



Rep. Kevin A. McCarthy

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1 AMENDMENT TO SENATE BILL 1652

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1652 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Power Agency Act is amended by  
5 changing Section 1-10, 1-56, and 1-75 as follows:

6 (20 ILCS 3855/1-10)

7 Sec. 1-10. Definitions.

8 "Agency" means the Illinois Power Agency.

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

1 "Authority" means the Illinois Finance Authority.

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

26 "Clean coal SNG facility" means a facility that uses a

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

7 "Commission" means the Illinois Commerce Commission.

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

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

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

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

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

26 (5) the costs of plans, specifications, site study and

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

8 "Department" means the Department of Commerce and Economic  
9 Opportunity.

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

11 "Demand-response" means measures that decrease peak  
12 electricity demand or shift demand from peak to off-peak  
13 periods.

14 "Distributed renewable energy generation device" means a  
15 device that is:

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

21 (2) interconnected at the distribution system level of  
22 either an electric utility as defined in this Section, an  
23 alternative retail electric supplier as defined in Section  
24 16-102 of the Public Utilities Act, a municipal utility as  
25 defined in Section 3-105 of the Public Utilities Act, or a  
26 rural electric cooperative as defined in Section 3-119 of

1       the Public Utilities Act;

2           (3) located on the customer side of the customer's  
3       electric meter and is primarily used to offset that  
4       customer's electricity load; and

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

7       "Energy efficiency" means measures that reduce the amount  
8       of electricity or natural gas required to achieve a given end  
9       use.

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

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

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

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

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

25       "Person" means any natural person, firm, partnership,  
26       corporation, either domestic or foreign, company, association,

1 limited liability company, joint stock company, or association  
2 and includes any trustee, receiver, assignee, or personal  
3 representative thereof.

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

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

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

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

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

1 of tires, garbage, general household, institutional, and  
2 commercial waste, industrial lunchroom or office waste,  
3 landscape waste other than tree waste, railroad crossties,  
4 utility poles, or construction or demolition debris, other than  
5 untreated and unadulterated waste wood.

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

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

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

25 "Substitute natural gas" or "SNG" means a gas manufactured  
26 by gasification of hydrocarbon feedstock, which is

1 substantially interchangeable in use and distribution with  
2 conventional natural gas.

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

24 (Source: P.A. 95-481, eff. 8-28-07; 95-913, eff. 1-1-09;  
25 95-1027, eff. 6-1-09; 96-33, eff. 7-10-09; 96-159, eff.  
26 8-10-09; 96-784, eff. 8-28-09; 96-1000, eff. 7-2-10.)



1 (20 ILCS 3855/1-56)

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

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

6 (b) The Illinois Power Agency Renewable Energy Resources  
7 Fund shall be administered by the Agency to procure renewable  
8 energy resources. Prior to June 1, 2011, resources procured  
9 pursuant to this Section shall be procured from facilities  
10 located in Illinois, provided the resources are available from  
11 those facilities. If resources are not available in Illinois,  
12 then they shall be procured in states that adjoin Illinois. If  
13 resources are not available in Illinois or in states that  
14 adjoin Illinois, then they may be purchased elsewhere.  
15 Beginning June 1, 2011, resources procured pursuant to this  
16 Section shall be procured from facilities located in Illinois  
17 or states that adjoin Illinois. If resources are not available  
18 in Illinois or in states that adjoin Illinois, then they may be  
19 procured elsewhere. To the extent available, at least 75% of  
20 these renewable energy resources shall come from wind  
21 generation. Of the renewable energy resources procured  
22 pursuant to this Section at least the following specified  
23 percentages shall come from photovoltaics on the following  
24 schedule: 0.5% by June 1, 2012; 1.5% by June 1, 2013; 3% by  
25 June 1, 2014; and 6% by June 1, 2015 and thereafter. Of the

1 renewable energy resources procured pursuant to this Section,  
2 at least the following percentages shall come from distributed  
3 renewable energy generation devices: 0.5% by June 1, 2013,  
4 0.75% by June 1, 2014, and 1% by June 1, 2015 and thereafter.  
5 To the extent available, half of the renewable energy resources  
6 procured from distributed renewable energy generation shall  
7 come from devices of less than 25 kilowatts in nameplate  
8 capacity. Renewable energy resources procured from distributed  
9 generation devices may also count towards the required  
10 percentages for wind and solar photovoltaics. Procurement of  
11 renewable energy resources from distributed renewable energy  
12 generation devices shall be done on an annual basis through  
13 multi-year contracts of no less than 5 years, and shall consist  
14 solely of renewable energy credits.

15 The Agency shall create credit requirements for suppliers  
16 of distributed renewable energy. In order to minimize the  
17 administrative burden on contracting entities, the Agency  
18 shall solicit the use of third-party organizations to aggregate  
19 distributed renewable energy into groups of no less than one  
20 megawatt in installed capacity. These third-party  
21 organizations shall administer contracts with individual  
22 distributed renewable energy generation device owners. An  
23 individual distributed renewable energy generation device  
24 owner shall have the ability to measure the output of his or  
25 her distributed renewable energy generation device.

26 (c) The Agency shall procure renewable energy resources at

1 least once each year in conjunction with a procurement event  
2 for electric utilities required to comply with Section 1-75 of  
3 the Act and shall, whenever possible, enter into long-term  
4 contracts on an annual basis for a portion of the incremental  
5 requirement for the given procurement year.

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

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

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

17 (g) All disbursements from the Illinois Power Agency  
18 Renewable Energy Resources Fund shall be made only upon  
19 warrants of the Comptroller drawn upon the Treasurer as  
20 custodian of the Fund upon vouchers signed by the Director or  
21 by the person or persons designated by the Director for that  
22 purpose. The Comptroller is authorized to draw the warrant upon  
23 vouchers so signed. The Treasurer shall accept all warrants so  
24 signed and shall be released from liability for all payments  
25 made on those warrants.

26 (h) The Illinois Power Agency Renewable Energy Resources

1 Fund shall not be subject to sweeps, administrative charges, or  
2 chargebacks, including, but not limited to, those authorized  
3 under Section 8h of the State Finance Act, that would in any  
4 way result in the transfer of any funds from this Fund to any  
5 other fund of this State or in having any such funds utilized  
6 for any purpose other than the express purposes set forth in  
7 this Section.

8 (Source: P.A. 96-159, eff. 8-10-09; 96-1000, eff. 7-2-10;  
9 96-1437, eff. 8-17-10.)

10 (20 ILCS 3855/1-75)

11 Sec. 1-75. Planning and Procurement Bureau. The Planning  
12 and Procurement Bureau has the following duties and  
13 responsibilities:

14 (a) The Planning and Procurement Bureau shall each  
15 year, beginning in 2008, develop procurement plans and  
16 conduct competitive procurement processes in accordance  
17 with the requirements of Section 16-111.5 of the Public  
18 Utilities Act for the eligible retail customers of electric  
19 utilities that on December 31, 2005 provided electric  
20 service to at least 100,000 customers in Illinois. For the  
21 purposes of this Section, the term "eligible retail  
22 customers" has the same definition as found in Section  
23 16-111.5(a) of the Public Utilities Act.

24 (1) The Agency shall each year, beginning in 2008,  
25 as needed, issue a request for qualifications for

1 experts or expert consulting firms to develop the  
2 procurement plans in accordance with Section 16-111.5  
3 of the Public Utilities Act. In order to qualify an  
4 expert or expert consulting firm must have:

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

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

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

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

17 (E) expertise in credit protocols and  
18 familiarity with contract protocols;

19 (F) adequate resources to perform and fulfill  
20 the required functions and responsibilities; and

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

24 (2) The Agency shall each year, as needed, issue a  
25 request for qualifications for a procurement  
26 administrator to conduct the competitive procurement

1 processes in accordance with Section 16-111.5 of the  
2 Public Utilities Act. In order to qualify an expert or  
3 expert consulting firm must have:

4 (A) direct previous experience administering a  
5 large-scale competitive procurement process;

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

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

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

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

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

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

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

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

13 (A) failure to satisfy qualification criteria;

14 (B) identification of a conflict of interest;

15 or

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

19 The Agency shall remove experts or expert  
20 consulting firms from the lists within 10 days if there  
21 is a reasonable basis for an objection and provide the  
22 updated lists to the affected utilities and other  
23 interested parties. If the Agency fails to remove an  
24 expert or expert consulting firm from a list, an  
25 objecting party may seek review by the Commission  
26 within 5 days thereafter by filing a petition, and the

1 Commission shall render a ruling on the petition within  
2 10 days. There is no right of appeal of the  
3 Commission's ruling.

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

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

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

23 (b) The experts or expert consulting firms retained by  
24 the Agency shall, as appropriate, prepare procurement  
25 plans, and conduct a competitive procurement process as  
26 prescribed in Section 16-111.5 of the Public Utilities Act,



1 to ensure adequate, reliable, affordable, efficient, and  
2 environmentally sustainable electric service at the lowest  
3 total cost over time, taking into account any benefits of  
4 price stability, for eligible retail customers of electric  
5 utilities that on December 31, 2005 provided electric  
6 service to at least 100,000 customers in the State of  
7 Illinois.

8 (c) Renewable portfolio standard.

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

1 meet these standards shall come from photovoltaics on  
2 the following schedule: 0.5% by June 1, 2012, 1.5% by  
3 June 1, 2013; 3% by June 1, 2014; and 6% by June 1,  
4 2015 and thereafter. Of the renewable energy resources  
5 procured pursuant to this Section, at least the  
6 following percentages shall come from distributed  
7 renewable energy generation devices: 0.5% by June 1,  
8 2013, 0.75% by June 1, 2014, and 1% by June 1, 2015 and  
9 thereafter. To the extent available, half of the  
10 renewable energy resources procured from distributed  
11 renewable energy generation shall come from devices of  
12 less than 25 kilowatts in nameplate capacity.  
13 Renewable energy resources procured from distributed  
14 generation devices may also count towards the required  
15 percentages for wind and solar photovoltaics.  
16 Procurement of renewable energy resources from  
17 distributed renewable energy generation devices shall  
18 be done on an annual basis through multi-year contracts  
19 of no less than 5 years, and shall consist solely of  
20 renewable energy credits.

21 The Agency shall create credit requirements for  
22 suppliers of distributed renewable energy. In order to  
23 minimize the administrative burden on contracting  
24 entities, the Agency shall solicit the use of  
25 third-party organizations to aggregate distributed  
26 renewable energy into groups of no less than one

1           megawatt in installed capacity. These third-party  
2           organizations shall administer contracts with  
3           individual distributed renewable energy generation  
4           device owners. An individual distributed renewable  
5           energy generation device owner shall have the ability  
6           to measure the output of his or her distributed  
7           renewable energy generation device. For purposes of  
8           this subsection (c), "cost-effective" means that the  
9           costs of procuring renewable energy resources do not  
10          cause the limit stated in paragraph (2) of this  
11          subsection (c) to be exceeded and do not exceed  
12          benchmarks based on market prices for renewable energy  
13          resources in the region, which shall be developed by  
14          the procurement administrator, in consultation with  
15          the Commission staff, Agency staff, and the  
16          procurement monitor and shall be subject to Commission  
17          review and approval.

18                 (2) For purposes of this subsection (c), the  
19                 required procurement of cost-effective renewable  
20                 energy resources for a particular year shall be  
21                 measured as a percentage of the actual amount of  
22                 electricity (megawatt-hours) supplied by the electric  
23                 utility to eligible retail customers in the planning  
24                 year ending immediately prior to the procurement. For  
25                 purposes of this subsection (c), the amount paid per  
26                 kilowatthour means the total amount paid for electric

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

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

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

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

22 (C) in 2010, the greater of an additional 0.5%  
23 of the amount paid per kilowatthour by those  
24 customers during the year ending May 31, 2009 or  
25 1.5% of the amount paid per kilowatthour by those  
26 customers during the year ending May 31, 2007;

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

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

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) Through June 1, 2011, renewable energy  
26 resources shall be counted for the purpose of meeting

1 the renewable energy standards set forth in paragraph  
2 (1) of this subsection (c) only if they are generated  
3 from facilities located in the State, provided that  
4 cost-effective renewable energy resources are  
5 available from those facilities. If those  
6 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, an electric utility subject to this subsection  
25 (c) shall apply the lesser of the maximum alternative  
26 compliance payment rate or the most recent estimated

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

23 (d) Clean coal portfolio standard.

24 (1) The procurement plans shall include electricity  
25 generated using clean coal. Each utility shall enter into  
26 one or more sourcing agreements with the initial clean coal

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

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

26 (B) Utilities shall maintain adequate records



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

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

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

25          Notwithstanding the requirements of this subsection  
26          (d), the total amount paid under sourcing agreements with

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

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

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

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

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

25 (E) thereafter, the total amount paid under  
26 sourcing agreements with clean coal facilities

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

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

1 500 MW when commercial operation commences, that has a  
2 final Clean Air Act permit on the effective date of this  
3 amendatory Act of the 95th General Assembly, and that will  
4 meet the definition of clean coal facility in Section 1-10  
5 of this Act when commercial operation commences. The  
6 sourcing agreements with this initial clean coal facility  
7 shall be subject to both approval of the initial clean coal  
8 facility by the General Assembly and satisfaction of the  
9 requirements of paragraph (4) of this subsection (d) and  
10 shall be executed within 90 days after any such approval by  
11 the General Assembly. The Agency and the Commission shall  
12 have authority to inspect all books and records associated  
13 with the initial clean coal facility during the term of  
14 such a sourcing agreement. A utility's sourcing agreement  
15 for electricity produced by the initial clean coal facility  
16 shall include:

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

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

1 of return approved by the General Assembly  
2 pursuant to paragraph (4) of this subsection (d);  
3 and

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

19 (B) power purchase provisions, which shall:

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

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

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

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

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

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

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

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

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

18          (D) general provisions, which shall:

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

22                 (ii) provide that utilities shall maintain  
23                 adequate records documenting purchases under the  
24                 sourcing agreements entered into to comply with  
25                 this subsection (d) and shall file an accounting  
26                 with the load forecast that must be filed with the



1 Agency by July 15 of each year, in accordance with  
2 subsection (d) of Section 16-111.5 of the Public  
3 Utilities Act.

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

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

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

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

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

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

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

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

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

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

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

1 be governed by the power purchase provisions or the  
2 contract for differences provisions;

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

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

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

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

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

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

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

1 delivering power to the facility's busbar by 2016.  
2 To assist in the preparation of its report, the  
3 Commission, in consultation with the Agency, may  
4 hire one or more experts or consultants, the costs  
5 of which shall be paid for by the owner of the  
6 initial clean coal facility. The Commission and  
7 Agency may begin the process of selecting such  
8 experts or consultants prior to receipt of the  
9 facility cost report.

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

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

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

8 The facility cost report shall be prepared as follows:

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

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

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



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

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

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

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

1 operations and maintenance costs.

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

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

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

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

1           initial clean coal facility.

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

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

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

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

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

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

25 (g) The Agency shall assess fees to each affected  
26 utility to recover the costs incurred in preparation of the

1 annual procurement plan for the utility.

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

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

7 Section 10. The Public Utilities Act is amended by changing  
8 Sections 8-103, 16-107.5, 16-111.5, 16-111.7, and 16-128 and by  
9 adding Sections 8-103A, 16-108.5, 16-108.6, 16-108.7,  
10 16-108.8, 16-111.5B, and 16-128A as follows:

11 (220 ILCS 5/8-103)

12 Sec. 8-103. Energy efficiency and demand-response  
13 measures.

14 (a) It is the policy of the State that electric utilities  
15 are required to use cost-effective energy efficiency and  
16 demand-response measures to reduce delivery load. Requiring  
17 investment in cost-effective energy efficiency and  
18 demand-response measures will reduce direct and indirect costs  
19 to consumers by decreasing environmental impacts and by  
20 avoiding or delaying the need for new generation, transmission,  
21 and distribution infrastructure. It serves the public interest  
22 to allow electric utilities to recover costs for reasonably and  
23 prudently incurred expenses for energy efficiency and  
24 demand-response measures. As used in this Section,

1 "cost-effective" means that the measures satisfy the total  
2 resource cost test. The low-income measures described in  
3 subsection (f)(4) of this Section shall not be required to meet  
4 the total resource cost test. For purposes of this Section, the  
5 terms "energy-efficiency", "demand-response", "electric  
6 utility", and "total resource cost test" shall have the  
7 meanings set forth in the Illinois Power Agency Act. For  
8 purposes of this Section, the amount per kilowatthour means the  
9 total amount paid for electric service expressed on a per  
10 kilowatthour basis. For purposes of this Section, the total  
11 amount paid for electric service includes without limitation  
12 estimated amounts paid for supply, transmission, distribution,  
13 surcharges, and add-on-taxes.

14 (b) Electric utilities shall implement cost-effective  
15 energy efficiency measures to meet the following incremental  
16 annual energy savings goals:

17 (1) 0.2% of energy delivered in the year commencing  
18 June 1, 2008;

19 (2) 0.4% of energy delivered in the year commencing  
20 June 1, 2009;

21 (3) 0.6% of energy delivered in the year commencing  
22 June 1, 2010;

23 (4) 0.8% of energy delivered in the year commencing  
24 June 1, 2011;

25 (5) 1% of energy delivered in the year commencing June  
26 1, 2012;

1           (6) 1.4% of energy delivered in the year commencing  
2           June 1, 2013;

3           (7) 1.8% of energy delivered in the year commencing  
4           June 1, 2014; and

5           (8) 2% of energy delivered in the year commencing June  
6           1, 2015 and each year thereafter.

7           (c) Electric utilities shall implement cost-effective  
8           demand-response measures to reduce peak demand by 0.1% over the  
9           prior year for eligible retail customers, as defined in Section  
10          16-111.5 of this Act, and for customers that elect hourly  
11          service from the utility pursuant to Section 16-107 of this  
12          Act, provided those customers have not been declared  
13          competitive. This requirement commences June 1, 2008 and  
14          continues for 10 years.

