18 distribution facilities. Beginning June 1, 2012, charges for  
19 delivery services shall also include the recovery of the  
20 electric utility's costs of renewable energy credits and  
21 excluded renewable energy resources contract costs in  
22 accordance with subsection (k) of this Section. The Commission  
23 shall also be authorized to consider whether, and if so to what  
24 extent, the following costs are appropriately included in the  
25 electric utility's delivery services rates: (i) the costs of  
26 that portion of generation facilities used for the production

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

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

1 point of delivery that is reasonably and technically feasible  
2 provided that there are no significant adverse impacts on  
3 system reliability or efficiency. Such requests shall not be  
4 unreasonably denied.

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

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

24 (i) the cogeneration or self-generation facilities  
25 serve a single retail customer and are located on that  
26 retail customer's premises (for purposes of this

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

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

25          (iii) the retail customer on whose premises the  
26          facilities are located either has an exclusive right to

1 receive, and corresponding obligation to pay for, all of  
2 the electrical capacity of the facility, or in the case of  
3 a cogeneration facility that has been designed to meet the  
4 retail customer's thermal energy requirements at that  
5 premises, an identified amount of the electrical capacity  
6 of the facility, over a minimum 5-year period; and

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

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

1 use prior to January 1, 1997, or is both predominantly fueled  
2 by byproducts of such customer's manufacturing process at such  
3 premises and sells or offers an average of 300 megawatts or  
4 more of electricity produced from such generation facility into  
5 the wholesale market. Such charges shall be calculated as  
6 provided in Section 16-102, and shall be collected on each  
7 kilowatt-hour delivered under a delivery services tariff to a  
8 retail customer from the date the customer first takes delivery  
9 services until December 31, 2006 except as provided in  
10 subsection (h) of this Section. Provided, however, that an  
11 electric utility, other than an electric utility providing  
12 service to at least 1,000,000 customers in this State on  
13 January 1, 1999, shall be entitled to petition for entry of an  
14 order by the Commission authorizing the electric utility to  
15 implement transition charges for an additional period ending no  
16 later than December 31, 2008. The electric utility shall file  
17 its petition with supporting evidence no earlier than 16  
18 months, and no later than 12 months, prior to December 31,  
19 2006. The Commission shall hold a hearing on the electric  
20 utility's petition and shall enter its order no later than 8  
21 months after the petition is filed. The Commission shall  
22 determine whether and to what extent the electric utility shall  
23 be authorized to implement transition charges for an additional  
24 period. The Commission may authorize the electric utility to  
25 implement transition charges for some or all of the additional  
26 period, and shall determine the mitigation factors to be used



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

14 (g) The electric utility shall file tariffs that establish  
15 the transition charges to be paid by each class of customers to  
16 the electric utility in conjunction with the provision of  
17 delivery services. The electric utility's tariffs shall define  
18 the classes of its customers for purposes of calculating  
19 transition charges. The electric utility's tariffs shall  
20 provide for the calculation of transition charges on a  
21 customer-specific basis for any retail customer whose average  
22 monthly maximum electrical demand on the electric utility's  
23 system during the 6 months with the customer's highest monthly  
24 maximum electrical demands equals or exceeds 3.0 megawatts for  
25 electric utilities having more than 1,000,000 customers, and  
26 for other electric utilities for any customer that has an

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

15 (h) An electric utility shall also be entitled to file  
16 tariffs that allow it to collect transition charges from retail  
17 customers in the electric utility's service area that do not  
18 take delivery services but that take electric power or energy  
19 from an alternative retail electric supplier or from an  
20 electric utility other than the electric utility in whose  
21 service area the customer is located. Such charges shall be  
22 calculated, in accordance with the definition of transition  
23 charges in Section 16-102, for the period of time that the  
24 customer would be obligated to pay transition charges if it  
25 were taking delivery services, except that no deduction for  
26 delivery services revenues shall be made in such calculation,

1 and usage data from the customer's class shall be used where  
2 historical usage data is not available for the individual  
3 customer. The customer shall be obligated to pay such charges  
4 on a lump sum basis on or before the date on which the customer  
5 commences to take service from the alternative retail electric  
6 supplier or other electric utility, provided, that the electric  
7 utility in whose service area the customer is located shall  
8 offer the customer the option of signing a contract pursuant to  
9 which the customer pays such charges ratably over the period in  
10 which the charges would otherwise have applied.

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

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

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

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

1 provisions of paragraphs (2) and (6) of subsection (c) of  
2 Section 1-75 of the Illinois Power Agency Act and, with respect  
3 to excluded renewable energy resources contract costs, the  
4 extent to which the electric utility's eligible retail  
5 customers have become delivery services non-eligible retail  
6 customers subsequent to the year that the contracts giving rise  
7 to the excluded renewable energy resources costs were entered  
8 into. Provided, that in no event shall the Commission allocate  
9 the costs of renewable energy credits and excluded renewable  
10 energy resources contract costs in a manner that causes the  
11 rate limitations specified in paragraph (2) of subsection (c)  
12 of Section 1-75 of the Illinois Power Agency Act to be exceeded  
13 for any class of customers.