15          (d) Notwithstanding the requirements of subsections (b)  
16          and (c) of this Section, an electric utility shall reduce the  
17          amount of energy efficiency and demand-response measures  
18          implemented in any single year by an amount necessary to limit  
19          the estimated average increase in the amounts paid by retail  
20          customers in connection with electric service due to the cost  
21          of those measures to:

22                 (1) in 2008, no more than 0.5% of the amount paid per  
23                 kilowatthour by those customers during the year ending May  
24                 31, 2007;

25                 (2) in 2009, the greater of an additional 0.5% of the  
26                 amount paid per kilowatthour by those customers during the

1 year ending May 31, 2008 or 1% of the amount paid per  
2 kilowatthour by those customers during the year ending May  
3 31, 2007;

4 (3) in 2010, the greater of an additional 0.5% of the  
5 amount paid per kilowatthour by those customers during the  
6 year ending May 31, 2009 or 1.5% of the amount paid per  
7 kilowatthour by those customers during the year ending May  
8 31, 2007;

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

14 (5) thereafter, the amount of energy efficiency and  
15 demand-response measures implemented for any single year  
16 shall be reduced by an amount necessary to limit the  
17 estimated average net increase due to the cost of these  
18 measures included in the amounts paid by eligible retail  
19 customers in connection with electric service to no more  
20 than the greater of 2.015% of the amount paid per  
21 kilowatthour by those customers during the year ending May  
22 31, 2007 or the incremental amount per kilowatthour paid  
23 for these measures in 2011.

24 No later than June 30, 2011, the Commission shall review  
25 the limitation on the amount of energy efficiency and  
26 demand-response measures implemented pursuant to this Section



1 and report to the General Assembly its findings as to whether  
2 that limitation unduly constrains the procurement of energy  
3 efficiency and demand-response measures.

4 (e) Electric utilities shall be responsible for overseeing  
5 the design, development, and filing of energy efficiency and  
6 demand-response plans with the Commission. Electric utilities  
7 shall implement 100% of the demand-response measures in the  
8 plans. Electric utilities shall implement 75% of the energy  
9 efficiency measures approved by the Commission, and may, as  
10 part of that implementation, outsource various aspects of  
11 program development and implementation. The remaining 25% of  
12 those energy efficiency measures approved by the Commission  
13 shall be implemented by the Department of Commerce and Economic  
14 Opportunity, and must be designed in conjunction with the  
15 utility and the filing process. The Department may outsource  
16 development and implementation of energy efficiency measures.  
17 A minimum of 10% of the entire portfolio of cost-effective  
18 energy efficiency measures shall be procured from units of  
19 local government, municipal corporations, school districts,  
20 and community college districts. The Department shall  
21 coordinate the implementation of these measures.

22 The apportionment of the dollars to cover the costs to  
23 implement the Department's share of the portfolio of energy  
24 efficiency measures shall be made to the Department once the  
25 Department has executed grants or contracts for energy  
26 efficiency measures and provided supporting documentation for

1 those grants and the contracts to the utility.

2 The details of the measures implemented by the Department  
3 shall be submitted by the Department to the Commission in  
4 connection with the utility's filing regarding the energy  
5 efficiency and demand-response measures that the utility  
6 implements.

7 A utility providing approved energy efficiency and  
8 demand-response measures in the State shall be permitted to  
9 recover costs of those measures through an automatic adjustment  
10 clause tariff filed with and approved by the Commission. The  
11 tariff shall be established outside the context of a general  
12 rate case. Each year the Commission shall initiate a review to  
13 reconcile any amounts collected with the actual costs and to  
14 determine the required adjustment to the annual tariff factor  
15 to match annual expenditures.

16 Each utility shall include, in its recovery of costs, the  
17 costs estimated for both the utility's and the Department's  
18 implementation of energy efficiency and demand-response  
19 measures. Costs collected by the utility for measures  
20 implemented by the Department shall be submitted to the  
21 Department pursuant to Section 605-323 of the Civil  
22 Administrative Code of Illinois and shall be used by the  
23 Department solely for the purpose of implementing these  
24 measures. A utility shall not be required to advance any moneys  
25 to the Department but only to forward such funds as it has  
26 collected. The Department shall report to the Commission on an

1 annual basis regarding the costs actually incurred by the  
2 Department in the implementation of the measures. Any changes  
3 to the costs of energy efficiency measures as a result of plan  
4 modifications shall be appropriately reflected in amounts  
5 recovered by the utility and turned over to the Department.

6 The portfolio of measures, administered by both the  
7 utilities and the Department, shall, in combination, be  
8 designed to achieve the annual savings targets described in  
9 subsections (b) and (c) of this Section, as modified by  
10 subsection (d) of this Section.

11 The utility and the Department shall agree upon a  
12 reasonable portfolio of measures and determine the measurable  
13 corresponding percentage of the savings goals associated with  
14 measures implemented by the utility or Department.

15 No utility shall be assessed a penalty under subsection (f)  
16 of this Section for failure to make a timely filing if that  
17 failure is the result of a lack of agreement with the  
18 Department with respect to the allocation of responsibilities  
19 or related costs or target assignments. In that case, the  
20 Department and the utility shall file their respective plans  
21 with the Commission and the Commission shall determine an  
22 appropriate division of measures and programs that meets the  
23 requirements of this Section.

24 If the Department is unable to meet incremental annual  
25 performance goals for the portion of the portfolio implemented  
26 by the Department, then the utility and the Department shall

1 jointly submit a modified filing to the Commission explaining  
2 the performance shortfall and recommending an appropriate  
3 course going forward, including any program modifications that  
4 may be appropriate in light of the evaluations conducted under  
5 item (7) of subsection (f) of this Section. In this case, the  
6 utility obligation to collect the Department's costs and turn  
7 over those funds to the Department under this subsection (e)  
8 shall continue only if the Commission approves the  
9 modifications to the plan proposed by the Department.

10 (f) No later than November 15, 2007, each electric utility  
11 shall file an energy efficiency and demand-response plan with  
12 the Commission to meet the energy efficiency and  
13 demand-response standards for 2008 through 2010. No later than  
14 October 1, 2010, each electric utility shall file an energy  
15 efficiency and demand-response plan with the Commission to meet  
16 the energy efficiency and demand-response standards for 2011  
17 through 2013. Every 3 years thereafter, each electric utility  
18 shall file, no later than September ~~October~~ 1, an energy  
19 efficiency and demand-response plan with the Commission. If a  
20 utility does not file such a plan by September ~~October~~ 1 of an  
21 applicable year, it shall face a penalty of \$100,000 per day  
22 until the plan is filed. Each utility's plan shall set forth  
23 the utility's proposals to meet the utility's portion of the  
24 energy efficiency standards identified in subsection (b) and  
25 the demand-response standards identified in subsection (c) of  
26 this Section as modified by subsections (d) and (e), taking

1 into account the unique circumstances of the utility's service  
2 territory. The Commission shall seek public comment on the  
3 utility's plan and shall issue an order approving or  
4 disapproving each plan within 5 ~~3~~ months after its submission.  
5 If the Commission disapproves a plan, the Commission shall,  
6 within 30 days, describe in detail the reasons for the  
7 disapproval and describe a path by which the utility may file a  
8 revised draft of the plan to address the Commission's concerns  
9 satisfactorily. If the utility does not refile with the  
10 Commission within 60 days, the utility shall be subject to  
11 penalties at a rate of \$100,000 per day until the plan is  
12 filed. This process shall continue, and penalties shall accrue,  
13 until the utility has successfully filed a portfolio of energy  
14 efficiency and demand-response measures. Penalties shall be  
15 deposited into the Energy Efficiency Trust Fund. In submitting  
16 proposed energy efficiency and demand-response plans and  
17 funding levels to meet the savings goals adopted by this Act  
18 the utility shall:

19 (1) Demonstrate that its proposed energy efficiency  
20 and demand-response measures will achieve the requirements  
21 that are identified in subsections (b) and (c) of this  
22 Section, as modified by subsections (d) and (e).

23 (2) Present specific proposals to implement new  
24 building and appliance standards that have been placed into  
25 effect.

26 (3) Present estimates of the total amount paid for

1 electric service expressed on a per kilowatthour basis  
2 associated with the proposed portfolio of measures  
3 designed to meet the requirements that are identified in  
4 subsections (b) and (c) of this Section, as modified by  
5 subsections (d) and (e).

6 (4) Coordinate with the Department to present a  
7 portfolio of energy efficiency measures proportionate to  
8 the share of total annual utility revenues in Illinois from  
9 households at or below 150% of the poverty level. The  
10 energy efficiency programs shall be targeted to households  
11 with incomes at or below 80% of area median income.

12 (5) Demonstrate that its overall portfolio of energy  
13 efficiency and demand-response measures, not including  
14 programs covered by item (4) of this subsection (f), are  
15 cost-effective using the total resource cost test and  
16 represent a diverse cross-section of opportunities for  
17 customers of all rate classes to participate in the  
18 programs.

19 (6) Include a proposed cost-recovery tariff mechanism  
20 to fund the proposed energy efficiency and demand-response  
21 measures and to ensure the recovery of the prudently and  
22 reasonably incurred costs of Commission-approved programs.

23 (7) Provide for an annual independent evaluation of the  
24 performance of the cost-effectiveness of the utility's  
25 portfolio of measures and the Department's portfolio of  
26 measures, as well as a full review of the 3-year results of

1 the broader net program impacts and, to the extent  
2 practical, for adjustment of the measures on a  
3 going-forward basis as a result of the evaluations. The  
4 resources dedicated to evaluation shall not exceed 3% of  
5 portfolio resources in any given year.

6 (g) No more than 3% of energy efficiency and  
7 demand-response program revenue may be allocated for  
8 demonstration of breakthrough equipment and devices.

9 (h) This Section does not apply to an electric utility that  
10 on December 31, 2005 provided electric service to fewer than  
11 100,000 customers in Illinois.

12 (i) If, after 2 years, an electric utility fails to meet  
13 the efficiency standard specified in subsection (b) of this  
14 Section, as modified by subsections (d) and (e), it shall make  
15 a contribution to the Low-Income Home Energy Assistance  
16 Program. The combined total liability for failure to meet the  
17 goal shall be \$1,000,000, which shall be assessed as follows: a  
18 large electric utility shall pay \$665,000, and a medium  
19 electric utility shall pay \$335,000. If, after 3 years, an  
20 electric utility fails to meet the efficiency standard  
21 specified in subsection (b) of this Section, as modified by  
22 subsections (d) and (e), it shall make a contribution to the  
23 Low-Income Home Energy Assistance Program. The combined total  
24 liability for failure to meet the goal shall be \$1,000,000,  
25 which shall be assessed as follows: a large electric utility  
26 shall pay \$665,000, and a medium electric utility shall pay

1 \$335,000. In addition, the responsibility for implementing the  
2 energy efficiency measures of the utility making the payment  
3 shall be transferred to the Illinois Power Agency if, after 3  
4 years, or in any subsequent 3-year period, the utility fails to  
5 meet the efficiency standard specified in subsection (b) of  
6 this Section, as modified by subsections (d) and (e). The  
7 Agency shall implement a competitive procurement program to  
8 procure resources necessary to meet the standards specified in  
9 this Section as modified by subsections (d) and (e), with costs  
10 for those resources to be recovered in the same manner as  
11 products purchased through the procurement plan as provided in  
12 Section 16-111.5. The Director shall implement this  
13 requirement in connection with the procurement plan as provided  
14 in Section 16-111.5.

15 For purposes of this Section, (i) a "large electric  
16 utility" is an electric utility that, on December 31, 2005,  
17 served more than 2,000,000 electric customers in Illinois; (ii)  
18 a "medium electric utility" is an electric utility that, on  
19 December 31, 2005, served 2,000,000 or fewer but more than  
20 100,000 electric customers in Illinois; and (iii) Illinois  
21 electric utilities that are affiliated by virtue of a common  
22 parent company are considered a single electric utility.

23 (j) If, after 3 years, or any subsequent 3-year period, the  
24 Department fails to implement the Department's share of energy  
25 efficiency measures required by the standards in subsection  
26 (b), then the Illinois Power Agency may assume responsibility



1 for and control of the Department's share of the required  
2 energy efficiency measures. The Agency shall implement a  
3 competitive procurement program to procure resources necessary  
4 to meet the standards specified in this Section, with the costs  
5 of these resources to be recovered in the same manner as  
6 provided for the Department in this Section.

7 (k) No electric utility shall be deemed to have failed to  
8 meet the energy efficiency standards to the extent any such  
9 failure is due to a failure of the Department or the Agency.

10 (Source: P.A. 95-481, eff. 8-28-07; 95-876, eff. 8-21-08;  
11 96-33, eff. 7-10-09; 96-159, eff. 8-10-09; 96-1000, eff.  
12 7-2-10.)

13 (220 ILCS 5/8-103A new)

14 Sec. 8-103A. Energy efficiency analysis. Beginning in  
15 2013, an electric utility subject to the requirements of  
16 Section 8-103 of this Act shall include in its energy  
17 efficiency and demand-response plan submitted pursuant to  
18 subsection (f) of Section 8-103 an analysis of additional  
19 cost-effective energy efficiency measures that could be  
20 implemented, by customer class, absent the limitations set  
21 forth in subsection (d) of Section 8-103. In seeking public  
22 comment on the electric utility's plan pursuant to subsection  
23 (f) of Section 8-103, the Commission shall include, beginning  
24 in 2013, the assessment of additional cost-effective energy  
25 efficiency measures submitted pursuant to this Section. For

1 purposes of this Section, the term "energy efficiency" shall  
2 have the meaning set forth in Section 1-10 of the Illinois  
3 Power Agency Act, and the term "cost-effective" shall have the  
4 meaning set forth in subsection (a) of Section 8-103 of this  
5 Act.

6 (220 ILCS 5/16-107.5)

7 Sec. 16-107.5. Net electricity metering.

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

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

1 digestion of livestock or food processing waste, fuel cells or  
2 microturbines powered by renewable fuels, or hydroelectric  
3 energy; and (iv) "net electricity metering" (or "net metering")  
4 means the measurement, during the billing period applicable to  
5 an eligible customer, of the net amount of electricity supplied  
6 by an electricity provider to the customer's premises or  
7 provided to the electricity provider by the customer.

8 (c) A net metering facility shall be equipped with metering  
9 equipment that can measure the flow of electricity in both  
10 directions at the same rate.

11 (1) For eligible ~~residential~~ customers whose electric  
12 service has not been declared competitive pursuant to  
13 Section 16-113 of this Act and whose electric delivery  
14 service is provided and measured on a kilowatt-hour basis  
15 and electric supply service is not provided based on hourly  
16 pricing, this shall typically be accomplished through use  
17 of a single, bi-directional meter. If the eligible  
18 customer's existing electric revenue meter does not meet  
19 this requirement, the electricity provider shall arrange  
20 for the local electric utility or a meter service provider  
21 to install and maintain a new revenue meter at the  
22 electricity provider's expense.

23 (2) For eligible customers whose electric service has  
24 not been declared competitive pursuant to Section 16-113 of  
25 this Act and whose electric delivery service is provided  
26 and measured on a kilowatt demand basis and electric supply

1 service is not provided based on hourly pricing, this shall  
2 typically be accomplished through use of a dual channel  
3 meter capable of measuring the flow of electricity both  
4 into and out of the customer's facility at the same rate  
5 and ratio. If such customer's existing electric revenue  
6 meter does not meet this requirement, then the electricity  
7 provider shall arrange for the local electric utility or a  
8 meter service provider to install and maintain a new  
9 revenue meter at the electricity provider's expense.

10 (3) For all other eligible customers, ~~For~~  
11 ~~non-residential customers,~~ the electricity provider may  
12 arrange for the local electric utility or a meter service  
13 provider to install and maintain metering equipment  
14 capable of measuring the flow of electricity both into and  
15 out of the customer's facility at the same rate and ratio,  
16 typically through the use of a dual channel meter. If the  
17 eligible customer's existing electric revenue meter does  
18 not meet this requirement, then the costs of installing  
19 such equipment shall be paid for by the customer. ~~For~~  
20 ~~generators with a nameplate rating of 40 kilowatts and~~  
21 ~~below, the costs of installing such equipment shall be paid~~  
22 ~~for by the electricity provider. For generators with a~~  
23 ~~nameplate rating over 40 kilowatts and up to 2,000~~  
24 ~~kilowatts capacity, the costs of installing such equipment~~  
25 ~~shall be paid for by the customer. Any subsequent revenue~~  
26 ~~meter change necessitated by any eligible customer shall be~~

1 ~~paid for by the customer.~~

2 (d) An electricity provider shall measure and charge or  
3 credit for the net electricity supplied to eligible customers  
4 or provided by eligible customers whose electric service has  
5 not been declared competitive pursuant to Section 16-113 of the  
6 Act and whose electric delivery service is provided and  
7 measured on a kilowatt-hour basis and electric supply service  
8 is not provided based on hourly pricing in the following  
9 manner:

10 (1) If the amount of electricity used by the customer  
11 during the billing period exceeds the amount of electricity  
12 produced by the customer, the electricity provider shall  
13 charge the customer for the net electricity supplied to and  
14 used by the customer as provided in subsection (e-5) ~~(e)~~ of  
15 this Section.

16 (2) If the amount of electricity produced by a customer  
17 during the billing period exceeds the amount of electricity  
18 used by the customer during that billing period, the  
19 electricity provider supplying that customer shall apply a  
20 1:1 kilowatt-hour credit to a subsequent bill for service  
21 to the customer for the net electricity supplied to the  
22 electricity provider. The electricity provider shall  
23 continue to carry over any excess kilowatt-hour credits  
24 earned and apply those credits to subsequent billing  
25 periods to offset any customer-generator consumption in  
26 those billing periods until all credits are used or until

1 the end of the annualized period.

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

8 (e) An electricity provider shall measure and charge or  
9 credit for the net electricity supplied to eligible customers  
10 whose electric service has not been declared competitive  
11 pursuant to Section 16-113 of this Act and whose electric  
12 delivery service is provided and measured on a kilowatt demand  
13 basis and electric supply service is not provided based on  
14 hourly pricing in the following manner:

15 (1) If the amount of electricity used by the customer  
16 during the billing period exceeds the amount of electricity  
17 produced by the customer, then the electricity provider  
18 shall charge the customer for the net electricity supplied  
19 to and used by the customer as provided in subsection (e-5)  
20 of this Section, provided that the electricity provider  
21 shall assess and the customer remains responsible for all  
22 taxes, fees, and utility delivery charges that would  
23 otherwise be applicable to the gross amount of  
24 kilowatt-hours supplied to the eligible customer by the  
25 electricity provider.

26 (2) If the amount of electricity produced by a customer

1        during the billing period exceeds the amount of electricity  
2        used by the customer during that billing period, then the  
3        electricity provider supplying that customer shall apply a  
4        1:1 kilowatt-hour credit that reflects the kilowatt-hour  
5        based charges in the customer's electric service rate to a  
6        subsequent bill for service to the customer for the net  
7        electricity supplied to the electricity provider. The  
8        electricity provider shall continue to carry over any  
9        excess kilowatt-hour credits earned and apply those  
10       credits to subsequent billing periods to offset any  
11       customer-generator consumption in those billing periods  
12       until all credits are used or until the end of the  
13       annualized period.

14       (3) At the end of the year or annualized over the  
15       period that service is supplied by means of net metering,  
16       or in the event that the retail customer terminates service  
17       with the electricity provider prior to the end of the year  
18       or the annualized period, any remaining credits in the  
19       customer's account shall expire.

20       (e-5) An electricity provider shall provide electric  
21       service to eligible ~~net metering~~ customers whose electric  
22       service has not been declared competitive pursuant to Section  
23       16-113 of this Act and whose electric supply service is not  
24       provided based on hourly pricing who utilize net metering  
25       ~~electric service~~ at non-discriminatory rates that are  
26       identical, with respect to rate structure, retail rate

1 components, and any monthly charges, to the rates that the  
2 customer would be charged if not a net metering customer. An  
3 electricity provider shall not charge net metering customers  
4 any fee or charge or require additional equipment, insurance,  
5 or any other requirements not specifically authorized by  
6 interconnection standards authorized by the Commission, unless  
7 the fee, charge, or other requirement would apply to other  
8 similarly situated customers who are not net metering  
9 customers. The customer will remain responsible for all taxes,  
10 fees, and utility delivery charges that would otherwise be  
11 applicable to the net amount of electricity used by the  
12 customer. Subsections (c) through (e) of this Section shall not  
13 be construed to prevent an arms-length agreement between an  
14 electricity provider and an eligible customer that sets forth  
15 different prices, terms, and conditions for the provision of  
16 net metering service, including, but not limited to, the  
17 provision of the appropriate metering equipment for  
18 non-residential customers.

19 (f) Notwithstanding the requirements of subsections (c)  
20 through (e-5) ~~(e)~~ of this Section, an electricity provider must  
21 require dual-channel metering for customers operating eligible  
22 renewable electrical generating facilities with a nameplate  
23 rating up to 2,000 kilowatts and to whom the provisions of  
24 neither subsection (d) nor (e) of this Section apply  
25 ~~non residential customers operating eligible renewable~~  
26 ~~electrical generating facilities with a nameplate rating over~~



1 ~~40 kilowatts and up to 2,000 kilowatts.~~ In such cases,  
2 electricity charges and credits shall be determined as follows:

3 (1) The electricity provider shall assess and the  
4 customer remains responsible for all taxes, fees, and  
5 utility delivery charges that would otherwise be  
6 applicable to the gross amount of kilowatt-hours supplied  
7 to the eligible customer by the electricity provider.

8 (2) Each month that service is supplied by means of  
9 dual-channel metering, the electricity provider shall  
10 compensate the eligible customer for any excess  
11 kilowatt-hour credits at the electricity provider's  
12 avoided cost of electricity supply over the monthly period  
13 or as otherwise specified by the terms of a power-purchase  
14 agreement negotiated between the customer and electricity  
15 provider.

16 (3) For all eligible net metering customers taking  
17 service from an electricity provider under contracts or  
18 tariffs employing time of use rates, any monthly  
19 consumption of electricity shall be calculated according  
20 to the terms of the contract or tariff to which the same  
21 customer would be assigned to or be eligible for if the  
22 customer was not a net metering customer. When those same  
23 customer-generators are net generators during any discrete  
24 time of use period, the net kilowatt-hours produced shall  
25 be valued at the same price per kilowatt-hour as the  
26 electric service provider would charge for retail

1 kilowatt-hour sales during that same time of use period.

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

14 (h) Within 120 days after the effective date of this  
15 amendatory Act of the 95th General Assembly, the Commission  
16 shall establish standards for net metering and, if the  
17 Commission has not already acted on its own initiative,  
18 standards for the interconnection of eligible renewable  
19 generating equipment to the utility system. The  
20 interconnection standards shall address any procedural  
21 barriers, delays, and administrative costs associated with the  
22 interconnection of customer-generation while ensuring the  
23 safety and reliability of the units and the electric utility  
24 system. The Commission shall consider the Institute of  
25 Electrical and Electronics Engineers (IEEE) Standard 1547 and  
26 the issues of (i) reasonable and fair fees and costs, (ii)

1 clear timelines for major milestones in the interconnection  
2 process, (iii) nondiscriminatory terms of agreement, and (iv)  
3 any best practices for interconnection of distributed  
4 generation.

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

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

17 (k) Each electricity provider shall maintain records and  
18 report annually to the Commission the total number of net  
19 metering customers served by the provider, as well as the type,  
20 capacity, and energy sources of the generating systems used by  
21 the net metering customers. Nothing in this Section shall limit  
22 the ability of an electricity provider to request the redaction  
23 of information deemed by the Commission to be confidential  
24 business information. Each electricity provider shall notify  
25 the Commission when the total generating capacity of its net  
26 metering customers is equal to or in excess of the 5% ~~1%~~ cap

1 specified in subsection (j) of this Section.

2 (1) Notwithstanding the definition of "eligible customer"  
3 in item (i) of subsection (b) of this Section, each electricity  
4 provider shall consider whether to allow meter aggregation for  
5 the purposes of net metering on:

6 (1) properties owned or leased by multiple customers  
7 that contribute to the operation of an eligible renewable  
8 electrical generating facility, such as a community-owned  
9 wind project, a community-owned biomass project, a  
10 community-owned solar project, or a community methane  
11 digester processing livestock waste from multiple sources;  
12 and

13 (2) individual units, apartments, or properties owned  
14 or leased by multiple customers and collectively served by  
15 a common eligible renewable electrical generating  
16 facility, such as an apartment building served by  
17 photovoltaic panels on the roof.

18 For the purposes of this subsection (1), "meter  
19 aggregation" means the combination of reading and billing on a  
20 pro rata basis for the types of eligible customers described in  
21 this Section.

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

1 and conditions provided for in that contract. Either the  
2 electricity provider or the customer may require compliance  
3 with the prices, terms, and conditions of the contract.

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

5 (220 ILCS 5/16-108.5 new)

6 Sec. 16-108.5. Infrastructure investment and  
7 modernization; regulatory reform.

8 (a) The General Assembly recognizes that for well over a  
9 century Illinois residents and businesses have been  
10 well-served by and have benefitted from a comprehensive  
11 electric utility system. The General Assembly finds that  
12 electric utilities are now entering a new construction cycle  
13 that is needed to refurbish, rebuild, modernize, and expand  
14 systems to continue to provide safe, reliable, and affordable  
15 service to the State's current and future utility customers in  
16 this newly digitized age. In particular, the General Assembly  
17 finds that it is the policy of this State that significant  
18 investments must be made in the State's electric grid over the  
19 next decade to modernize and upgrade transmission and  
20 distribution facilities in the State. These investments will  
21 ensure that the State's electric utility infrastructure will  
22 promote future economic development in the State and that the  
23 State's electric utilities will be able to continue to provide  
24 quality electric service to their customers, including  
25 innovative technological offerings that will enhance customer

1 experience and choice such as smart meters that are dependent  
2 on a modernized or Smart Grid. These investments, including  
3 programs to reinforce the safety and security of high voltage  
4 transmission lines, will also ensure that the State's electric  
5 utility infrastructure continues to be safe and reliable. The  
6 introduction of performance metrics will further ensure that  
7 reliability and other indicators are not just maintained but  
8 improved over the next decade.

9 The General Assembly further recognizes that, in addition  
10 to attracting capital and businesses to the State, these  
11 investments will create training opportunities for the  
12 citizens of this State, all of which will create new employment  
13 opportunities for Illinoisans at a time when they are most  
14 needed, especially for minority-owned and female-owned  
15 business enterprises. The General Assembly further finds that  
16 regulatory reform measures that increase predictability,  
17 stability, and transparency in the ratemaking process are  
18 needed to promote prudent, long-term infrastructure investment  
19 and to mutually benefit the State's electric utilities and  
20 their customers, regulators, and investors.

21 (b) For purposes of this Section, "participating utility"  
22 means an electric utility or a combination utility serving more  
23 than 1,000,000 customers in Illinois that voluntarily elects  
24 and commits to undertake the infrastructure investment program  
25 consisting of the commitments and obligations described in this  
26 subsection (b), notwithstanding any other provisions of this

1 Act and without obtaining any approvals from the Commission or  
2 any other agency other than as set forth in this Section,  
3 regardless of whether any such approval would otherwise be  
4 required. "Combination utility" means a utility that, as of  
5 January 1, 2011, provided electric service to at least one  
6 million retail customers in Illinois and gas service to at  
7 least 500,000 retail customers in Illinois. A participating  
8 utility shall recover the expenditures made under the  
9 infrastructure investment program through the ratemaking  
10 process, including, but not limited to, the performance-based  
11 formula rate and process set forth in this Section.

12 During the infrastructure investment program's peak  
13 program year, a participating utility other than a combination  
14 utility shall create 2,000 full-time equivalent jobs in  
15 Illinois, and a participating utility that is a combination  
16 utility shall create 450 full-time equivalent jobs in Illinois,  
17 including direct jobs, contractor positions, and induced jobs.  
18 For purposes of this Section, "peak program year" means the  
19 consecutive 12-month period with the highest number of  
20 full-time equivalent jobs that occurs between the beginning of  
21 investment year 2 and the end of investment year 4.

22 A participating utility shall meet one of the following  
23 commitments, as applicable:

24 (1) Beginning no later than 180 days after a  
25 participating utility other than a combination utility  
26 files a performance-based formula rate tariff pursuant to

1 subsection (c) of this Section, or, beginning no later than  
2 January 1, 2012 if such utility files such  
3 performance-based formula rate tariff within 14 days of the  
4 effective date of this amendatory Act of the 97th General  
5 Assembly, the participating utility shall, except as  
6 provided in subsection (b-5):

7 (A) over a 5-year period, invest an estimated  
8 \$1,100,000,000 in electric system upgrades,  
9 modernization projects, and training facilities,  
10 including, but not limited to:

11 (i) distribution infrastructure improvements  
12 totaling an estimated \$1,000,000,000, including  
13 underground residential distribution cable  
14 injection and replacement and mainline cable  
15 system refurbishment and replacement projects;

16 (ii) training facility construction or upgrade  
17 projects totaling an estimated \$10,000,000,  
18 provided that, at a minimum, one such facility  
19 shall be located in a municipality having a  
20 population of more than 2 million residents and one  
21 such facility shall be located in a municipality  
22 having a population of more than 150,000 residents  
23 but fewer than 170,000 residents; any such new  
24 facility located in a municipality having a  
25 population of more than 2 million residents must be  
26 designed for the purpose of obtaining, and the



1           owner of the facility shall apply for,  
2           certification under the United States Green  
3           Building Council's Leadership in Energy Efficiency  
4           Design Green Building Rating System; and

5           (iii) wood pole inspection, treatment, and  
6           replacement programs; and

7           (B) over a 10-year period, invest an estimated  
8           \$1,500,000,000 to upgrade and modernize its  
9           transmission and distribution infrastructure and in  
10           Smart Grid electric system upgrades, including, but  
11           not limited to:

12           (i) additional smart meters;

13           (ii) distribution automation;

14           (iii) associated cyber secure data  
15           communication network; and

16           (iv) substation micro-processor relay  
17           upgrades.

18           (2) Beginning no later than 180 days after a  
19           participating utility that is a combination utility files a  
20           performance-based formula rate tariff pursuant to  
21           subsection (c) of this Section, or, beginning no later than  
22           January 1, 2012 if such utility files such  
23           performance-based formula rate tariff within 14 days of the  
24           effective date of this amendatory Act of the 97th General  
25           Assembly, the participating utility shall, except as  
26           provided in subsection (b-5):

1           (A) over a 10-year period, invest an estimated  
2           \$265,000,000 in electric system upgrades,  
3           modernization projects, and training facilities,  
4           including, but not limited to:

5           (i) distribution infrastructure improvements  
6           totaling an estimated \$245,000,000, which may  
7           include bulk supply substations, transformers,  
8           reconductoring, and rebuilding overhead  
9           distribution and sub-transmission lines,  
10           underground residential distribution cable  
11           injection and replacement and mainline cable  
12           system refurbishment and replacement projects;

13           (ii) training facility construction or upgrade  
14           projects totaling an estimated \$1,000,000; any  
15           such new facility must be designed for the purpose  
16           of obtaining, and the owner of the facility shall  
17           apply for, certification under the United States  
18           Green Building Council's Leadership in Energy  
19           Efficiency Design Green Building Rating System;  
20           and

21           (iii) wood pole inspection, treatment, and  
22           replacement programs; and

23           (B) over a 10-year period, invest an estimated  
24           \$360,000,000 to upgrade and modernize its transmission  
25           and distribution infrastructure and in Smart Grid  
26           electric system upgrades, including, but not limited

1           to:

2                   (i) additional smart meters;

3                   (ii) distribution automation;

4                   (iii) associated cyber secure data  
5                   communication network; and

6                   (iv) substation micro-processor relay  
7                   upgrades.

8           For purposes of this Section, "Smart Grid electric system  
9           upgrades" shall have the meaning set forth in subsection (a) of  
10           Section 16-108.6 of this Act.

11           The investments in the infrastructure investment program  
12           described in this subsection (b) shall be incremental to the  
13           participating utility's annual capital investment program, as  
14           defined by, for purposes of this subsection (b), the  
15           participating utility's average capital spend for calendar  
16           years 2008, 2009, and 2010 as reported in the applicable  
17           Federal Energy Regulatory Commission (FERC) Form 1; provided  
18           that where one or more utilities have merged, the average  
19           capital spend shall be determined using the aggregate of the  
20           merged utilities' capital spend reported in FERC Form 1 for the  
21           years 2008, 2009, and 2010.

22           Within 60 days after filing a tariff under subsection (c)  
23           of this Section, a participating utility shall submit to the  
24           Commission its plan, including scope, schedule, and staffing,  
25           for satisfying its infrastructure investment program  
26           commitments pursuant to this subsection (b). The submitted plan

1 shall include a schedule and staffing plan for the next  
2 calendar year. The plan shall also include a plan for the  
3 creation, operation, and administration of a Smart Grid test  
4 bed as described in subsection (c) of Section 16-108.8. The  
5 plan need not allocate the work equally over the respective  
6 periods, but should allocate material increments throughout  
7 such periods commensurate with the work to be undertaken. No  
8 later than April 1 of each subsequent year, the utility shall  
9 submit to the Commission a report that includes any update to  
10 the plan, a schedule for the next calendar year, the  
11 expenditures made for the prior calendar year and cumulatively,  
12 and the number of full-time equivalent jobs created for the  
13 prior calendar year and cumulatively. If the utility is  
14 materially deficient in satisfying a schedule or staffing plan,  
15 then the report must also include a corrective action plan to  
16 address the deficiency. The fact that the plan, implementation  
17 of the plan, or a schedule changes shall not imply the  
18 imprudence or unreasonableness of the infrastructure  
19 investment program, plan, or schedule.

20 With respect to the participating utility's peak job  
21 commitment, if, after considering the utility's corrective  
22 action plan and compliance thereunder, the Commission enters an  
23 order finding, after notice and hearing, that a participating  
24 utility did not satisfy its peak job commitment described in  
25 this subsection (b) for reasons that are reasonably within its  
26 control, then the Commission shall also determine, after

1 consideration of the evidence, including, but not limited to,  
2 evidence submitted by the Department of Commerce and Economic  
3 Opportunity and the utility, the deficiency in the number of  
4 full-time equivalent jobs during the peak program year due to  
5 such failure. The Commission shall notify the Department of any  
6 proceeding that is initiated pursuant to this paragraph. For  
7 each full-time equivalent job deficiency during the peak  
8 program year that the Commission finds as set forth in this  
9 paragraph, the participating utility shall, within 30 days  
10 after the entry of the Commission's order, pay \$3,000 to a fund  
11 for training grants administered under Section 605-800 of The  
12 Department of Commerce and Economic Opportunity Law, which  
13 shall not be a recoverable expense.

14 With respect to the participating utility's investment  
15 amount commitments, if, after considering the utility's  
16 corrective action plan and compliance thereunder, the  
17 Commission enters an order finding after notice and hearing,  
18 that a participating utility is not satisfying its investment  
19 amount commitments described in this subsection (b), then the  
20 utility shall no longer be eligible to annually update the  
21 performance-based formula rate tariff pursuant to subsection  
22 (d) of this Section. In such event, the then current rates  
23 shall remain in effect until such time as new rates are set  
24 pursuant to Article IX of this Act, subject to retroactive  
25 adjustment, with interest, to reconcile rates charged with  
26 actual costs.

1       If the Commission finds that a participating utility is no  
2 longer eligible to update the performance-based formula rate  
3 tariff pursuant to subsection (d) of this Section, or the  
4 performance-based formula rate is otherwise terminated, then  
5 the participating utility's voluntary commitments and  
6 obligations under this subsection (b) shall immediately  
7 terminate, except for the utility's obligation to pay an amount  
8 already owed to the fund for training grants pursuant to a  
9 Commission order.