14 For purposes of recovery through the electric utility's  
15 tariffed charges for delivery services, the cost of the  
16 renewable energy credits included in purchases of bundled  
17 renewable energy resources, as defined in Section 1-10 of the  
18 Illinois Power Agency Act, to meet the renewable energy  
19 resource standards applicable to the load of the electric  
20 utility's eligible retail customers, as defined in subsection  
21 (a) of Section 16-111.5 of this Act, shall be the allocated  
22 renewable energy credit prices approved by the Commission in  
23 accordance with subsection (f) of Section 16-111.5 of this Act.

24 The electric utility shall be entitled to recover the cost  
25 of such renewable energy credits and excluded renewable energy  
26 resources contract costs through an automatic adjustment

1 charge provision in the electric utility's delivery services  
2 tariffs that allows the electric utility to adjust its tariffed  
3 charges on a quarterly basis for changes in its costs incurred  
4 to purchase renewable energy credits and its excluded renewable  
5 energy resources contract costs, if any, without the need to  
6 file a general delivery services rate case. The electric  
7 utility's collections pursuant to such an automatic adjustment  
8 charge tariff shall be subject to annual review,  
9 reconciliation, and true-up against actual costs by the  
10 Commission pursuant to a procedure that shall be specified in  
11 the electric utility's tariff and approved by the Commission in  
12 connection with its approval of the tariff. The procedure shall  
13 provide that any difference between the electric utility's  
14 collections pursuant to the automatic adjustment charge for an  
15 annual period and the electric utility's actual costs of  
16 renewable energy credits and actual excluded renewable energy  
17 resources contract costs for the annual period shall be  
18 refunded to or collected from, as applicable, the electric  
19 utility's delivery services customers in subsequent periods.

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

21 (220 ILCS 5/16-111.5)

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

23 (a) An electric utility that on December 31, 2005 served at  
24 least 100,000 customers in Illinois shall procure power, energy  
25 efficiency products, and energy for its eligible retail

1 customers in accordance with the applicable provisions set  
2 forth in Section 1-75 of the Illinois Power Agency Act and this  
3 Section and, for years beginning on and after June 1, 2012,  
4 shall procure renewable energy credits with respect to the  
5 kilowatthour usage of delivery services non-eligible retail  
6 customers in the electric utility's service area in accordance  
7 with the applicable provisions set forth in Section 1-75 of the  
8 Illinois Power Agency Act and this Section. A small  
9 multi-jurisdictional electric utility that on December 31,  
10 2005 served less than 100,000 customers in Illinois may elect  
11 to procure power and energy for all or a portion of its  
12 eligible Illinois retail customers in accordance with the  
13 applicable provisions set forth in this Section and Section  
14 1-75 of the Illinois Power Agency Act. This Section shall not  
15 apply to a small multi-jurisdictional utility until such time  
16 as a small multi-jurisdictional utility requests the Illinois  
17 Power Agency to prepare a procurement plan for its eligible  
18 retail customers. "Eligible retail customers" for the purposes  
19 of this Section means those retail customers that purchase  
20 power and energy from the electric utility under fixed-price  
21 bundled service tariffs, other than those retail customers  
22 whose service is declared or deemed competitive under Section  
23 16-113 and those other customer groups specified in this  
24 Section, including self-generating customers, customers  
25 electing hourly pricing, or those customers who are otherwise  
26 ineligible for fixed-price bundled tariff service. "Delivery

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

17 (b) A procurement plan shall be prepared for each electric  
18 utility consistent with the applicable requirements of the  
19 Illinois Power Agency Act and this Section. For purposes of  
20 this Section, Illinois electric utilities that are affiliated  
21 by virtue of a common parent company are considered to be a  
22 single electric utility. Small multi-jurisdictional utilities  
23 may request a procurement plan for a portion of or all of its  
24 Illinois load. Each procurement plan shall analyze the  
25 projected balance of supply and demand for eligible retail  
26 customers over a 5-year period with the first planning year



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

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

18 (i) multi-year historical analysis of hourly  
19 loads;

20 (ii) switching trends and competitive retail  
21 market analysis;

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

23 and

24 (iv) growth forecasts by customer class.

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

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

7 (ii) supply side needs that are projected to be  
8 offset by purchases of renewable energy resources, if  
9 any.

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

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

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

26 (A) be procured by a demand-response provider

1 from eligible retail customers;

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

8 (C) provide for customers' participation in  
9 the stream of benefits produced by the  
10 demand-response products;

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

16 (E) meet the same credit requirements as apply  
17 to suppliers of capacity, in the applicable  
18 regional transmission organization market;

19 (iii) the proposed energy efficiency products for  
20 which contracts will be executed during the next year.  
21 The cost-effective energy efficiency measures shall be  
22 procured whenever the cost is lower than the combined  
23 avoided costs of energy, capacity, transmission, and  
24 the renewable portfolio standard for a comparable  
25 volume of energy provided that the energy efficiency  
26 products shall:

1                   (A) be procured by an energy efficiency  
2                   provider from eligible retail customers;