10       In meeting the obligations of this subsection (b), to the  
11 extent feasible and consistent with State and federal law, the  
12 investments under the infrastructure investment program should  
13 provide employment opportunities for all segments of the  
14 population and workforce, including minority-owned and  
15 female-owned business enterprises, and shall not, consistent  
16 with State and federal law, discriminate based on race or  
17 socioeconomic status.

18       (b-5) Nothing in this Section shall prohibit the Commission  
19 from investigating the prudence and reasonableness of the  
20 expenditures made under the infrastructure investment program  
21 during the annual review required by subsection (d) of this  
22 Section and shall, as part of such investigation, determine  
23 whether the utility's actual costs under the program are  
24 prudent and reasonable. The fact that a participating utility  
25 invests more than the minimum amounts specified in subsection  
26 (b) of this Section or its plan shall not imply imprudence or

1 unreasonableness.

2 If the participating utility finds that it is implementing  
3 its plan for satisfying the infrastructure investment program  
4 commitments described in subsection (b) of this Section at a  
5 cost below the estimated amounts specified in subsection (b) of  
6 this Section, then the utility may file a petition with the  
7 Commission requesting that it be permitted to satisfy its  
8 commitments by spending less than the estimated amounts  
9 specified in subsection (b) of this Section. The Commission  
10 shall, after notice and hearing, enter its order approving or  
11 denying each such petition within 150 days after the filing of  
12 the petition.

13 In no event, absent General Assembly approval, shall the  
14 capital investment costs incurred by a participating utility  
15 other than a combination utility in satisfying its  
16 infrastructure investment program commitments described in  
17 subsection (b) of this Section exceed \$3,000,000,000 or, for a  
18 participating utility that is a combination utility,  
19 \$720,000,000. If the participating utility's updated cost  
20 estimates for satisfying its infrastructure investment program  
21 commitments described in subsection (b) of this Section exceed  
22 the limitation imposed by this subsection (b-5), then it shall  
23 submit a report to the Commission that identifies the increased  
24 costs and explains the reason or reasons for the increased  
25 costs no later than the year in which the utility estimates it  
26 will exceed the limitation. The Commission shall review the

1 report and shall, within 90 days after the participating  
2 utility files the report, report to the General Assembly its  
3 findings regarding the participating utility's report. If the  
4 General Assembly does not amend the limitation imposed by this  
5 subsection (b-5), then the utility may modify its plan so as  
6 not to exceed the limitation imposed by this subsection (b-5)  
7 and may propose corresponding changes to the metrics, and the  
8 Commission shall modify the metrics and incremental savings  
9 goals established pursuant to subsection (f) of this Section  
10 accordingly.

11 (c) A participating utility may elect to recover its  
12 delivery services costs through a performance-based formula  
13 rate approved by the Commission, which shall specify the cost  
14 components that form the basis of the rate charged to customers  
15 with sufficient specificity to operate in a standardized manner  
16 and be updated annually with transparent information that  
17 reflects the utility's actual costs to be recovered during the  
18 applicable rate year, which is the period beginning with the  
19 first billing day of January and extending through the last  
20 billing day of the following December. In the event the utility  
21 recovers a portion of its costs through automatic adjustment  
22 clause tariffs on the effective date of this amendatory Act of  
23 the 97th General Assembly, the utility may elect to continue to  
24 recover these costs through such tariffs, but then these costs  
25 shall not be recovered through the performance-based formula  
26 rate.



1       The performance-based formula rate shall be implemented  
2 through a tariff filed with the Commission consistent with the  
3 provisions of this subsection (c) that shall be applicable to  
4 all delivery services customers. The Commission shall initiate  
5 and conduct an investigation of the tariff in a manner  
6 consistent with the provisions of this subsection (c) and the  
7 provisions of Article IX of this Act to the extent they do not  
8 conflict with this subsection (c). Except in the case where the  
9 Commission finds, after notice and hearing, that a  
10 participating utility is not satisfying its investment amount  
11 commitments under subsection (b) of this Section, the  
12 performance-based formula rate shall remain in effect at the  
13 discretion of the utility. The performance-based formula rate  
14 approved by the Commission shall do the following:

15           (1) Provide for the recovery of the utility's actual  
16 costs of delivery services that are prudently incurred and  
17 reasonable in amount consistent with Commission practice  
18 and law. The fact that a cost differs from that incurred in  
19 a prior calendar year or that an investment is different  
20 from that made in a prior calendar year shall not imply the  
21 imprudence or unreasonableness of that cost or investment.

22           (2) Reflect the utility's actual capital structure for  
23 the applicable calendar year, excluding goodwill, subject  
24 to a determination of prudence and reasonableness  
25 consistent with Commission practice and law.

26           (3) Include a cost of equity, which shall be calculated

1       as the sum of the following:

2               (A) the average for the applicable calendar year of  
3               the monthly average yields of 30-year U.S. Treasury  
4               bonds published by the Board of Governors of the  
5               Federal Reserve System in its weekly H.15 Statistical  
6               Release or successor publication; and

7               (B) 600 basis points.

8               At such time as the Board of Governors of the Federal  
9               Reserve System ceases to include the monthly average yields  
10              of 30-year U.S. Treasury bonds in its weekly H.15  
11              Statistical Release or successor publication, the monthly  
12              average yields of the U.S. Treasury bonds then having the  
13              longest duration published by the Board of Governors in its  
14              weekly H.15 Statistical Release or successor publication  
15              shall instead be used for purposes of this paragraph (3).

16              (4) Permit and set forth protocols, subject to a  
17              determination of prudence and reasonableness consistent  
18              with Commission practice and law, for the following:

19              (A) recovery of incentive compensation expense  
20              that is based on the achievement of operational  
21              metrics, including metrics related to budget controls,  
22              outage duration and frequency, safety, customer  
23              service, efficiency and productivity, and  
24              environmental compliance. Incentive compensation  
25              expense that is based on net income or an affiliate's  
26              earnings per share shall not be recoverable under the

1           performance-based formula rate;

2           (B) recovery of pension and other post-employment  
3           benefits expense, provided that such costs are  
4           supported by an actuarial study;

5           (C) recovery of severance costs, provided that if  
6           the amount is over \$3,700,000 for a participating  
7           utility that is a combination utility or \$10,000,000  
8           for a participating utility that serves more than 3  
9           million retail customers, then the full amount shall be  
10           amortized consistent with subparagraph (F) of this  
11           paragraph (4);

12           (D) investment return on pension assets net of  
13           deferred tax benefits equal to the utility's long-term  
14           debt cost of capital as of the end of the applicable  
15           calendar year;

16           (E) recovery of the expenses related to the  
17           Commission proceeding under this subsection (c) to  
18           approve this performance-based formula rate and  
19           initial rates or to subsequent proceedings related to  
20           the formula, provided that the recovery shall be  
21           amortized over a 3-year period; recovery of expenses  
22           related to the annual Commission proceedings under  
23           subsection (d) of this Section to review the inputs to  
24           the performance-based formula rate shall be expensed  
25           and recovered through the performance-based formula  
26           rate;

1           (F) amortization over a 5-year period of the full  
2           amount of each charge or credit that exceeds \$3,700,000  
3           for a participating utility that is a combination  
4           utility or \$10,000,000 for a participating utility  
5           that serves more than 3 million retail customers in the  
6           applicable calendar year and that relates to a  
7           workforce reduction program's severance costs, changes  
8           in accounting rules, changes in law, compliance with  
9           any Commission-initiated audit, or a single storm or  
10           other similar expense, provided that any unamortized  
11           balance shall be reflected in rate base. For purposes  
12           of this subparagraph (F), changes in law includes any  
13           enactment, repeal, or amendment in a law, ordinance,  
14           rule, regulation, interpretation, permit, license,  
15           consent, or order, including those relating to taxes,  
16           accounting, or to environmental matters, or in the  
17           interpretation or application thereof by any  
18           governmental authority occurring after the effective  
19           date of this amendatory Act of the 97th General  
20           Assembly;

21           (G) recovery of existing regulatory assets over  
22           the periods previously authorized by the Commission;

23           (H) historical weather normalized billing  
24           determinants; and

25           (I) allocation methods for common costs.

26           (5) Provide that if the participating utility's earned

1 rate of return on common equity related to the provision of  
2 delivery services for the prior rate year (calculated using  
3 costs and capital structure approved by the Commission as  
4 provided in subparagraph (2) of this subsection (c),  
5 consistent with this Section, in accordance with  
6 Commission rules and orders, including, but not limited to,  
7 adjustments for goodwill, and after any Commission-ordered  
8 disallowances and taxes) is more than 50 basis points  
9 higher than the rate of return on common equity calculated  
10 pursuant to paragraph (3) of this subsection (c) (after  
11 adjusting for any penalties to the rate of return on common  
12 equity applied pursuant to the performance metrics  
13 provision of subsection (f) of this Section), then the  
14 participating utility shall apply a credit through the  
15 performance-based formula rate that reflects an amount  
16 equal to the value of that portion of the earned rate of  
17 return on common equity that is more than 50 basis points  
18 higher than the rate of return on common equity calculated  
19 pursuant to paragraph (3) of this subsection (c) (after  
20 adjusting for any penalties to the rate of return on common  
21 equity applied pursuant to the performance metrics  
22 provision of subsection (f) of this Section) for the prior  
23 rate year, adjusted for taxes. If the participating  
24 utility's earned rate of return on common equity related to  
25 the provision of delivery services for the prior rate year  
26 (calculated using costs and capital structure approved by

1 the Commission as provided in subparagraph (2) of this  
2 subsection (c), consistent with this Section, in  
3 accordance with Commission rules and orders, including,  
4 but not limited to, adjustments for goodwill, and after any  
5 Commission-ordered disallowances and taxes) is more than  
6 50 basis points less than the return on common equity  
7 calculated pursuant to paragraph (3) of this subsection (c)  
8 (after adjusting for any penalties to the rate of return on  
9 common equity applied pursuant to the performance metrics  
10 provision of subsection (f) of this Section), then the  
11 participating utility shall apply a charge through the  
12 performance-based formula rate that reflects an amount  
13 equal to the value of that portion of the earned rate of  
14 return on common equity that is more than 50 basis points  
15 less than the rate of return on common equity calculated  
16 pursuant to paragraph (3) of this subsection (c) (after  
17 adjusting for any penalties to the rate of return on common  
18 equity applied pursuant to the performance metrics  
19 provision of subsection (f) of this Section) for the prior  
20 rate year, adjusted for taxes.

21 (6) Provide for an annual reconciliation, with  
22 interest as described in subsection (d) of this Section, of  
23 the revenue requirement reflected in rates for each  
24 calendar year, beginning with the calendar year in which  
25 the utility files its performance-based formula rate  
26 tariff pursuant to subsection (c) of this Section, with

1 what the revenue requirement would have been had the actual  
2 cost information for the applicable calendar year been  
3 available at the filing date.

4 The utility shall file, together with its tariff, final  
5 data based on its most recently filed FERC Form 1, plus  
6 projected plant additions and correspondingly updated  
7 depreciation reserve and expense for the calendar year in which  
8 the tariff and data are filed, that shall populate the  
9 performance-based formula rate and set the initial delivery  
10 services rates under the formula. For purposes of this Section,  
11 "FERC Form 1" means the Annual Report of Major Electric  
12 Utilities, Licensees and Others that electric utilities are  
13 required to file with the Federal Energy Regulatory Commission  
14 under the Federal Power Act, Sections 3, 4(a), 304 and 209,  
15 modified as necessary to be consistent with 83 Ill. Admin. Code  
16 Part 415 as of May 1, 2011. Nothing in this Section is intended  
17 to allow costs that are not otherwise recoverable to be  
18 recoverable by virtue of inclusion in FERC Form 1.

19 After the utility files its proposed performance-based  
20 formula rate structure and protocols and initial rates, the  
21 Commission shall initiate a docket to review the filing. The  
22 Commission shall enter an order approving, or approving as  
23 modified, the performance-based formula rate, including the  
24 initial rates, as just and reasonable within 270 days after the  
25 date on which the tariff was filed, or, if the tariff is filed  
26 within 14 days after the effective date of this amendatory Act

1 of the 97th General Assembly, then by March 31, 2012. Such  
2 review shall be based on the same evidentiary standards,  
3 including, but not limited to, those concerning the prudence  
4 and reasonableness of the costs incurred by the utility, the  
5 Commission applies in a hearing to review a filing for a  
6 general increase in rates under Article IX of this Act. The  
7 initial rates shall take effect within 30 days after the  
8 Commission's order approving the performance-based formula  
9 rate tariff.

10 Until such time as the Commission approves a different rate  
11 design and cost allocation pursuant to subsection (e) of this  
12 Section, rate design and cost allocation across customer  
13 classes shall be consistent with the Commission's most recent  
14 order regarding the participating utility's request for a  
15 general increase in its delivery services rates.

16 Subsequent changes to the performance-based formula rate  
17 structure or protocols shall be made as set forth in Section  
18 9-201 of this Act, but nothing in this subsection (c) is  
19 intended to limit the Commission's authority under Article IX  
20 and other provisions of this Act to initiate an investigation  
21 of a participating utility's performance-based formula rate  
22 tariff, provided that any such changes shall be consistent with  
23 paragraphs (1) through (6) of this subsection (c). Any change  
24 ordered by the Commission shall be made at the same time new  
25 rates take effect following the Commission's next order  
26 pursuant to subsection (d) of this Section, provided that the



1 new rates take effect no less than 30 days after the date on  
2 which the Commission issues an order adopting the change.

3 A participating utility that files a tariff pursuant to  
4 this subsection (c) must submit a one-time \$200,000 filing fee  
5 at the time the Chief Clerk of the Commission accepts the  
6 filing, which shall be a recoverable expense.

7 In the event the performance-based formula rate is  
8 terminated, the then current rates shall remain in effect until  
9 such time as new rates are set pursuant to Article IX of this  
10 Act, subject to retroactive rate adjustment, with interest, to  
11 reconcile rates charged with actual costs. At such time that  
12 the performance-based formula rate is terminated, the  
13 participating utility's voluntary commitments and obligations  
14 under subsection (b) of this Section shall immediately  
15 terminate, except for the utility's obligation to pay an amount  
16 already owed to the fund for training grants pursuant to a  
17 Commission order issued under subsection (b) of this Section.

18 (d) Subsequent to the Commission's issuance of an order  
19 approving the utility's performance-based formula rate  
20 structure and protocols, and initial rates under subsection (c)  
21 of this Section, the utility shall file, on or before May 1 of  
22 each year, with the Chief Clerk of the Commission its updated  
23 cost inputs to the performance-based formula rate for the  
24 applicable rate year and the corresponding new charges. Each  
25 such filing shall conform to the following requirements and  
26 include the following information:

1           (1) The inputs to the performance-based formula rate  
2           for the applicable rate year shall be based on final  
3           historical data reflected in the utility's most recently  
4           filed annual FERC Form 1 plus projected plant additions and  
5           correspondingly updated depreciation reserve and expense  
6           for the calendar year in which the inputs are filed. The  
7           filing shall also include a reconciliation of the revenue  
8           requirement that was in effect for the prior rate year (as  
9           set by the cost inputs for the prior rate year) with the  
10           actual revenue requirement for the prior rate year (as  
11           reflected in the applicable FERC Form 1 that reports the  
12           actual costs for the prior rate year). Any over-collection  
13           or under-collection indicated by such reconciliation shall  
14           be reflected as a credit against, or recovered as an  
15           additional charge to, respectively, with interest, the  
16           charges for the applicable rate year. Provided, however,  
17           that the first such reconciliation shall be for the  
18           calendar year in which the utility files its  
19           performance-based formula rate tariff pursuant to  
20           subsection (c) of this Section and shall reconcile (i) the  
21           revenue requirement or requirements established by the  
22           rate order or orders in effect from time to time during  
23           such calendar year (weighted, as applicable) with (ii) the  
24           revenue requirement for that calendar year calculated  
25           pursuant to the performance-based formula rate using (A)  
26           actual costs for that year as reflected in the applicable

1       FERC Form 1, and (B) for the first such reconciliation  
2       only, the cost of equity approved by the Commission in such  
3       order or orders in effect during that year (weighted, as  
4       applicable). The first such reconciliation is not intended  
5       to provide for the recovery of costs previously excluded  
6       from rates based on a prior Commission order finding of  
7       imprudence or unreasonableness. Each reconciliation shall  
8       be certified by the participating utility in the same  
9       manner that FERC Form 1 is certified. The filing shall also  
10       include the charge or credit, if any, resulting from the  
11       calculation required by paragraph (6) of subsection (c) of  
12       this Section.

13       Notwithstanding anything that may be to the contrary,  
14       the intent of the reconciliation is to ultimately reconcile  
15       the revenue requirement reflected in rates for each  
16       calendar year, beginning with the calendar year in which  
17       the utility files its performance-based formula rate  
18       tariff pursuant to subsection (c) of this Section, with  
19       what the revenue requirement would have been had the actual  
20       cost information for the applicable calendar year been  
21       available at the filing date.

22       (2) The new charges shall take effect beginning on the  
23       first billing day of the following January billing period  
24       and remain in effect through the last billing day of the  
25       next December billing period regardless of whether the  
26       Commission enters upon a hearing pursuant to this

1       subsection (d).

2           (3) The filing shall include relevant and necessary  
3       data and documentation for the applicable rate year that is  
4       consistent with the Commission's rules applicable to a  
5       filing for a general increase in rates or any rules adopted  
6       by the Commission to implement this Section. Normalization  
7       adjustments shall not be required. Notwithstanding any  
8       other provision of this Section or Act or any rule or other  
9       requirement adopted by the Commission, a participating  
10       utility that is a combination utility with more than one  
11       rate zone shall not be required to file a separate set of  
12       such data and documentation for each rate zone and may  
13       combine such data and documentation into a single set of  
14       schedules.

15       Within 45 days after the utility files its annual update of  
16       cost inputs to the performance-based formula rate, the  
17       Commission shall have the authority, either upon complaint or  
18       its own initiative, but with reasonable notice, to enter upon a  
19       hearing concerning the prudence and reasonableness of the costs  
20       incurred by the utility to be recovered during the applicable  
21       rate year that are reflected in the inputs to the  
22       performance-based formula rate derived from the utility's FERC  
23       Form 1. During the course of the hearing, each objection shall  
24       be stated with particularity and substantial evidence provided  
25       in support thereof, after which the utility shall have the  
26       opportunity to rebut the evidence. Discovery shall be allowed

1 consistent with the Commission's Rules of Practice, which Rules  
2 shall be enforced by the Commission or the assigned hearing  
3 examiner. The Commission shall apply the same evidentiary  
4 standards, including, but not limited to, those concerning the  
5 prudence and reasonableness of the costs incurred by the  
6 utility, in the hearing as it would apply in a hearing to  
7 review a filing for a general increase in rates under Article  
8 IX of this Act. The Commission shall not, however, have the  
9 authority in a proceeding under this subsection (d) to consider  
10 or order any changes to the structure or protocols of the  
11 performance-based formula rate approved pursuant to subsection  
12 (c) of this Section. In a proceeding under this subsection (d),  
13 the Commission shall enter its order no later than the earlier  
14 of 240 days after the utility's filing of its annual update of  
15 cost inputs to the performance-based formula rate or December  
16 31. The Commission's determinations of the prudence and  
17 reasonableness of the costs incurred for the applicable  
18 calendar year shall be final upon entry of the Commission's  
19 order and shall not be subject to reopening, reexamination, or  
20 collateral attack in any other proceeding, case, docket, order,  
21 rule or regulation, provided, however, that nothing in this  
22 subsection (d) shall prohibit a party from petitioning the  
23 Commission to rehear or appeal to the courts the order pursuant  
24 to the provisions of this Act.

25 In the event the Commission does not, either upon complaint  
26 or its own initiative, enter upon a hearing within 45 days

1 after the utility files the annual update of cost inputs to its  
2 performance-based formula rate, then the costs incurred for the  
3 applicable calendar year shall be deemed prudent and  
4 reasonable, and the filed charges shall not be subject to  
5 reopening, reexamination, or collateral attack in any other  
6 proceeding, case, docket, order, rule, or regulation.

7 (e) Nothing in subsections (c) or (d) of this Section shall  
8 prohibit the Commission from investigating, or a participating  
9 utility from filing, revenue-neutral tariff changes related to  
10 rate design of a performance-based formula rate that has been  
11 placed into effect for the utility. Following approval of a  
12 participating utility's performance-based formula rate tariff  
13 pursuant to subsection (c) of this Section, the utility shall  
14 make a filing with the Commission within one year after the  
15 effective date of the performance-based formula rate tariff  
16 that proposes changes to the tariff to incorporate the findings  
17 of any final rate design orders of the Commission applicable to  
18 the participating utility and entered subsequent to the  
19 Commission's approval of the tariff. The Commission shall,  
20 after notice and hearing, enter its order approving, or  
21 approving with modification, the proposed changes to the  
22 performance-based formula rate tariff within 240 days after the  
23 utility's filing. Following such approval, the utility shall  
24 make a filing with the Commission during each subsequent 3-year  
25 period that either proposes revenue-neutral tariff changes or  
26 re-files the existing tariffs without change, which shall

1 present the Commission with an opportunity to suspend the  
2 tariffs and consider revenue-neutral tariff changes related to  
3 rate design.

4 (f) Within 30 days after the filing of a tariff pursuant to  
5 subsection (c) of this Section, each participating utility  
6 shall develop and file with the Commission multi-year metrics  
7 designed to achieve, ratably over a 10-year period, improvement  
8 over baseline performance values as follows:

9 (1) Twenty percent improvement in the System Average  
10 Interruption Frequency Index, using a baseline of the  
11 average of the data from 2001 through 2010.

12 (2) Fifteen percent improvement in the system Customer  
13 Average Interruption Duration Index, using a baseline of  
14 the average of the data from 2001 through 2010.

15 (3) For a participating utility other than a  
16 combination utility, 20% improvement in the System Average  
17 Interruption Frequency Index for its Southern Region,  
18 using a baseline of the average of the data from 2001  
19 through 2010. For purposes of this paragraph (C), Southern  
20 Region shall have the meaning set forth in the  
21 participating utility's most recent report filed pursuant  
22 to Section 16-125 of this Act.

23 (4) Seventy-five percent improvement in the total  
24 number of customers who exceed the service reliability  
25 targets as set forth in subparagraphs (A) through (C) of  
26 paragraph (4) of subsection (b) of 83 Ill. Admin. Code Part

1 411.140 as of May 1, 2011, using 2010 as the baseline year.

2 (5) Reduction in issuance of estimated electric bills:  
3 90% improvement for a participating utility other than a  
4 combination utility, and 56% improvement for a  
5 participating utility that is a combination utility, using  
6 a baseline of the average number of estimated bills for the  
7 years 2008 through 2010.

8 (6) Consumption on inactive meters: 90% improvement  
9 for a participating utility other than a combination  
10 utility, and 56% improvement for a participating utility  
11 that is a combination utility, using a baseline of the  
12 average unbilled kilowatthours for the years 2009 and 2010.

13 (7) Unaccounted for energy: 50% improvement for a  
14 participating utility other than a combination utility  
15 using a baseline of the non-technical line loss unaccounted  
16 for energy kilowatthours for the year 2009.

17 (8) Uncollectible expense: reduce uncollectible  
18 expense by at least \$30,000,000 for a participating utility  
19 other than a combination utility and by at least \$3,500,000  
20 for a participating utility that is a combination utility,  
21 using a baseline of the average uncollectible expense for  
22 the years 2008 through 2010.

23 (9) Opportunities for minority-owned and female-owned  
24 business enterprises: design a performance metric  
25 regarding the creation of opportunities for minority-owned  
26 and female-owned business enterprises consistent with



1       State and federal law using a base performance value of the  
2       percentage of the participating utility's capital  
3       expenditures that were paid to minority-owned and  
4       female-owned business enterprises in 2010.

5       The definitions set forth in 83 Ill. Admin. Code Part  
6       411.20 as of May 1, 2011 shall be used for purposes of  
7       calculating performance under paragraphs (1) through (3) of  
8       this subsection (f), provided, however, that the participating  
9       utility may exclude up to 9 extreme weather event days from  
10       such calculation for each year. For purposes of this Section,  
11       an extreme weather event day is a 24-hour calendar day  
12       (beginning at 12:00 am and ending at 11:59 pm) during which any  
13       weather event (e.g., storm, tornado) caused interruptions for  
14       10,000 or more of the participating utility's customers for 3  
15       hours or more. If there are more than 9 extreme weather event  
16       days in a year, then the utility may choose no more than 9  
17       extreme weather event days to exclude, provided that the same  
18       extreme weather event days are excluded from each of the  
19       calculations performed under paragraphs (1) through (3) of this  
20       subsection (f).

21       The metrics shall include incremental performance goals  
22       for each year of the 10-year period, which shall be designed to  
23       demonstrate that the utility is on track to achieve the  
24       performance goal in each category at the end of the 10-year  
25       period. The utility shall elect when the 10-year period shall  
26       commence, provided that it begins no later than 14 months

1 following the date on which the utility begins investing  
2 pursuant to subsection (b) of this Section.

3 The metrics and performance goals set forth in this  
4 subsection (f) are based on the assumptions that the  
5 participating utility may fully implement the technology  
6 described in subsection (b) of this Section, including  
7 utilizing the full functionality of such technology and that  
8 there is no requirement for personal on-site notification. If  
9 the utility is unable to meet the metrics and performance goals  
10 set forth in subparagraphs (5) through (8) of this subsection  
11 (f) for such reasons, and the Commission so finds after notice  
12 and hearing, then the utility shall be excused from compliance,  
13 but only to the limited extent achievement of the affected  
14 metrics and performance goals was hindered by the less than  
15 full implementation.

16 (f-5) The financial penalties applicable to the metrics  
17 described in subparagraphs (1) through (8) of subsection (f) of  
18 this Section, as applicable, shall be applied through an  
19 adjustment to the participating utility's return on equity as  
20 follows:

21 (1) With respect to each of the incremental annual  
22 performance goals established pursuant to paragraph (1) of  
23 subsection (f) of this Section, for each year that a  
24 participating utility other than a combination utility  
25 does not achieve the annual goal, the participating  
26 utility's return on equity shall be reduced by 5 basis

1 points for such unachieved goal for the following 12-month  
2 period, and for each year that a participating utility that  
3 is a combination utility does not achieve the annual goal,  
4 the participating utility's return on equity shall be  
5 reduced by 10 basis points for each such unachieved goal  
6 for the following 12-month period.

7 (2) With respect to each of the incremental annual  
8 performance goals established pursuant to subparagraphs  
9 (2), (3), and (4) of subsection (f) of this Section, as  
10 applicable, for each year that the participating utility  
11 does not achieve each such goal, the participating  
12 utility's return on equity shall be reduced by 5 basis  
13 points for each such unachieved goal for the following  
14 12-month period. With respect to each of the incremental  
15 annual performance goals established pursuant to  
16 subparagraph (5) of subsection (f) of this Section, for  
17 each year that the participating utility does not achieve  
18 at least 95% of each such goal, the participating utility's  
19 return on equity shall be reduced by 5 basis points for  
20 each such unachieved goal for the following 12-month  
21 period.

22 (3) With respect to each of the incremental annual  
23 performance goals established pursuant to paragraphs (6),  
24 (7), and (8) of subsection (f) of this Section, as  
25 applicable, the performance under each such goal shall be  
26 calculated in terms of the percentage of the goal achieved.

1       The percentage of goal achieved for each of the goals shall  
2       be aggregated, and an average percentage value calculated,  
3       for each year of the 10-year period. If the utility does  
4       not achieve an average percentage value in a given year of  
5       at least 95%, the participating utility's return on equity  
6       shall be reduced by 5 basis points for the following  
7       12-month period.

8       The financial penalties shall be applied as described in  
9       this subsection (f-5) through a separate tariff mechanism,  
10       which shall be filed by the utility together with its metrics.  
11       In the event the formula rate tariff established pursuant to  
12       subsection (c) of this Section terminates, the utility's  
13       obligations under subsection (f) of this Section and this  
14       subsection (f-5) shall also terminate, provided, however, that  
15       the tariff mechanism established pursuant to subsection (f) of  
16       this Section and this subsection (f-5) shall remain in effect  
17       until any penalties due and owing at the time of such  
18       termination are applied.

19       The Commission shall, after notice and hearing, enter an  
20       order within 120 days after the metrics are filed approving, or  
21       approving with modification, the metrics and tariff mechanism.  
22       On June 1 of each subsequent year, each participating utility  
23       shall file a report with the Commission that includes  
24       performance under each metric, identification of any  
25       extraordinary events that adversely impacted the utility's  
26       performance, and any proposed financial penalties to be applied

1 through the approved tariff mechanism or any revised future  
2 incremental annual performance goals to address a shortfall.  
3 Each such filing shall include documentation and data  
4 supporting any proposed financial penalties to be applied, and  
5 the Commission shall, after notice and hearing, enter an order  
6 approving, or approving with modification, any proposed  
7 financial penalties within 180 days after the filing. The  
8 Commission-approved financial penalties shall be applied  
9 beginning with the next rate year.

10 (g) On or before July 31, 2014, each participating utility  
11 shall file a report with the Commission that sets forth the  
12 average annual increase in the average amount paid per  
13 kilowatthour for residential eligible retail customers,  
14 exclusive of the effects of energy efficiency programs,  
15 comparing the 12-month period ending May 31, 2011 to the  
16 12-month period ending May 31, 2014. For a participating  
17 utility that is a combination utility with more than one rate  
18 zone, the weighted average aggregate increase shall be  
19 provided. The report shall be filed together with a statement  
20 from an independent auditor attesting to the accuracy of the  
21 report.

22 In the event that the average annual increase exceeds 2.5%  
23 as calculated pursuant to this subsection (g), then Sections  
24 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of this Act, other  
25 than this subsection, shall be inoperative as they relate to  
26 the utility and its service area as of the date of the report

1 due to be submitted pursuant to this subsection and the utility  
2 shall no longer be eligible to annually update the  
3 performance-based formula rate tariff pursuant to subsection  
4 (d) of this Section. In such event, the then current rates  
5 shall remain in effect until such time as new rates are set  
6 pursuant to Article IX of this Act, subject to retroactive  
7 adjustment, with interest, to reconcile rates charged with  
8 actual costs, and the participating utility's voluntary  
9 commitments and obligations under subsection (b) of this  
10 Section shall immediately terminate, except for the utility's  
11 obligation to pay an amount already owed to the fund for  
12 training grants pursuant to a Commission order issued under  
13 subsection (b) of this Section.

14 In the event that the average annual increase is 2.5% or  
15 less as calculated pursuant to this subsection (g), then the  
16 performance-based formula rate shall remain in effect as set  
17 forth in this Section.

18 For purposes of this Section, the amount per kilowatthour  
19 means the total amount paid for electric service expressed on a  
20 per kilowatthour basis, and the total amount paid for electric  
21 service includes without limitation amounts paid for supply,  
22 transmission, distribution, surcharges, and add-on-taxes  
23 exclusive of any increases in taxes or new taxes imposed after  
24 the effective date of this amendatory Act of the 97th General  
25 Assembly. For purposes of this Section, "eligible retail  
26 customers" shall have the meaning set forth in Section 16-111.5

1 of this Act.

2 The fact that this Section becomes inoperative as set forth  
3 in this subsection shall not be construed to mean that the  
4 Commission may reexamine or otherwise reopen prudence or  
5 reasonableness determinations already made.

6 (h) Sections 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of  
7 this Act, other than this subsection, are inoperative after  
8 December 31, 2017 for every participating utility, after which  
9 time a participating utility shall no longer be eligible to  
10 annually update the performance-based formula rate tariff  
11 pursuant to subsection (d) of this Section. At such time, the  
12 then current rates shall remain in effect until such time as  
13 new rates are set pursuant to Article IX of this Act, subject  
14 to retroactive adjustment, with interest, to reconcile rates  
15 charged with actual costs.

16 By December 31, 2017, the Commission shall prepare and file  
17 with the General Assembly a report on the infrastructure  
18 program and the performance-based formula rate. The report  
19 shall include the change in the average amount per kilowatthour  
20 paid by residential customers between June 1, 2011 and May 31,  
21 2017. If the change in the total average rate paid exceeds 2.5%  
22 compounded annually, the Commission shall include in the report  
23 an analysis that shows the portion of the change due to the  
24 delivery services component and the portion of the change due  
25 to the supply component of the rate. The report shall include  
26 separate sections for each participating utility.

1       In the event Sections 16-108.5, 16-108.6, 15-108.7, and  
2 16-108.8 of this Act do not become inoperative after December  
3 31, 2017, then these Sections are inoperative after December  
4 31, 2022 for every participating utility, after which time a  
5 participating utility shall no longer be eligible to annually  
6 update the performance-based formula rate tariff pursuant to  
7 subsection (d) of this Section. At such time, the then current  
8 rates shall remain in effect until such time as new rates are  
9 set pursuant to Article IX of this Act, subject to retroactive  
10 adjustment, with interest, to reconcile rates charged with  
11 actual costs.

12       The fact that this Section becomes inoperative as set forth  
13 in this subsection shall not be construed to mean that the  
14 Commission may reexamine or otherwise reopen prudence or  
15 reasonableness determinations already made.

16       (i) While a participating utility may use, develop, and  
17 maintain broadband systems and the delivery of broadband  
18 services, voice-over-internet-protocol services,  
19 telecommunications services, and cable and video programming  
20 services for use in providing delivery services and Smart Grid  
21 functionality or application to its retail customers,  
22 including, but not limited to, the installation,  
23 implementation and maintenance of Smart Grid electric system  
24 upgrades as defined in Section 16-108.6 of the Act, a  
25 participating utility is prohibited from offering to its retail  
26 customers broadband services or the delivery of broadband



1 services, voice-over-internet-protocol services,  
2 telecommunications services, or cable or video programming  
3 services, unless they are part of a service directly related to  
4 delivery services or Smart Grid functionality or applications  
5 as defined in Section 16-108.6 of this Act, and from recovering  
6 the costs of such offerings from retail customers.

7 (j) Nothing in this Section is intended to legislatively  
8 overturn the opinion issued in Commonwealth Edison Co. v. Ill.  
9 Commerce Comm'n, Nos. 2-08-0959, 2-08-1037, 2-08-1137,  
10 1-08-3008, 1-08-3030, 1-08-3054, 1-08-3313 cons. (Ill. App.  
11 Ct. 2d Dist. Sept. 30, 2010). This amendatory Act of the 97th  
12 General Assembly shall not be construed as creating a contract  
13 between the General Assembly and the participating utility, and  
14 shall not establish a property right in the participating  
15 utility.

16 (220 ILCS 5/16-108.6 new)

17 Sec. 16-108.6. Provisions relating to Smart Grid Advanced  
18 Metering Infrastructure Deployment Plan.

19 (a) For purposes of this Section and Sections 16-108.7 and  
20 16-108.8 of this Act:

21 "Advanced Metering Infrastructure" or "AMI" means the  
22 communications hardware and software and associated system  
23 software that enables Smart Grid functions by creating a  
24 network between advanced meters and utility business systems  
25 and allowing collection and distribution of information to

1 customers and other parties in addition to providing  
2 information to the utility itself.

3 "Cost-beneficial" means a determination that the benefits  
4 of a participating utility's Smart Grid AMI Deployment Plan  
5 exceed the costs of the Plan as initially filed with the  
6 Commission or as subsequently modified by the Commission. This  
7 standard is met if the present value of the total benefits of  
8 the Smart Grid AMI Deployment Plan exceeds the present value of  
9 the total costs of the Smart Grid AMI Deployment Plan. The  
10 total cost shall include all utility costs reasonably  
11 associated with the Smart Grid AMI Deployment Plan. The total  
12 benefits shall include the sum of avoided electricity costs,  
13 including avoided utility operational costs, avoided consumer  
14 power, capacity, and energy costs, and avoided societal costs  
15 associated with the production and consumption of electricity,  
16 as well as other societal benefits, including the greater  
17 integration of renewable and distributed power resources,  
18 reductions in the emissions of harmful pollutants and  
19 associated avoided health-related costs, other benefits  
20 associated with energy efficiency measures, demand-response  
21 activities, and the enabling of greater penetration of  
22 alternative fuel vehicles.