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

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

11                   (D) meet the same credit requirements as apply  
12                   to suppliers of capacity, in the applicable  
13                   regional transmission organization market;

14                   (iv) ~~(iii)~~ monthly forecasted system supply  
15                   requirements, including expected minimum, maximum, and  
16                   average values for the planning period;

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

1 purchase plan, and ancillary services;

2 (vi) ~~(v)~~ proposed term structures for each  
3 wholesale product type included in the proposed  
4 procurement plan portfolio of products; and

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

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

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 and for each small

1 multi-jurisdictional utility that on December 31, 2005  
2 served less than 100,000 customers in Illinois;

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

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

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

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

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



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

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

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

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

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

25 (e) The procurement process shall include each of the  
26 following components:

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

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

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

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

1 products and procurement process being used to procure  
2 power for the Illinois utilities. The benchmarks shall be  
3 confidential but shall be provided to, and will be subject  
4 to Commission review and approval, prior to a procurement  
5 event.

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

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

19 (i) Event of supplier default: In the event of  
20 supplier default, the utility shall review the  
21 contract of the defaulting supplier to determine if the  
22 amount of supply is 200 megawatts or greater, and if  
23 there are more than 60 days remaining of the contract  
24 term. If both of these conditions are met, and the  
25 default results in termination of the contract, then  
26 the utility shall immediately notify the Illinois

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

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

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

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

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

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



1 credits, within 2 business days after receipt of the reports.

2 (g) Within 3 business days after the Commission decision  
3 approving the results of a procurement event, the utility shall  
4 enter into binding contractual arrangements with the winning  
5 suppliers using the standard form contracts; except that the  
6 utility shall not be required either directly or indirectly to  
7 execute the contracts if a tariff that is consistent with  
8 subsection (l) of this Section has not been approved and placed  
9 into effect for that utility.

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

1           (i) Within 2 business days after a Commission decision  
2 approving the results of a procurement event or such other date  
3 as may be required by the Commission from time to time, the  
4 utility shall file for informational purposes with the  
5 Commission its actual or estimated retail supply charges, as  
6 applicable, by customer supply group reflecting the costs  
7 associated with the procurement and computed in accordance with  
8 the tariffs filed pursuant to subsection (l) of this Section  
9 and approved by the Commission.

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

1 include contracts for renewable resources that extend beyond  
2 May 2009.

3 (i) Within 14 days following filing of the initial  
4 procurement plan, any person may file a detailed objection  
5 with the Commission contesting the procurement plan  
6 submitted by the electric utility. All objections to the  
7 electric utility's plan shall be specific, supported by  
8 data or other detailed analyses. The electric utility may  
9 file a response to any objections to its procurement plan  
10 within 7 days after the date objections are due to be  
11 filed. Within 7 days after the date the utility's response  
12 is due, the Commission shall determine whether a hearing is  
13 necessary. If it determines that a hearing is necessary, it  
14 shall require the hearing to be completed and issue an  
15 order on the procurement plan within 60 days after the  
16 filing of the procurement plan by the electric utility.

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

26 (k) In order to promote price stability for residential and

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

26 (1) An electric utility shall recover its costs incurred

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

1 for which it contracted before the effective date of this  
2 Section in conjunction with the provision of full requirements  
3 service under fixed-price bundled service tariffs subsequent  
4 to December 31, 2006. All such costs shall be deemed to have  
5 been prudently incurred. The pass-through tariffs that are  
6 filed and approved pursuant to this Section shall not be  
7 subject to review under, or in any way limited by, Section  
8 16-111(i) of this Act. Beginning June 1, 2012, the costs  
9 incurred by the electric utility to purchase renewable energy  
10 credits in accordance with subsection (c) of Section 1-75 of  
11 the Illinois Power Agency Act, and any excluded renewable  
12 energy resources contract costs as defined in Section 1-10 of  
13 the Illinois Power Agency Act, shall be recovered through the  
14 electric utility's tariffed charges for delivery services  
15 pursuant to Section 16-108 of this Act and shall not be  
16 recovered through the electric utility's tariffed charges for  
17 electric power and energy supply to its eligible retail  
18 customers.

19 (m) The Commission has the authority to adopt rules to  
20 carry out the provisions of this Section. For the public  
21 interest, safety, and welfare, the Commission also has  
22 authority to adopt rules to carry out the provisions of this  
23 Section on an emergency basis immediately following the  
24 effective date of this amendatory Act.

25 (n) Notwithstanding any other provision of this Act, any  
26 affiliated electric utilities that submit a single procurement

1 plan covering their combined needs may procure for those  
2 combined needs in conjunction with that plan, and may enter  
3 jointly into power supply contracts, purchases, and other  
4 procurement arrangements, and allocate capacity, energy  
5 efficiency products, and energy and cost responsibility  
6 therefor among themselves in proportion to their requirements.