23 "Participating utility" has the meaning set forth in  
24 Section 16-108.5 of this Act.

25 "Smart Grid" means investments and policies that together  
26 promote one or more of the following goals:

1           (1) Increased use of digital information and controls  
2           technology to improve reliability, security, and  
3           efficiency of the electric grid.

4           (2) Dynamic optimization of grid operations and  
5           resources, with full cyber-security.

6           (3) Deployment and integration of distributed  
7           resources and generation, including renewable resources.

8           (4) Development and incorporation of demand-response,  
9           demand-side resources, and energy efficiency resources.

10           (5) Deployment of "smart" technologies (real-time,  
11           automated, interactive technologies that optimize the  
12           physical operation of appliances and consumer devices) for  
13           metering, communications concerning grid operations and  
14           status, and distribution automation.

15           (6) Integration of "smart" appliances and consumer  
16           devices.

17           (7) Deployment and integration of advanced electricity  
18           storage and peak-shaving technologies, including plug-in  
19           electric and hybrid electric vehicles, thermal-storage air  
20           conditioning and renewable energy generation.

21           (8) Provision to consumers of timely information and  
22           control options.

23           (9) Development of open access standards for  
24           communication and interoperability of appliances and  
25           equipment connected to the electric grid, including the  
26           infrastructure serving the grid.

1           (10) Identification and lowering of unreasonable or  
2           unnecessary barriers to adoption of Smart Grid  
3           technologies, practices, services, and business models  
4           that support energy efficiency, demand-response, and  
5           distributed generation.

6           "Smart Grid Advisory Council" means the group of  
7           stakeholders formed pursuant to subsection (b) of this Section  
8           for the purposes of advising and working with participating  
9           utilities on the development and implementation of a Smart Grid  
10           Advanced Metering Infrastructure Deployment Plan.

11           "Smart Grid electric system upgrades" means any of the  
12           following:

13           (1) metering devices, sensors, control devices, and  
14           other devices integrated with and attached to an electric  
15           utility system that are capable of engaging in Smart Grid  
16           functions;

17           (2) other monitoring and communications devices that  
18           enable Smart Grid functions, including, but not limited to,  
19           distribution automation;

20           (3) software that enables devices or computers to  
21           engage in Smart Grid functions;

22           (4) associated cyber secure data communication  
23           network, including enhancements to cyber security  
24           technologies and measures;

25           (5) substation micro-processor relay upgrades;

26           (6) devices that allow electric or hybrid-electric

1 vehicles to engage in Smart Grid functions; or

2 (7) devices that enable individual consumers to  
3 incorporate distributed and micro-generation.

4 "Smart Grid electric system upgrades" does not include  
5 expenditures for: (1) electricity generation, transmission, or  
6 distribution infrastructure or equipment that does not  
7 directly relate to or support installing, implementing or  
8 enabling Smart Grid functions; (2) physical interconnection of  
9 generators or other devices to the grid except those that are  
10 directly related to enabling Smart Grid functions; or (3)  
11 ongoing or routine operation, billing, customer relations,  
12 security, and maintenance.

13 "Smart Grid functions" means:

14 (1) the ability to develop, store, send, and receive  
15 digital information concerning or enabling grid  
16 operations, electricity use, costs, prices, time of use,  
17 nature of use, storage, or other information relevant to  
18 device, grid, or utility operations, to or from or by means  
19 of the electric utility system through one or a combination  
20 of devices and technologies;

21 (2) the ability to develop, store, send, and receive  
22 digital information concerning electricity use, costs,  
23 prices, time of use, nature of use, storage, or other  
24 information relevant to device, grid, or utility  
25 operations to or from a computer or other control device;

26 (3) the ability to measure or monitor electricity use

1 as a function of time of day, power quality characteristics  
2 such as voltage level, current, cycles per second, or  
3 source or type of generation and to store, synthesize, or  
4 report that information by digital means;

5 (4) the ability to sense and localize disruptions or  
6 changes in power flows on the grid and communicate such  
7 information instantaneously and automatically for purposes  
8 of enabling automatic protective responses to sustain  
9 reliability and security of grid operations;

10 (5) the ability to detect, prevent, communicate with  
11 regard to, respond to, or recover from system security  
12 threats, including cyber-security threats and terrorism,  
13 using digital information, media, and devices;

14 (6) the ability of any device or machine to respond to  
15 signals, measurements, or communications automatically or  
16 in a manner programmed by its owner or operator without  
17 independent human intervention;

18 (7) the ability to use digital information to operate  
19 functionalities on the electric utility grid that were  
20 previously electro-mechanical or manual;

21 (8) the ability to use digital controls to manage and  
22 modify electricity demand, enable congestion management,  
23 assist in voltage control, provide operating reserves, and  
24 provide frequency regulation; or

25 (9) the ability to integrate electric plug-in  
26 vehicles, distributed generation, and storage in a safe and

1 cost effective manner on the electric grid.

2 (b) Within 30 days after the effective date of this  
3 amendatory Act of the 97th General Assembly, the Smart Grid  
4 Advisory Council shall be established, which shall consist of 7  
5 total voting members with each member possessing either  
6 technical, business or consumer expertise in Smart Grid issues  
7 and each having been the single appointment of one of the  
8 following: the Governor, the Speaker of the House, the Minority  
9 Leader of the House, the President of the Senate, the Minority  
10 Leader of the Senate, the Illinois Science and Technology  
11 Coalition, and the Citizens Utility Board. The Governor shall  
12 designate one of the members of the Council to serve as  
13 chairman, and that person shall serve as the chairman at the  
14 pleasure of the Governor. The members shall not be compensated  
15 for serving on the Smart Grid Advisory Council. The Smart Grid  
16 Advisory Council shall have the following duties:

17 (1) Serve as an advisor to participating utilities  
18 subject to this Section and in the manner described in this  
19 Section, and the recommendations provided by the Council,  
20 although non-binding, shall be considered by the  
21 utilities.

22 (2) Serve as trustees of the trust or foundation  
23 established pursuant to Section 16-108.7 of this Act with  
24 the duties enumerated thereunder.

25 (c) After consultation with the Smart Grid Advisory  
26 Council, each participating utility shall file a Smart Grid

1 Advanced Metering Infrastructure Deployment Plan ("AMI Plan")  
2 with the Commission within 180 days after the effective date of  
3 this amendatory Act of the 97th General Assembly or by November  
4 1, 2011, whichever is later, or in the case of a combination  
5 utility as defined in Section 16-108.5, by April 1, 2012,  
6 provided that a participating utility shall not file its plan  
7 until the evaluation report on the Pilot Program described in  
8 this subsection (c) is issued. The AMI Plan shall provide for  
9 investment over a 10-year period that is sufficient to  
10 implement the AMI Plan across its entire service territory in a  
11 manner that is consistent with subsection (b) of Section  
12 16-108.5 of this Act. The AMI Plan shall contain:

13 (1) the participating utility's Smart Grid AMI vision  
14 statement that is consistent with the goal of developing a  
15 cost-beneficial Smart Grid;

16 (2) a statement of Smart Grid AMI strategy that  
17 includes a description of how the utility evaluates and  
18 prioritizes technology choices to create customer value,  
19 including a plan to enhance and enable customers' ability  
20 to take advantage of Smart Grid functions beginning at the  
21 time an account has billed successfully on the AMI network;

22 (3) a deployment schedule and plan that includes  
23 deployment of AMI to all customers for a participating  
24 utility other than a combination utility, and to 62% of all  
25 customers for a participating utility that is a combination  
26 utility;



1           (4) annual milestones and metrics for the purposes of  
2           measuring the success of the AMI Plan in enabling Smart  
3           Grid functions; and enhancing consumer benefits from Smart  
4           Grid AMI; and

5           (5) a plan for the consumer education to be implemented  
6           by the participating utility.

7           The AMI Plan shall be fully consistent with the standards  
8           of the National Institute of Standard and Technology (NIST) for  
9           Smart Grid interoperability that are in effect at the time the  
10           participating utility files its AMI Plan, shall include open  
11           standards and internet protocol to the maximum extent possible  
12           consistent with cyber-security, and shall maximize, to the  
13           extent possible, a flexible smart meter platform that can  
14           accept remote device upgrades and contain sufficient internal  
15           memory capacity for additional storage capabilities, functions  
16           and services without the need for physical access to the meter.

17           The AMI Plan shall secure the privacy of personal  
18           information and establish the right of consumers to consent to  
19           the disclosure of personal energy information to third parties  
20           through electronic, web-based, and other means in accordance  
21           with State and federal law and regulations regarding consumer  
22           privacy and protection of consumer data.

23           After notice and hearing, the Commission shall, within 60  
24           days of the filing of an AMI Plan, issue its order approving,  
25           or approving with modification, the AMI Plan if the Commission  
26           finds that the AMI Plan contains the information required in

1 paragraphs (1) through (5) of this subsection (c) and further  
2 finds that the implementation of the AMI Plan will be  
3 cost-beneficial consistent with the principles established  
4 through the Illinois Smart Grid Collaborative, giving weight to  
5 the results of any Commission-approved pilot designed to  
6 examine the benefits and costs of AMI deployment. A  
7 participating utility's decision to invest pursuant to an AMI  
8 Plan approved by the Commission shall not be subject to  
9 prudence reviews in subsequent Commission proceedings. Nothing  
10 in this subsection (c) is intended to limit the Commission's  
11 ability to review the reasonableness of the costs incurred  
12 under the AMI Plan. A participating utility shall be allowed to  
13 recover the reasonable costs it incurs in implementing a  
14 Commission-approved AMI Plan, including the costs of retired  
15 meters, and may recover such costs through its tariffs,  
16 including the performance-based formula rate tariff approved  
17 pursuant to subsection (c) of Section 16-108.5 of this Act.

18 (d) The AMI Plan shall secure the privacy of the customer's  
19 personal information. "Personal information" for this purpose  
20 consists of the customer's name, address, telephone number, and  
21 other personally identifying information, as well as  
22 information about the customer's electric usage. Electric  
23 utilities, their contractors or agents, and any third party who  
24 comes into possession of such personal information by virtue of  
25 working on Smart Grid technology shall not disclose such  
26 personal information to be used in mailing lists or to be used

1 for other commercial purposes not reasonably related to the  
2 conduct of the utility's business. Electric utilities shall  
3 comply with the consumer privacy requirements of the Personal  
4 Information Protection Act. In the event a participating  
5 utility receives revenues from the sale of information obtained  
6 through Smart Grid technology that is not personal information,  
7 the participating utility shall use such revenues to offset the  
8 revenue requirement.

9 (e) On April 1 of each year beginning in 2013 and after  
10 consultation with the Smart Grid Advisory Council, each  
11 participating utility shall submit a report regarding the  
12 progress it has made toward completing implementation of its  
13 AMI Plan. This report shall:

14 (1) describe the AMI investments made during the prior  
15 12 months and the AMI investments planned to be made in the  
16 following 12 months;

17 (2) provide sufficient detail to determine the  
18 utility's progress in meeting the metrics and milestones  
19 identified by the utility in its AMI Plan; and

20 (3) identify any updates to the AMI Plan.

21 Within 21 days after the utility files its annual report,  
22 the Commission shall have authority, either upon complaint or  
23 its own initiative, but with reasonable notice, to enter upon  
24 an investigation regarding the utility's progress in  
25 implementing the AMI Plan as described in paragraph (1) of this  
26 subsection (e). If the Commission finds, after notice and

1 hearing, that the participating utility's progress in  
2 implementing the AMI Plan is materially deficient for the given  
3 Plan year, then the Commission shall issue an order requiring  
4 the participating utility to devise a corrective action plan,  
5 subject to Commission approval and oversight, to bring  
6 implementation back on schedule consistent with the AMI Plan.  
7 The Commission's order must be entered within 90 days after the  
8 utility files its annual report. If the Commission does not  
9 initiate an investigation within 21 days after the utility  
10 files its annual report, then the filing shall be deemed  
11 accepted by the Commission. The utility shall not be required  
12 to suspend implementation of its AMI Plan during any Commission  
13 investigation.

14 The participating utility's annual report regarding AMI  
15 Plan year 10 shall contain a statement verifying that the  
16 implementation of its AMI Plan is complete, provided, however,  
17 that if the utility is subject to a corrective action plan that  
18 extends the implementation period beyond 10 years, the utility  
19 shall include the verification statement in its final annual  
20 report. Following the date of a Commission order approving the  
21 final annual report or the date on which the final report is  
22 deemed accepted by the Commission, the utility's annual  
23 reporting obligations under this subsection (d) shall  
24 terminate, provided, however, that the utility shall have a  
25 continuing obligation to provide information, upon request, to  
26 the Commission and Smart Grid Advisory Council regarding the

1 AMI Plan.

2 (f) Each participating utility shall pay a pro rata share,  
3 based on number of customers, of \$5,000,000 per year to the  
4 trust or foundation established pursuant to Section 16-108.7 of  
5 this Act for each plan year of the AMI Plan, which shall be  
6 used for purposes of providing customer education regarding  
7 smart meters and related consumer-facing technologies and  
8 services and 70% of which shall be a recoverable expense;  
9 provided that other reasonable amounts expended by the utility  
10 for such consumer education shall not be subject to the 70%  
11 limitation of this subsection.

12 (g) Within 60 days after the Commission approves a  
13 participating utility's AMI Plan pursuant to subsection (c) of  
14 this Section, the participating utility, after consultation  
15 with the Smart Grid Advisory Council, shall file a proposed  
16 tariff with the Commission that offers an opt-in market-based  
17 peak time rebate program to all residential retail customers  
18 with smart meters that is designed to provide, in a  
19 competitively neutral manner, rebates to those residential  
20 retail customers that curtail their use of electricity during  
21 specific periods that are identified as peak usage periods. The  
22 total amount of rebates shall be the amount of compensation the  
23 utility obtains through markets or programs at the applicable  
24 regional transmission organization. The utility shall make all  
25 reasonable attempts to secure funding for the peak time rebate  
26 program through markets or programs at the applicable regional

1 transmission organization. The rules and procedures for  
2 consumers to opt-in to the peak time rebate program shall  
3 include electronic sign-up, be designed to maximize  
4 participation, and be included on the utility's website. The  
5 Commission shall monitor the performance of programs  
6 established pursuant to this subsection (g) and shall order the  
7 termination or modification of a program if it determines that  
8 the program is not, after a reasonable period of time for  
9 development of at least 4 years, resulting in net benefits to  
10 the residential customers of the participating utility.

11 (h) If Section 16-108.5 of this Act becomes inoperative  
12 with respect to one or more participating utilities as set  
13 forth in subsection (g) or (h) of that Section, then Sections  
14 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of this Act shall  
15 become inoperative as to each affected utility and its service  
16 area on the same date as Section 16-108.5 becomes inoperative.

17 (220 ILCS 5/16-108.7 new)

18 Sec. 16-108.7. Illinois Science and Energy Innovation  
19 Trust.

20 (a) Within 90 days of the effective date of this amendatory  
21 Act of the 97th General Assembly, the members of the Smart Grid  
22 Advisory Council established pursuant to Section 16-108.6 of  
23 this Act, or a majority of the members thereof, shall cause to  
24 be established an Illinois science and energy innovation trust  
25 or foundation for the purposes of providing financial and

1 technical support and assistance to entities, public or  
2 private, within the State of Illinois including, but not  
3 limited to, units of State and local government, educational  
4 and research institutions, corporations, and charitable,  
5 educational, environmental and community organizations, for  
6 programs and projects that support, encourage or utilize  
7 innovative technologies or other methods of modernizing the  
8 State's electric grid that will benefit the public by promoting  
9 economic development in Illinois. Such activities shall be  
10 supported through grants, loans, contracts, or other programs  
11 designed to assist and further benefit technological advances  
12 in the area of electric grid modernization and operation. The  
13 trust or foundation shall also be eligible for receipt of other  
14 energy and environmental grant opportunities, from public or  
15 private sources. The trust or foundation shall not be a  
16 governmental entity.

17 (b) Funds received by the trust or foundation pursuant to  
18 subsection (f) of Section 16-108.6 of this Act shall be used  
19 solely for the purpose of providing consumer education  
20 regarding smart meters and related consumer-facing  
21 technologies and services and the peak time rebate program  
22 described in subsection (g) of Section 16-108.6 of this Act.  
23 Thirty percent of such funds received from each participating  
24 utility shall be used by the trust or foundation for purposes  
25 of providing such education to each participating utility's  
26 low-income retail customers, including low-income senior

1 citizens.

2 The trust or foundation shall use all funds received  
3 pursuant to subsection (f) of Section 16-108.6 of this Act in a  
4 manner that reflects the unique needs and characteristics of  
5 each participating utility's service territory and in  
6 proportion to each participating utility's payment.

7 (c) Such trust or foundation shall be governed by a  
8 declaration of trust or articles of incorporation and bylaws  
9 which shall, at a minimum, provide the following:

10 (1) There shall initially be 7 trustees of the trust or  
11 foundation, which shall consist of the members of the Smart  
12 Grid Advisory Council established pursuant to Section  
13 16-108.6 of this Act. Subsequently, the participating  
14 utilities shall appoint one trustee and the Clean Energy  
15 Trust shall appoint one non-voting trustee who shall  
16 provide expertise regarding early stage investment in  
17 Smart Grid projects.

18 (2) All trustees shall be entitled to reimbursement for  
19 reasonable expenses incurred on behalf of the trust in the  
20 performance of their duties as trustees. All such  
21 reimbursements shall be paid out of the trust.

22 (3) Trustees shall be appointed within 60 days after  
23 the creation of the trust or foundation and shall serve for  
24 a term of 5 years commencing upon the date of their  
25 respective appointments, until their respective successors  
26 are appointed and qualified.



1           (4) A vacancy in the office of trustee shall be filled  
2           by the person holding the office responsible for appointing  
3           the trustee whose death or resignation creates the vacancy,  
4           and a trustee appointed to fill a vacancy shall serve the  
5           remainder of the term of the trustee whose resignation or  
6           death created the vacancy.

7           (5) The trust or foundation shall have an indefinite  
8           term and shall terminate at such time as no trust assets  
9           remain.

10           (6) The allocation and disbursement of funds for the  
11           various purposes for which the trust or foundation is  
12           established shall be determined by the trustees in  
13           accordance with the declaration of trust or the articles of  
14           incorporation and bylaws.

15           (7) The trust or foundation shall be authorized to  
16           employ an executive director and other employees, or  
17           contract management of the trust or foundation in its  
18           entirety to an outside organization found suitable by the  
19           trustees, to enter into leases, contracts and other  
20           obligations on behalf of the trust or foundation, and to  
21           incur expenses that the trustees deem necessary or  
22           appropriate for the fulfillment of the purposes for which  
23           the trust or foundation is established, provided, however,  
24           that salaries and administrative expenses incurred on  
25           behalf of the trust or foundation shall not exceed 3% of  
26           the trust's principal value, or \$750,000, whichever is

1 greater, in any given year. The trustees shall not be  
2 compensated by the trust or foundation.

3 (8) The trustees may create and appoint advisory boards  
4 or committees to assist them with the administration of the  
5 trust or foundation, and to advise and make recommendations  
6 to them regarding the contribution and disbursement of the  
7 trust or foundation funds.

8 (9) All funds dispersed by the trust or foundation for  
9 programs and projects to meet the objectives of the trust  
10 or foundation as enumerated in this Section shall be  
11 subject to a peer-review process as determined by the  
12 trustees. This process shall be designed to determine, in  
13 an objective and unbiased manner, those programs and  
14 projects that best fit the objectives of the trust or  
15 foundation. In each fiscal year the trustees shall  
16 determine, based solely on the information provided  
17 through the peer-review process, a budget for programs and  
18 projects for that fiscal year.

19 (10) The trustees shall administer a Smart Grid  
20 education fund from which it shall make grants to qualified  
21 not-for-profit organizations for the purpose of educating  
22 customers with regard to smart meters and related  
23 consumer-facing technologies and services. In making such  
24 grants the trust or foundation shall strongly encourage  
25 grantees to coordinate to the extent practicable and  
26 consider recommendations from the participating utilities

1 regarding the development and implementation of customer  
2 education plans.

3 (11) One of the objectives of the trust or foundation  
4 is to remain self-funding. In order to meet this objective,  
5 the trustees may sign agreements with those entities  
6 receiving funding that provide for license fees,  
7 royalties, or other payments to the trust or foundation  
8 from such entities that receive support for their product  
9 development from the trust or foundation. Such payments,  
10 however, shall be contingent on the commercialization of  
11 such products, services, or technologies enabled by the  
12 funding provided by the trust or foundation.

13 (d) The trustees shall notify each participating utility as  
14 defined in Section 16-108.5 of this Act of the formation of the  
15 trust or foundation. Within 90 days after receipt of the  
16 notification, each participating utility that is not a  
17 combination utility as defined in Section 16-108.5 of this Act  
18 shall contribute \$15,000,000 to the trust or foundation, and  
19 each participating utility that is a combination utility, as  
20 defined in Section 16-108.5 of this Act, shall contribute  
21 \$7,500,000 to the trust or foundation established pursuant to  
22 this Section. Such contributions shall not be a recoverable  
23 expense.

24 (e) If Section 16-108.5 of this Act becomes inoperative  
25 with respect to one or more participating utilities as set  
26 forth in subsection (g) or (h) of that Section, then Sections

1 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of this Act shall  
2 become inoperative as to each affected utility and its service  
3 area on the same date as Section 16-108.5 becomes inoperative.

4 (220 ILCS 5/16-108.8 new)

5 Sec. 16-108.8. Illinois Smart Grid test bed.

6 (a) Within 180 days after the effective date of this  
7 amendatory Act of the 97th General Assembly, each participating  
8 utility, as defined by Section 16-108.5 of this Act, shall  
9 create or otherwise designate a Smart Grid test bed, which may  
10 be located at one or more places within the utility's system,  
11 for the purposes of allowing for the testing of Smart Grid  
12 technologies. The objectives of this test bed shall be to:

13 (1) provide an open, unbiased opportunity for testing  
14 programs, technologies, business models, and other Smart  
15 Grid-related activities;

16 (2) provide on-grid locations for the testing of  
17 potentially innovative Smart Grid-related technologies and  
18 services, including but not limited to those funded by the  
19 trust or foundation established pursuant to Section  
20 16-108.7 of this Act;

21 (3) facilitate testing of business models or services  
22 that help integrate Smart Grid-related technologies into  
23 the electric grid, especially those business models that  
24 may help promote new products and services for retail  
25 customers;

1           (4) offer opportunities to test and showcase Smart Grid  
2           technologies and services, especially those likely to  
3           support the economic development goals of the State of  
4           Illinois.

5           (b) The test bed shall reside in one or more locations on  
6           the participating utility's network. Such locations shall be  
7           chosen by the utility to maximize the opportunity for real-time  
8           and real-world testing of Smart Grid technologies and services  
9           taking into account the safety and security of the  
10           participating utility's grid and grid operations.

11           (c) The participating utility, with input from the Smart  
12           Grid Advisory Council established pursuant to Section 16-108.6  
13           of this Act, shall, as part of its filing under subsection (b)  
14           of Section 16-108.5, include a plan for the creation,  
15           operation, and administration of the test bed. This plan shall  
16           address the following:

17           (1) how the utility proposes to comply with each of the  
18           objectives set forth in subsection (a) of this Section;

19           (2) the proposed location or locations of the test bed;

20           (3) the process by which the utility will receive,  
21           review, and qualify proposals to use the test bed;

22           (4) the criteria by which the utility proposes to  
23           qualify proposals to use the test bed, including, but not  
24           limited to safety, reliability, security, customer data  
25           security, privacy, and economic development  
26           considerations;

1           (5) the engineering and operations support that the  
2           utility will provide to test bed users, including provision  
3           of customer data; and

4           (6) the estimated costs to establish, administer and  
5           promote the availability of the test bed.

6           (d) The test bed should be open to all qualified entities  
7           wishing to test programs, technologies, business models, and  
8           other Smart Grid-related activities, provided that the utility  
9           retains control of its grid and operations and may reject any  
10           programs, technologies, business models, and other Smart  
11           Grid-related activities that threaten the reliability, safety,  
12           security, or operations of its network, or that would threaten  
13           the security of customer-identifiable data in the judgment of  
14           the utility. The number of technologies and entities  
15           participating in the test bed at any time may be limited by the  
16           utility based on its determination of its ability to maintain a  
17           secure, safe, and reliable grid.

18           (e) At a minimum, the test bed shall have the ability to  
19           receive live signals from PJM Interconnection LLC or other  
20           applicable regional transmission organization, the ability to  
21           test new applications in a utility scale environment (to  
22           include ramp rate regulations for distributed wind and solar  
23           resources), critical peak price response, and market based  
24           power dispatch.

25           (f) At the end of the fourth year of operation the test bed  
26           shall be subject to an independent evaluation to determine if

1 the test bed is meeting the objectives of this Section or is  
2 likely to meet the objectives in the future. The evaluation  
3 shall include the performance of the utility as test bed  
4 operator. Subject to the findings, the utility and the trust or  
5 foundation established pursuant to Section 16-108.7 of this Act  
6 may choose to continue operating the test bed.

7 (g) The utility shall be entitled to recover all prudently  
8 incurred and reasonable costs associated with evaluation of  
9 proposals, engineering, construction, operation, and  
10 administration of the test bed through the performance-based  
11 formula rate tariff established pursuant to Section 16-108.5 of  
12 this Act.

13 (h) The utility is authorized to charge fees to users of  
14 the test bed that shall recover the costs associated with the  
15 incremental costs to the utility associated with  
16 administration of the test bed, provided, however, that any  
17 such fees collected by the utility shall be used to offset the  
18 costs to be recovered pursuant to subsection (g) of this  
19 Section.

20 (i) On a quarterly basis, the utility shall provide the  
21 trust or foundation established pursuant to Section 16-108.7 of  
22 this Act with a report summarizing test bed activities,  
23 customers, discoveries, and other information as shall be  
24 mutually deemed relevant.

25 (j) To the extent practicable, the utility and trust or  
26 foundation established pursuant to Section 16-108.7 of this Act

1 shall jointly pursue resources that enhance the capabilities  
2 and capacity of the test bed.

3 (k) If Section 16-108.5 of this Act becomes inoperative  
4 with respect to one or more participating utilities as set  
5 forth in subsection (g) or (h) of that Section, then Sections  
6 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of this Act shall  
7 become inoperative as to each affected utility and its service  
8 area on the same date as Section 16-108.5 become inoperative.

9 (220 ILCS 5/16-111.5)

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

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



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

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

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

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

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

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

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

15 and

16 (iv) growth forecasts by customer class.

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

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

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

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

26 (3) A plan for meeting the expected load requirements

1 that will not be met through preexisting contracts. This  
2 plan shall include:

3 (i) definitions of the different retail customer  
4 classes for which supply is being purchased;

5 (ii) the proposed mix of demand-response products  
6 for which contracts will be executed during the next  
7 year. The cost-effective demand-response measures  
8 shall be procured whenever the cost is lower than  
9 procuring comparable capacity products, provided that  
10 such products shall:

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

13 (B) at least satisfy the demand-response  
14 requirements of the regional transmission  
15 organization market in which the utility's service  
16 territory is located, including, but not limited  
17 to, any applicable capacity or dispatch  
18 requirements;

19 (C) provide for customers' participation in  
20 the stream of benefits produced by the  
21 demand-response products;

22 (D) provide for reimbursement by the  
23 demand-response provider of the utility for any  
24 costs incurred as a result of the failure of the  
25 supplier of such products to perform its  
26 obligations thereunder; and

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

4 (iii) monthly forecasted system supply  
5 requirements, including expected minimum, maximum, and  
6 average values for the planning period;

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

18 (v) proposed term structures for each wholesale  
19 product type included in the proposed procurement plan  
20 portfolio of products; and

21 (vi) an assessment of the price risk, load  
22 uncertainty, and other factors that are associated  
23 with the proposed procurement plan; this assessment,  
24 to the extent possible, shall include an analysis of  
25 the following factors: contract terms, time frames for  
26 securing products or services, fuel costs, weather

1 patterns, transmission costs, market conditions, and  
2 the governmental regulatory environment; the proposed  
3 procurement plan shall also identify alternatives for  
4 those portfolio measures that are identified as having  
5 significant price risk.

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

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

16 (1) The procurement administrator shall:

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

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

26 (iii) serve as the interface between the electric

1 utility and suppliers;

2 (iv) manage the bidder pre-qualification and  
3 registration process;

4 (v) obtain the electric utilities' agreement to  
5 the final form of all supply contracts and credit  
6 collateral agreements;

7 (vi) administer the request for proposals process;

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

20 (viii) maintain confidentiality of supplier and  
21 bidding information in a manner consistent with all  
22 applicable laws, rules, regulations, and tariffs;

23 (ix) submit a confidential report to the  
24 Commission recommending acceptance or rejection of  
25 bids;

26 (x) notify the utility of contract counterparties

1 and contract specifics; and

2 (xi) administer related contingency procurement  
3 events.

4 (2) The procurement monitor, who shall be retained by  
5 the Commission, shall:

6 (i) monitor interactions among the procurement  
7 administrator, suppliers, and utility;

8 (ii) monitor and report to the Commission on the  
9 progress of the procurement process;

10 (iii) provide an independent confidential report  
11 to the Commission regarding the results of the  
12 procurement event;

13 (iv) assess compliance with the procurement plans  
14 approved by the Commission for each utility that on  
15 December 31, 2005 provided electric service to a least  
16 100,000 customers in Illinois;

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

20 (vi) provide expert advice to the Commission and  
21 consult with the procurement administrator regarding  
22 issues related to procurement process design, rules,  
23 protocols, and policy-related matters; and

24 (vii) consult with the procurement administrator  
25 regarding the development and use of benchmark  
26 criteria, standard form contracts, credit policies,

1           and bid documents.

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

4           (1) Beginning in 2008, each Illinois utility procuring  
5 power pursuant to this Section shall annually provide a  
6 range of load forecasts to the Illinois Power Agency by  
7 July 15 of each year, or such other date as may be required  
8 by the Commission or Agency. The load forecasts shall cover  
9 the 5-year procurement planning period for the next  
10 procurement plan and shall include hourly data  
11 representing a high-load, low-load and expected-load  
12 scenario for the load of the eligible retail customers. The  
13 utility shall provide supporting data and assumptions for  
14 each of the scenarios.

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



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

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

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

1 adequate, reliable, affordable, efficient, and  
2 environmentally sustainable electric service at the lowest  
3 total cost over time, taking into account any benefits of  
4 price stability.

5 (e) The procurement process shall include each of the  
6 following components:

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

26 (2) Standard contract forms and credit terms and

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

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

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

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

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

25 (i) Event of supplier default: In the event of  
26 supplier default, the utility shall review the

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

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

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

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

1 transmission organization market it shall be purchased  
2 from the wholesale market.

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

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

23 (g) Within 3 business days after the Commission decision  
24 approving the results of a procurement event, the utility shall  
25 enter into binding contractual arrangements with the winning  
26 suppliers using the standard form contracts; except that the

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

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

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



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

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

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

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

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

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

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

21 (k-5) In order to promote price stability for residential  
22 and small commercial customers during the infrastructure  
23 investment program described in subsection (b) of Section  
24 16-108.5 of this Act, and notwithstanding any other provision  
25 of this Act or the Illinois Power Agency Act, for each electric  
26 utility that serves more than one million retail customers in

1 Illinois the Illinois Power Agency shall conduct a procurement  
2 event within 120 days after the effective date of this  
3 amendatory Act of the 97th General Assembly and may procure  
4 contracts for energy and renewable energy credits for the  
5 period June 1, 2013 through December 31, 2017 that satisfy the  
6 requirements of this subsection (k-5), including the  
7 benchmarks described in this subsection. These contracts shall  
8 be entered into as the result of a competitive procurement  
9 event, and, to the extent that any provisions of this Section  
10 or the Illinois Power Agency Act do not conflict with this  
11 subsection (k-5), such provisions shall apply to the  
12 procurement event. The energy contracts shall be for 24 hour by  
13 7 day supply over a term that runs from the first delivery year  
14 through December 31, 2017. For a utility that serves over 2  
15 million customers, the energy contracts shall be multi-year  
16 with pricing escalating at 2.5% per annum. The energy contracts  
17 may be designed as financial swaps or may require physical  
18 delivery.

19 Within 30 days of the effective date of this amendatory Act  
20 of the 97th General Assembly, each such utility shall submit to  
21 the Agency updated load forecasts for the period June 1, 2013  
22 through December 31, 2017. The megawatt volume of the contracts  
23 shall be based on the updated load forecasts of the minimum  
24 monthly on-peak or off-peak average load requirements shown in  
25 the forecasts, taking into account any existing energy  
26 contracts in effect as well as the expected migration of the

1 utility's customers to alternative retail electric suppliers.  
2 The renewable energy credit volume shall be based on the number  
3 of credits that would satisfy the requirements of subsection  
4 (c) of Section 1-75 of the Illinois Power Agency Act, subject  
5 to the rate impact caps and other provisions of subsection (c)  
6 of Section 1-75 of the Illinois Power Agency Act. The  
7 evaluation of contract bids in the competitive procurement  
8 events for energy and for renewable energy credits shall  
9 incorporate price benchmarks set collaboratively by the  
10 Agency, the procurement administrator, the staff of the  
11 Commission, and the procurement monitor. If the contracts are  
12 swap contracts, then they shall be executed as transactions  
13 under a negotiated master agreement based on the form of master  
14 agreement for financial swap contracts sponsored by the  
15 International Swaps and Derivatives Association, Inc. Costs  
16 incurred pursuant to a contract authorized by this subsection  
17 (k-5) shall be deemed prudently incurred and reasonable in  
18 amount and the electric utility shall be entitled to full cost  
19 recovery pursuant to the tariffs filed with the Commission.

20 The cost of administering the procurement event described  
21 in this subsection (k-5) shall be paid by the winning supplier  
22 or suppliers to the procurement administrator through a  
23 supplier fee. In the event that there is no winning supplier  
24 for a particular utility, such utility will pay the procurement  
25 administrator for the costs associated with the procurement  
26 event, and those costs shall not be a recoverable expense.

1 Nothing in this subsection (k-5) is intended to alter the  
2 recovery of costs for any other procurement event.

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

1 Agency, costs associated with load balancing, and contingency  
2 plan costs. The electric utility shall also recover its full  
3 costs of procuring electric supply for which it contracted  
4 before the effective date of this Section in conjunction with  
5 the provision of full requirements service under fixed-price  
6 bundled service tariffs subsequent to December 31, 2006. All  
7 such costs shall be deemed to have been prudently incurred. The  
8 pass-through tariffs that are filed and approved pursuant to  
9 this Section shall not be subject to review under, or in any  
10 way limited by, Section 16-111(i) of this Act.

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

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

25 (o) On or before June 1 of each year, the Commission shall  
26 hold an informal hearing for the purpose of receiving comments

1 on the prior year's procurement process and any recommendations  
2 for change.

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



1 under Section 9-220 of this Act.

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

3 (220 ILCS 5/16-111.5B new)

4 Sec. 16-111.5B. Provisions relating to energy efficiency  
5 procurement.

6 (a) Beginning in 2012, procurement plans prepared pursuant  
7 to Section 16-111.5 of this Act shall be subject to the  
8 following additional requirements:

9 (1) The analysis included pursuant to paragraph (2) of  
10 subsection (b) of Section 16-111.5 shall also include the  
11 impact of energy efficiency building codes or appliance  
12 standards, both current and projected.

13 (2) The procurement plan components described in  
14 subsection (b) of Section 16-111.5 shall also include an  
15 assessment of opportunities to expand the programs  
16 promoting energy efficiency measures that have been  
17 offered under plans approved pursuant to Section 8-103 of  
18 this Act or to implement additional cost-effective energy  
19 efficiency programs or measures.