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

11 (p) An electric utility subject to this Section may propose  
12 to invest, lease, own, or operate an electric generation  
13 facility as part of its procurement plan, provided the utility  
14 demonstrates that such facility is the least-cost option to  
15 provide electric service to eligible retail customers. If the  
16 facility is shown to be the least-cost option and is included  
17 in a procurement plan prepared in accordance with Section 1-75  
18 of the Illinois Power Agency Act and this Section, then the  
19 electric utility shall make a filing pursuant to Section 8-406  
20 of the Act, and may request of the Commission any statutory  
21 relief required thereunder. If the Commission grants all of the  
22 necessary approvals for the proposed facility, such supply  
23 shall thereafter be considered as a pre-existing contract under  
24 subsection (b) of this Section. The Commission shall in any  
25 order approving a proposal under this subsection specify how  
26 the utility will recover the prudently incurred costs of

1 investing in, leasing, owning, or operating such generation  
2 facility through just and reasonable rates charged to eligible  
3 retail customers. Cost recovery for facilities included in the  
4 utility's procurement plan pursuant to this subsection shall  
5 not be subject to review under or in any way limited by the  
6 provisions of Section 16-111(i) of this Act. Nothing in this  
7 Section is intended to prohibit a utility from filing for a  
8 fuel adjustment clause as is otherwise permitted under Section  
9 9-220 of this Act.

10 (Source: P.A. 97-325, eff. 8-12-11.)

11 (220 ILCS 5/16-115)

12 Sec. 16-115. Certification of alternative retail electric  
13 suppliers.

14 (a) Any alternative retail electric supplier must obtain a  
15 certificate of service authority from the Commission in  
16 accordance with this Section before serving any retail customer  
17 or other user located in this State. An alternative retail  
18 electric supplier may request, and the Commission may grant, a  
19 certificate of service authority for the entire State or for a  
20 specified geographic area of the State.

21 (b) An alternative retail electric supplier seeking a  
22 certificate of service authority shall file with the Commission  
23 a verified application containing information showing that the  
24 applicant meets the requirements of this Section. The  
25 alternative retail electric supplier shall publish notice of



1 its application in the official State newspaper within 10 days  
2 following the date of its filing. No later than 45 days after  
3 the application is properly filed with the Commission, and such  
4 notice is published, the Commission shall issue its order  
5 granting or denying the application.

6 (c) An application for a certificate of service authority  
7 shall identify the area or areas in which the applicant intends  
8 to offer service and the types of services it intends to offer.  
9 Applicants that seek to serve residential or small commercial  
10 retail customers within a geographic area that is smaller than  
11 an electric utility's service area shall submit evidence  
12 demonstrating that the designation of this smaller area does  
13 not violate Section 16-115A. An applicant that seeks to serve  
14 residential or small commercial retail customers may state in  
15 its application for certification any limitations that will be  
16 imposed on the number of customers or maximum load to be  
17 served.

18 (d) The Commission shall grant the application for a  
19 certificate of service authority if it makes the findings set  
20 forth in this subsection based on the verified application and  
21 such other information as the applicant may submit:

22 (1) That the applicant possesses sufficient technical,  
23 financial and managerial resources and abilities to  
24 provide the service for which it seeks a certificate of  
25 service authority. In determining the level of technical,  
26 financial and managerial resources and abilities which the

1 applicant must demonstrate, the Commission shall consider  
2 (i) the characteristics, including the size and financial  
3 sophistication, of the customers that the applicant seeks  
4 to serve, and (ii) whether the applicant seeks to provide  
5 electric power and energy using property, plant and  
6 equipment which it owns, controls or operates;

7 (2) That the applicant will comply with all applicable  
8 federal, State, regional and industry rules, policies,  
9 practices and procedures for the use, operation, and  
10 maintenance of the safety, integrity and reliability, of  
11 the interconnected electric transmission system;

12 (3) That the applicant will only provide service to  
13 retail customers in an electric utility's service area that  
14 are eligible to take delivery services under this Act;

15 (4) That the applicant will comply with such  
16 informational or reporting requirements as the Commission  
17 may by rule establish and provide the information required  
18 by Section 16-112. Any data related to contracts for the  
19 purchase and sale of electric power and energy shall be  
20 made available for review by the Staff of the Commission on  
21 a confidential and proprietary basis and only to the extent  
22 and for the purposes which the Commission determines are  
23 reasonably necessary in order to carry out the purposes of  
24 this Act;

25 (5) That the applicant will procure renewable energy  
26 resources in accordance with Section 16-115D of this Act,

1 and will source electricity from clean coal facilities, as  
2 defined in Section 1-10 of the Illinois Power Agency Act,  
3 in amounts ~~at least~~ equal to the amounts ~~percentages~~ set  
4 forth in subsections (c) and (d) of Section 1-75 of the  
5 Illinois Power Agency Act. For purposes of this Section:

6 (i) (blank) ~~(Blank)~~;

7 (ii) (blank) ~~(Blank)~~;

8 (iii) (blank); ~~the required sourcing of~~  
9 ~~electricity generated by clean coal facilities, other~~  
10 ~~than the initial clean coal facility, shall be limited~~  
11 ~~to the amount of electricity that can be procured or~~  
12 ~~sourced at a price at or below the benchmarks approved~~  
13 ~~by the Commission each year in accordance with item (1)~~  
14 ~~of subsection (c) and items (1) and (5) of subsection~~  
15 ~~(d) of Section 1-75 of the Illinois Power Agency Act;~~

16 (iv) all alternative retail electric suppliers, whether certified before or after the effective date of  
17 this amendatory Act of the 97th General Assembly, shall  
18 execute a sourcing agreement to source electricity  
19 from the initial clean coal facility, on the terms set  
20 forth in paragraphs (3) and (4) of subsection (d) of  
21 Section 1-75 of the Illinois Power Agency Act, with  
22 each reference therein to "utility" being deemed to be  
23 a reference to an alternative retail electric  
24 supplier, except that ~~in lieu of~~ the requirements in  
25 subparagraphs (B)(v), (D)(ii), and (D)(vii) ~~(A)(v),~~  
26

1           ~~(B) (i), (C) (v), and (C) (vi)~~ of paragraph (3) of that  
2           subsection (d), shall not apply; ~~the applicant shall~~  
3           ~~execute one or more of the following:~~

4                   ~~(1) if the sourcing agreement is a power~~  
5                   ~~purchase agreement, a contract with the initial~~  
6                   ~~clean coal facility to purchase in each hour an~~  
7                   ~~amount of electricity equal to all clean coal~~  
8                   ~~energy made available from the initial clean coal~~  
9                   ~~facility during such hour, which the utilities are~~  
10                  ~~not required to procure under the terms of~~  
11                  ~~subsection (d) of Section 1-75 of the Illinois~~  
12                  ~~Power Agency Act, multiplied by a fraction, the~~  
13                  ~~numerator of which is the alternative retail~~  
14                  ~~electric supplier's retail market sales of~~  
15                  ~~electricity (expressed in kilowatthours sold) in~~  
16                  ~~the State during the prior calendar month and the~~  
17                  ~~denominator of which is the total sales of~~  
18                  ~~electricity (expressed in kilowatthours sold) in~~  
19                  ~~the State by alternative retail electric suppliers~~  
20                  ~~during such prior month that are subject to the~~  
21                  ~~requirements of this paragraph (5) of subsection~~  
22                  ~~(d) of this Section and subsection (d) of Section~~  
23                  ~~1-75 of the Illinois Power Agency Act plus the~~  
24                  ~~total sales of electricity (expressed in~~  
25                  ~~kilowatthours sold) by utilities outside of their~~  
26                  ~~service areas during such prior month, pursuant to~~

1 ~~subsection (c) of Section 16-116 of this Act; or~~  
2 ~~(2) if the sourcing agreement is a contract for~~  
3 ~~differences, a contract with the initial clean~~  
4 ~~coal facility in each hour with respect to an~~  
5 ~~amount of electricity equal to all clean coal~~  
6 ~~energy made available from the initial clean coal~~  
7 ~~facility during such hour, which the utilities are~~  
8 ~~not required to procure under the terms of~~  
9 ~~subsection (d) of Section 1-75 of the Illinois~~  
10 ~~Power Agency Act, multiplied by a fraction, the~~  
11 ~~numerator of which is the alternative retail~~  
12 ~~electric supplier's retail market sales of~~  
13 ~~electricity (expressed in kilowatthours sold) in~~  
14 ~~the State during the prior calendar month and the~~  
15 ~~denominator of which is the total sales of~~  
16 ~~electricity (expressed in kilowatthours sold) in~~  
17 ~~the State by alternative retail electric suppliers~~  
18 ~~during such prior month that are subject to the~~  
19 ~~requirements of this paragraph (5) of subsection~~  
20 ~~(d) of this Section and subsection (d) of Section~~  
21 ~~1-75 of the Illinois Power Agency Act plus the~~  
22 ~~total sales of electricity (expressed in~~  
23 ~~kilowatthours sold) by utilities outside of their~~  
24 ~~service areas during such prior month, pursuant to~~  
25 ~~subsection (c) of Section 16-116 of this Act;~~  
26 ~~(v) (blank); if, in any year after the first year~~

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

1 ~~sequestration requirement and the other terms of this~~  
2 ~~contract provision. Compliance with the sequestration~~  
3 ~~requirements and offset purchase requirements that~~  
4 ~~apply to the initial clean coal facility shall be~~  
5 ~~reviewed annually by an independent expert retained by~~  
6 ~~the owner of the initial clean coal facility, with the~~  
7 ~~advance written approval of the Attorney General;~~

8 (vi) ~~the~~ The Commission shall, after notice and  
9 ~~hearing, revoke the certification of any alternative~~  
10 ~~retail electric supplier that fails to execute a~~  
11 ~~sourcing agreement with the initial clean coal~~  
12 ~~facility as required by item (5) of subsection (d) of~~  
13 ~~this Section. The sourcing agreements with the ~~this~~~~  
14 ~~initial clean coal facility shall be subject to~~  
15 ~~approval both approval of the initial clean coal~~  
16 ~~facility by the Illinois Power Agency pursuant to~~  
17 ~~paragraph (4) of subsection (d) of Section 1-75 of the~~  
18 ~~Illinois Power Agency Act General Assembly and~~  
19 ~~satisfaction of the requirements of item (4) of~~  
20 ~~subsection (d) of Section 1-75 of the Illinois Power~~  
21 ~~Agency Act, and shall be executed within 30 ~~90~~ days~~  
22 ~~after any such approval by the Illinois Power Agency or~~  
23 ~~the issuance of any necessary approval by the Federal~~  
24 ~~Energy Regulatory Commission, whichever is later;~~

25 (vii) The Commission shall have jurisdiction over  
26 disciplinary proceedings and complaints for violations

1           of this Section. If, upon complaint, the Commission  
2           determines an alternative retail electric supplier has  
3           failed to execute a sourcing agreement with the initial  
4           clean coal facility, then the Commission shall issue  
5           notice of the finding to the alternative retail  
6           electric supplier. The alternative retail electric  
7           supplier shall have 30 days after the receipt of notice  
8           to enter into a sourcing agreement. If, after the  
9           notice period, the Commission finds an alternative  
10           retail electric supplier has failed to comply, then the  
11           Commission shall revoke the alternative retail  
12           electric supplier's certificate for 6 months ~~General~~  
13           ~~Assembly. The Commission shall not accept an~~  
14           ~~application for certification from an alternative~~  
15           ~~retail electric supplier that has lost certification~~  
16           ~~under this subsection (d), or any corporate affiliate~~  
17           ~~thereof, for at least one year from the date of~~  
18           ~~revocation;~~

19           (6) With respect to an applicant that seeks to serve  
20           residential or small commercial retail customers, that the  
21           area to be served by the applicant and any limitations it  
22           proposes on the number of customers or maximum amount of  
23           load to be served meet the provisions of Section 16-115A,  
24           provided, that the Commission can extend the time for  
25           considering such a certificate request by up to 90 days,  
26           and can schedule hearings on such a request;



1           (7) That the applicant meets the requirements of  
2 subsection (a) of Section 16-128; and

3           (8) That the applicant will comply with all other  
4 applicable laws and regulations.

5           (d-5) (Blank).

6           (e) A retail customer that owns a cogeneration or  
7 self-generation facility and that seeks certification only to  
8 provide electric power and energy from such facility to retail  
9 customers at separate locations which customers are both (i)  
10 owned by, or a subsidiary or other corporate affiliate of, such  
11 applicant and (ii) eligible for delivery services, shall be  
12 granted a certificate of service authority upon filing an  
13 application and notifying the Commission that it has entered  
14 into an agreement with the relevant electric utilities pursuant  
15 to Section 16-118. Provided, however, that if the retail  
16 customer owning such cogeneration or self-generation facility  
17 would not be charged a transition charge due to the exemption  
18 provided under subsection (f) of Section 16-108 prior to the  
19 certification, and the retail customers at separate locations  
20 are taking delivery services in conjunction with purchasing  
21 power and energy from the facility, the retail customer on  
22 whose premises the facility is located shall not thereafter be  
23 required to pay transition charges on the power and energy that  
24 such retail customer takes from the facility.

25           (f) The Commission shall have the authority to promulgate  
26 rules and regulations to carry out the provisions of this

1 Section. On or before May 1, 1999, the Commission shall adopt a  
2 rule or rules applicable to the certification of those  
3 alternative retail electric suppliers that seek to serve only  
4 nonresidential retail customers with maximum electrical  
5 demands of one megawatt or more which shall provide for (i)  
6 expedited and streamlined procedures for certification of such  
7 alternative retail electric suppliers and (ii) specific  
8 criteria which, if met by any such alternative retail electric  
9 supplier, shall constitute the demonstration of technical,  
10 financial and managerial resources and abilities to provide  
11 service required by subsection (d) (1) of this Section, such as  
12 a requirement to post a bond or letter of credit, from a  
13 responsible surety or financial institution, of sufficient  
14 size for the nature and scope of the services to be provided;  
15 demonstration of adequate insurance for the scope and nature of  
16 the services to be provided; and experience in providing  
17 similar services in other jurisdictions.

18 (g) In any proceeding initiated by a public utility  
19 pursuant to Section 8-406 or Section 8-406.1 of this Act for a  
20 certificate of public convenience and necessity to construct  
21 and operate any utility plant, equipment, or facility required  
22 to provide service to the initial clean coal facility, it shall  
23 be conclusively presumed that the public convenience and  
24 necessity require the construction of such utility plant,  
25 equipment, or facility. In any proceeding initiated by a public  
26 utility pursuant to Section 8-503 of this Act for an order

1 directing the addition, extension, or improvement of any  
2 utility plant, equipment, facilities, or other property or the  
3 erection of any new utility plant, equipment, or facilities to  
4 provide service to the initial clean coal facility, it shall be  
5 conclusively presumed that such additional, extended, improved  
6 or new utility plant, equipment, facility, or other property is  
7 necessary and should be added, extended, or erected.

8 (Source: P.A. 95-130, eff. 1-1-08; 95-1027, eff. 6-1-09;  
9 96-159, eff. 8-10-09.)

10 (220 ILCS 5/16-115D)

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

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

19 (1) The definition of renewable energy resources  
20 contained in Section 1-10 of the Illinois Power Agency Act  
21 applies to all renewable energy resources required to be  
22 procured by alternative retail electric suppliers.

23 (2) The quantity of renewable energy resources shall be  
24 measured as a percentage of the actual amount of metered  
25 electricity (megawatt-hours) delivered by the alternative

1 retail electric supplier to Illinois retail customers  
2 during the 12-month period June 1 through May 31,  
3 commencing June 1, 2009, and the comparable 12-month period  
4 in each year thereafter except as provided in item (6) of  
5 this subsection (a).

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

21 (4) The quantity and source of renewable energy  
22 resources shall be independently verified through the PJM  
23 Environmental Information System Generation Attribute  
24 Tracking System (PJM-GATS) or the Midwest Renewable Energy  
25 Tracking System (M-RETS), which shall document the  
26 location of generation, resource type, month, and year of

1 generation for all qualifying renewable energy resources  
2 that an alternative retail electric supplier uses to comply  
3 with this Section. No later than June 1, 2009, the Illinois  
4 Power Agency shall provide PJM-GATS, M-RETS, and  
5 alternative retail electric suppliers with all information  
6 necessary to identify resources located in Illinois,  
7 within states that adjoin Illinois or within portions of  
8 the PJM and MISO footprint in the United States that  
9 qualify under the definition of renewable energy resources  
10 in Section 1-10 of the Illinois Power Agency Act for  
11 compliance with this Section 16-115D. Alternative retail  
12 electric suppliers shall not be subject to the requirements  
13 in item (3) of subsection (c) of Section 1-75 of the  
14 Illinois Power Agency Act.

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

17 (6) The required procurement of renewable energy  
18 resources by an alternative retail electric supplier shall  
19 apply to all metered electricity delivered to Illinois  
20 retail customers by the alternative retail electric  
21 supplier pursuant to contracts executed or extended after  
22 March 15, 2009.

23 (b) Until May 31, 2012, an ~~An~~ alternative retail electric  
24 supplier shall comply with the renewable energy portfolio  
25 standards by making an alternative compliance payment, as  
26 described in subsection (d) of this Section, to cover at least

1 one-half of the alternative retail electric supplier's  
2 compliance obligation and any one or combination of the  
3 following means to cover the remainder of the alternative  
4 retail electric supplier's compliance obligation:

5 (1) Generating electricity using renewable energy  
6 resources identified pursuant to item (4) of subsection (a)  
7 of this Section.

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

11 (3) Purchasing renewable energy credits from renewable  
12 energy resources identified pursuant to item (4) of  
13 subsection (a) of this Section.

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

16 (c) Use of renewable energy credits.

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

1 before June 1, 2009 to comply with this Section.

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

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

17 (d) Alternative compliance payments.

18 (1) The Commission shall establish and post on its  
19 website, within 5 business days after entering an order  
20 approving a procurement plan pursuant to Section 1-75 of  
21 the Illinois Power Agency Act, maximum alternative  
22 compliance payment rates, expressed on a per kilowatt-hour  
23 basis, that will be applicable in the first compliance  
24 period following the plan approval. A separate maximum  
25 alternative compliance payment rate shall be established  
26 for the service territory of each electric utility that is

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



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

20 (2) In any given compliance year, an alternative retail  
21 electric supplier may elect to use alternative compliance  
22 payments to comply with all or a part of the applicable  
23 renewable portfolio standard. In the event that an  
24 alternative retail electric supplier elects to make  
25 alternative compliance payments to comply with all or a  
26 part of the applicable renewable portfolio standard, such

1 payments shall be made by September 1, 2010 for the period  
2 of June 1, 2009 to May 1, 2010 and by September 1 of each  
3 year thereafter for the subsequent compliance period, in  
4 the manner and form as determined by the Commission. Any  
5 election by an alternative retail electric supplier to use  
6 alternative compliance payments is subject to review by the  
7 Commission under subsection (e) of this Section.

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

1 renewable energy resources required under item (3) of  
2 subsection (a) of this Section and the actual amount of  
3 metered electricity delivered by the alternative retail  
4 electric supplier to retail customers within the service  
5 territory during the compliance period.

6 (4) All alternative compliance payments by alternative  
7 retail electric suppliers shall be deposited in the  
8 Illinois Power Agency Renewable Energy Resources Fund and  
9 used to purchase renewable energy credits, in accordance  
10 with Section 1-56 of the Illinois Power Agency Act.

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

23 (e) Each alternative retail electric supplier shall, by  
24 September 1, 2010 and by September 1 of each year thereafter,  
25 prepare and submit to the Commission a report, in a format to  
26 be specified by the Commission on or before December 31, 2009,

1 that provides information certifying compliance by the  
2 alternative retail electric supplier with this Section,  
3 including copies of all PJM-GATS and M-RETS reports, and  
4 documentation relating to banking, retiring renewable energy  
5 credits, and any other information that the Commission  
6 determines necessary to ensure compliance with this Section. An  
7 alternative retail electric supplier may file commercially or  
8 financially sensitive information or trade secrets with the  
9 Commission as provided under the rules of the Commission. To be  
10 filed confidentially, the information shall be accompanied by  
11 an affidavit that sets forth both the reasons for the  
12 confidentiality and a public synopsis of the information.

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

22 (1) immediately comply with this Section; and

23 (2) if the violation involves a failure to procure the  
24 requisite quantity of renewable energy resources or pay the  
25 applicable alternative compliance payment by the annual  
26 deadline, the Commission shall require the alternative

1 retail electric supplier to double the applicable  
2 alternative compliance payment that would otherwise be  
3 required to bring the alternative retail electric supplier  
4 into compliance with this Section.

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

15 (g) All of the provisions of this Section apply to electric  
16 utilities operating outside their service area except under  
17 item (2) of subsection (a) of this Section the quantity of  
18 renewable energy resources shall be measured as a percentage of  
19 the actual amount of electricity (megawatt-hours) supplied in  
20 the State outside of the utility's service territory during the  
21 12-month period June 1 through May 31, commencing June 1, 2009,  
22 and the comparable 12-month period in each year thereafter  
23 except as provided in item (6) of subsection (a) of this  
24 Section.

25 If any such utility fails to procure the requisite quantity  
26 of renewable energy resources by the annual deadline, then the

1 Commission shall require the utility to double the alternative  
2 compliance payment that would otherwise be required to bring  
3 the utility into compliance with this Section.

4 If any such utility fails to comply with the renewable  
5 energy resource portfolio requirement in this Section more than  
6 once in a 5-year period, then the Commission shall order the  
7 utility to cease all sales outside of the utility's service  
8 territory for a period of at least one year.

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

23 (i) The obligations specified in this Section of  
24 alternative retail electric suppliers and electric utilities  
25 operating outside their service territories to procure  
26 renewable energy resources, make alternative compliance

1 payments, and file annual reports, and the obligations of the  
2 Commission to determine and post alternative compliance  
3 payment rates, shall terminate effective May 31, 2012, provided  
4 that alternative retail electric suppliers and electric  
5 utilities operating outside their service territories shall be  
6 obligated to make all alternative compliance payments that they  
7 were obligated to pay for periods through and including May 31,  
8 2012, but were not paid as of that date and to file all  
9 required reports for periods prior to June 1, 2012. The  
10 Commission shall continue to enforce the payment of unpaid  
11 alternative compliance payments after May 31, 2012 in  
12 accordance with subsections (f) and (g) of this Section. All  
13 alternative compliance payments made after May 31, 2012 shall  
14 be deposited in the Illinois Power Agency Renewable Energy  
15 Resources Fund and used to purchase renewable energy credits,  
16 in accordance with Section 1-56 of the Illinois Power Agency  
17 Act.

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

20 (220 ILCS 5/16-116)

21 Sec. 16-116. Commission oversight of electric utilities  
22 serving retail customers outside their service areas or  
23 providing competitive, non-tariffed services.

24 (a) An electric utility that has a tariff on file for  
25 delivery services may, without regard to any otherwise

1 applicable tariffs on file, provide electric power and energy  
2 to one or more retail customers located outside its service  
3 area, but only to the extent (i) such retail customer (A) is  
4 eligible for delivery services under any delivery services  
5 tariff filed with the Commission by the electric utility in  
6 whose service area the retail customer is located and (B) has  
7 either elected to take such delivery services or has paid or  
8 contracted to pay the charges specified in Sections 16-108 and  
9 16-114, or (ii) if such retail customer is served by a  
10 municipal system or electric cooperative, the customer is  
11 eligible for delivery services under the terms and conditions  
12 for such service established by the municipal system or  
13 electric cooperative serving that customer.

14 (b) An electric utility may offer any competitive service  
15 to any customer or group of customers without filing contracts  
16 with or seeking approval of the Commission, notwithstanding any  
17 rule or regulation that would require such approval. The  
18 Commission shall not increase or decrease the prices, and may  
19 not alter or add to the terms and conditions for the utility's  
20 competitive services, from those agreed to by the electric  
21 utility and the customer or customers. Non-tariffed,  
22 competitive services shall not be subject to the provisions of  
23 the Electric Supplier Act or to Articles V, VII, VIII or IX of  
24 the Act, except to the extent that any provisions of such  
25 Articles are made applicable to alternative retail electric  
26 suppliers pursuant to Sections 16-115 and 16-115A, but shall be



1 subject to the provisions of subsections (b) through (g) of  
2 Section 16-115A, and Section 16-115B to the same extent such  
3 provisions are applicable to the services provided by  
4 alternative retail electric suppliers.

5 (c) Electric utilities serving retail customers outside  
6 their service areas shall be subject to the requirements of  
7 paragraph (5) of subsection (d) of Section 16-115 of the Public  
8 Utilities Act, ~~except that the numerators referred to in that~~  
9 ~~subsection (d) shall be the utility's retail market sales of~~  
10 ~~electricity (expressed in kilowatthours sold) in the State~~  
11 ~~outside of the utility's service territory in the prior month.~~  
12 (Source: P.A. 95-1027, eff. 6-1-09.)

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