20 (3) In addition to the information provided pursuant to  
21 paragraph (1) of subsection (d) of Section 16-111.5 of this  
22 Act, each Illinois utility procuring power pursuant to that  
23 Section shall annually provide to the Illinois Power Agency  
24 by July 15 of each year, or such other date as may be  
25 required by the Commission or Agency, an assessment of

1       cost-effective energy efficiency programs or measures that  
2       could be included in the procurement plan. The assessment  
3       shall include the following:

4               (A) A comprehensive energy efficiency potential  
5               study for the utility's service territory that was  
6               completed within the past 3 years.

7               (B) Beginning in 2014, the most recent analysis  
8               submitted pursuant to Section 8-103A of this Act and  
9               approved by the Commission under subsection (f) of  
10              Section 8-103 of this Act.

11              (C) Identification of new or expanded  
12              cost-effective energy efficiency programs or measures  
13              that are incremental to those included in energy  
14              efficiency and demand-response plans approved by the  
15              Commission pursuant to Section 8-103 of this Act and  
16              that would be offered to eligible retail customers.

17              (D) Analysis showing that the new or expanded  
18              cost-effective energy efficiency programs or measures  
19              would lead to a reduction in the overall cost of  
20              electric service.

21              (E) Analysis of how the cost of procuring  
22              additional cost-effective energy efficiency measures  
23              compares over the life of the measures to the  
24              prevailing cost of comparable supply.

25              (F) An energy savings goal, expressed in  
26              megawatt-hours, for the year in which the measures will

1           be implemented.

2           In preparing such assessments, a utility shall conduct  
3 an annual solicitation process for purposes of requesting  
4 proposals from third party vendors, the results of which  
5 shall be provided to the Agency as part of the assessment,  
6 including documentation of all bids received. The utility  
7 shall develop requests for proposals consistent with the  
8 manner in which it develops requests for proposals under  
9 plans approved pursuant to Section 8-103 of this Act, which  
10 considers input from the Agency and interested  
11 stakeholders.

12           (4) The Illinois Power Agency shall include in the  
13 procurement plan prepared pursuant to paragraph (2) of  
14 subsection (d) of Section 16-111.5 of this Act energy  
15 efficiency programs and measures it determines are  
16 cost-effective and the associated annual energy savings  
17 goal included in the annual solicitation process and  
18 assessment submitted pursuant to paragraph (3) of this  
19 subsection (a).

20           (5) Pursuant to paragraph (4) of subsection (d) of  
21 Section 16-111.5 of this Act, the Commission shall also  
22 approve the energy efficiency programs and measures  
23 included in the procurement plan, including the annual  
24 energy savings goal, if the Commission determines they  
25 fully capture the potential for all achievable  
26 cost-effective savings, to the extent practicable, and

1 otherwise satisfy the requirements of Section 8-103 of this  
2 Act.

3 In the event the Commission approves the procurement of  
4 additional energy efficiency, it shall reduce the amount of  
5 power to be procured under the procurement plan to reflect  
6 the additional energy efficiency and shall direct the  
7 utility to undertake the procurement of such energy  
8 efficiency, which shall not be subject to the requirements  
9 of subsection (e) of Section 16-111.5 of this Act. The  
10 utility shall consider input from the Agency and interested  
11 stakeholders on the procurement and administration  
12 process.

13 (6) An electric utility shall recover its costs  
14 incurred under this Section related to the implementation  
15 of energy efficiency programs and measures approved by the  
16 Commission in its order approving the procurement plan  
17 under Section 16-111.5 of this Act, including, but not  
18 limited to, all costs associated with complying with this  
19 Section and all start-up and administrative costs and the  
20 costs for any evaluation, measurement, and verification of  
21 the measures, from eligible retail customers through the  
22 automatic adjustment clause tariff established pursuant to  
23 Section 8-103 of this Act, provided, however, that the  
24 limitations described in subsection (d) of that Section  
25 shall not apply to the costs incurred pursuant to this  
26 Section or Section 16-111.7 of this Act.

1       (b) For purposes of this Section, the term "energy  
2 efficiency" shall have the meaning set forth in Section 1-10 of  
3 the Illinois Power Agency Act, and the term "cost-effective"  
4 shall have the meaning set forth in subsection (a) of Section  
5 8-103 of this Act. In addition, the estimated costs to acquire  
6 an additional energy efficiency measure, when divided by the  
7 number of kilowatt-hours expected to be saved over the life of  
8 the measure, shall be less than or equal to the electricity  
9 costs that would be avoided as a result of the energy  
10 efficiency measure.

11       (220 ILCS 5/16-111.7)

12       Sec. 16-111.7. On-bill financing program; electric  
13 utilities.

14       (a) The Illinois General Assembly finds that Illinois homes  
15 and businesses have the potential to save energy through  
16 conservation and cost-effective energy efficiency measures.  
17 Programs created pursuant to this Section will allow utility  
18 customers to purchase cost-effective energy efficiency  
19 measures, including measures set forth in a  
20 Commission-approved energy efficiency and demand-response plan  
21 under Section 8-103 of this Act and that are cost-effective as  
22 that term is defined by that Section, with no required initial  
23 upfront payment, and to pay the cost of those products and  
24 services over time on their utility bill.

25       (b) Notwithstanding any other provision of this Act, an

1 electric utility serving more than 100,000 customers on January  
2 1, 2009 shall offer a Commission-approved on-bill financing  
3 program ("program") that allows its eligible retail customers,  
4 as that term is defined in Section 16-111.5 of this Act, who  
5 own a residential single family home, duplex, or other  
6 residential building with 4 or less units, or condominium at  
7 which the electric service is being provided (i) to borrow  
8 funds from a third party lender in order to purchase electric  
9 energy efficiency measures approved under the program for  
10 installation in such home or condominium without any required  
11 upfront payment and (ii) to pay back such funds over time  
12 through the electric utility's bill. Based upon the process  
13 described in subsection (b-5) of this Section, small commercial  
14 retail customers, as that term is defined in Section 16-102 of  
15 this Act, who own the premises at which electric service is  
16 being provided may be included in such program. After receiving  
17 a request from an electric utility for approval of a proposed  
18 program and tariffs pursuant to this Section, the Commission  
19 shall render its decision within 120 days. If no decision is  
20 rendered within 120 days, then the request shall be deemed to  
21 be approved.

22 (b-5) Within 30 days after the effective date of this  
23 amendatory Act of the 96th General Assembly, the Commission  
24 shall convene a workshop process during which interested  
25 participants may discuss issues related to the program,  
26 including program design, eligible electric energy efficiency

1 measures, vendor qualifications, and a methodology for  
2 ensuring ongoing compliance with such qualifications,  
3 financing, sample documents such as request for proposals,  
4 contracts and agreements, dispute resolution, pre-installment  
5 and post-installment verification, and evaluation. The  
6 workshop process shall be completed within 150 days after the  
7 effective date of this amendatory Act of the 96th General  
8 Assembly.

9 (c) Not later than 60 days following completion of the  
10 workshop process described in subsection (b-5) of this Section,  
11 each electric utility subject to subsection (b) of this Section  
12 shall submit a proposed program to the Commission that contains  
13 the following components:

14 (1) A list of recommended electric energy efficiency  
15 measures that will be eligible for on-bill financing. An  
16 eligible electric energy efficiency measure ("measure")  
17 shall be defined by the following:

18 (A) the measure would be applied to or replace  
19 electric energy-using equipment; and either

20 (B) application of the measure to equipment and  
21 systems will have estimated electricity savings  
22 (determined by rates in effect at the time of  
23 purchase), that are sufficient to cover the costs of  
24 implementing the measures, including finance charges  
25 and any program fees not recovered pursuant to  
26 subsection (f) of this Section; to ~~to~~ assist the

1 electric utility in identifying or approving measures,  
2 the utility may consult with the Department of Commerce  
3 and Economic Opportunity, as well as with retailers,  
4 technicians, and installers of electric energy  
5 efficiency measures and energy auditors (collectively  
6 "vendors"); ~~or~~

7 (C) the measure is included in a  
8 Commission-approved energy efficiency and  
9 demand-response plan under Section 8-103 of this Act  
10 and is cost-effective as that term is defined by that  
11 Section.

12 (2) The electric utility shall issue a request for  
13 proposals ("RFP") to lenders for purposes of providing  
14 financing to participants to pay for approved measures. The  
15 RFP criteria shall include, but not be limited to, the  
16 interest rate, origination fees, and credit terms. The  
17 utility shall select the winning bidders based on its  
18 evaluation of these criteria, with a preference for those  
19 bids containing the rates, fees, and terms most favorable  
20 to participants;

21 (3) The utility shall work with the lenders selected  
22 pursuant to the RFP process, and with vendors, to establish  
23 the terms and processes pursuant to which a participant can  
24 purchase eligible electric energy efficiency measures  
25 using the financing obtained from the lender. The vendor  
26 shall explain and offer the approved financing packaging to



1 those customers identified in subsection (b) of this  
2 Section and shall assist customers in applying for  
3 financing. As part of the process, vendors shall also  
4 provide to participants information about any other  
5 incentives that may be available for the measures.

6 (4) The lender shall conduct credit checks or undertake  
7 other appropriate measures to limit credit risk, and shall  
8 review and approve or deny financing applications  
9 submitted by customers identified in subsection (b) of this  
10 Section. Following the lender's approval of financing and  
11 the participant's purchase of the measure or measures, the  
12 lender shall forward payment information to the electric  
13 utility, and the utility shall add as a separate line item  
14 on the participant's utility bill a charge showing the  
15 amount due under the program each month.

16 (5) A loan issued to a participant pursuant to the  
17 program shall be the sole responsibility of the  
18 participant, and any dispute that may arise concerning the  
19 loan's terms, conditions, or charges shall be resolved  
20 between the participant and lender. Upon transfer of the  
21 property title for the premises at which the participant  
22 receives electric service from the utility or the  
23 participant's request to terminate service at such  
24 premises, the participant shall pay in full its electric  
25 utility bill, including all amounts due under the program,  
26 provided that this obligation may be modified as provided

1 in subsection (g) of this Section. Amounts due under the  
2 program shall be deemed amounts owed for residential and,  
3 as appropriate, small commercial electric service.

4 (6) The electric utility shall remit payment in full to  
5 the lender each month on behalf of the participant. In the  
6 event a participant defaults on payment of its electric  
7 utility bill, the electric utility shall continue to remit  
8 all payments due under the program to the lender, and the  
9 utility shall be entitled to recover all costs related to a  
10 participant's nonpayment through the automatic adjustment  
11 clause tariff established pursuant to Section 16-111.8 of  
12 this Act. In addition, the electric utility shall retain a  
13 security interest in the measure or measures purchased  
14 under the program, and the utility retains its right to  
15 disconnect a participant that defaults on the payment of  
16 its utility bill.

17 (7) The total outstanding amount financed under the  
18 program shall not exceed \$2.5 million for an electric  
19 utility or electric utilities under a single holding  
20 company, provided that the electric utility or electric  
21 utilities may petition the Commission for an increase in  
22 such amount.

23 (d) A program approved by the Commission shall also include  
24 the following criteria and guidelines for such program:

25 (1) guidelines for financing of measures installed  
26 under a program, including, but not limited to, RFP

1 criteria and limits on both individual loan amounts and the  
2 duration of the loans;

3 (2) criteria and standards for identifying and  
4 approving measures;

5 (3) qualifications of vendors that will market or  
6 install measures, as well as a methodology for ensuring  
7 ongoing compliance with such qualifications;

8 (4) sample contracts and agreements necessary to  
9 implement the measures and program; and

10 (5) the types of data and information that utilities  
11 and vendors participating in the program shall collect for  
12 purposes of preparing the reports required under  
13 subsection (g) of this Section.

14 (e) The proposed program submitted by each electric utility  
15 shall be consistent with the provisions of this Section that  
16 define operational, financial and billing arrangements between  
17 and among program participants, vendors, lenders, and the  
18 electric utility.

19 (f) An electric utility shall recover all of the prudently  
20 incurred costs of offering a program approved by the Commission  
21 pursuant to this Section, including, but not limited to, all  
22 start-up and administrative costs and the costs for program  
23 evaluation. All prudently incurred costs under this Section  
24 shall be recovered from the residential and small commercial  
25 retail customer classes eligible to participate in the program  
26 through the automatic adjustment clause tariff established

1 pursuant to Section 8-103 of this Act.

2 (g) An independent evaluation of a program shall be  
3 conducted after 3 years of the program's operation. The  
4 electric utility shall retain an independent evaluator who  
5 shall evaluate the effects of the measures installed under the  
6 program and the overall operation of the program, including but  
7 not limited to customer eligibility criteria and whether the  
8 payment obligation for permanent electric energy efficiency  
9 measures that will continue to provide benefits of energy  
10 savings should attach to the meter location. As part of the  
11 evaluation process, the evaluator shall also solicit feedback  
12 from participants and interested stakeholders. The evaluator  
13 shall issue a report to the Commission on its findings no later  
14 than 4 years after the date on which the program commenced, and  
15 the Commission shall issue a report to the Governor and General  
16 Assembly including a summary of the information described in  
17 this Section as well as its recommendations as to whether the  
18 program should be discontinued, continued with modification or  
19 modifications or continued without modification, provided that  
20 any recommended modifications shall only apply prospectively  
21 and to measures not yet installed or financed.

22 (h) An electric utility offering a Commission-approved  
23 program pursuant to this Section shall not be required to  
24 comply with any other statute, order, rule, or regulation of  
25 this State that may relate to the offering of such program,  
26 provided that nothing in this Section is intended to limit the

1 electric utility's obligation to comply with this Act and the  
2 Commission's orders, rules, and regulations, including Part  
3 280 of Title 83 of the Illinois Administrative Code.

4 (i) The source of a utility customer's electric supply  
5 shall not disqualify a customer from participation in the  
6 utility's on-bill financing program. Customers of alternative  
7 retail electric suppliers may participate in the program under  
8 the same terms and conditions applicable to the utility's  
9 supply customers.

10 (Source: P.A. 96-33, eff. 7-10-09.)

11 (220 ILCS 5/16-128)

12 Sec. 16-128. Provisions related to utility employees  
13 during the mandatory transition period.

14 (a) The General Assembly finds:

15 (1) The reliability and safety of the electric system  
16 has depended and depends on a workforce of skilled and  
17 dedicated employees, equipped with technical training and  
18 experience.

19 (2) The integrity and reliability of the system ~~has~~  
20 also requires ~~depended on~~ the industry's commitment to  
21 invest in regular inspection and maintenance, to assure  
22 that it can withstand the demands of heavy service  
23 requirements and emergency situations.

24 (3) It is in the State's interest to protect the  
25 interests of utility employees who have and continue to

1        dedicate ~~dedicated~~ themselves to assuring reliable service  
2        to the citizens of this State, and who might otherwise be  
3        economically displaced in a restructured industry.

4        The General Assembly further finds that it is necessary to  
5        assure that employees of electric utilities and employees of  
6        contractors or subcontractors performing work on behalf of an  
7        electric utility operating in the deregulated industry have the  
8        requisite skills, knowledge, training, experience, and  
9        competence to provide reliable and safe electrical service  
10       under this Act ~~and therefore that alternative retail electric~~  
11       ~~suppliers shall be required to demonstrate the competence of~~  
12       ~~their employees to work in the industry.~~

13       The General Assembly also finds that it is necessary to  
14       assure that employees of alternative retail electric suppliers  
15       and employees of contractors or subcontractors performing work  
16       on behalf of an alternative retail electric supplier operating  
17       in the deregulated industry have the requisite skills,  
18       knowledge, training, experience, and competence to provide  
19       reliable and safe electrical service under this Act.

20       To ensure that these findings and prerequisites for  
21       reliable and safe electrical service continue to prevail, each  
22       alternative retail electric supplier, electric utility, and  
23       contractors and subcontractors performing work on behalf of an  
24       electric utility or alternative retail electric supplier must  
25       demonstrate the competence of their respective employees to  
26       work on the distribution system.

1           The knowledge, skill, training, experience, and competence  
2 levels to be demonstrated shall be consistent with those  
3 ~~generally~~ required of or by the electric utilities in this  
4 State as of January 1, 2007, with respect to their employees  
5 and employees of contractors or subcontractors performing work  
6 on their behalf. Nothing in this Section shall prohibit an  
7 electric utility from establishing knowledge, skill, training,  
8 experience, and competence levels greater than those required  
9 as of January 1, 2007.

10           An adequate ~~Adequate~~ demonstration of requisite knowledge,  
11 skill, training, experience, and competence shall include, at a  
12 minimum, such factors as completion or current participation  
13 and ultimate completion by the employee of an accredited or  
14 otherwise recognized apprenticeship program for the particular  
15 craft, trade or skill, or specified and several years of  
16 employment ~~with an electric utility~~ performing a particular  
17 work function that is utilized by an electric utility.

18           Notwithstanding any law, tariff, Commission rule, order,  
19 or decision to the contrary, the Commission shall have an  
20 affirmative statutory obligation to ensure that an electric  
21 utility is employing employees, contractors, and  
22 subcontractors with employees who meet the requirements of  
23 subsection (a) of this Section when installing, operating, and  
24 maintaining generation, transmission, or distribution  
25 facilities and equipment within this State pursuant to any  
26 provision in this Act or any Commission order, rule, or

1 decision.

2 For purposes of this Section, "distribution facilities and  
3 equipment" means any and all of the facilities and equipment,  
4 including, but not limited to, substations, distribution  
5 feeder circuits, switches, meters, protective equipment,  
6 primary circuits, distribution transformers, line extensions  
7 and service extensions both above or below ground, conduit,  
8 risers, elbows, transformer pads, junction boxes, manholes,  
9 pedestals, conductors, and all associated fittings that  
10 connect the transmission- or distribution system to either the  
11 weatherhead on the retail customer's building or other  
12 structure for above ground service or to the terminals on the  
13 meter base of the retail customer's building or other structure  
14 for below ground service.

15 To implement this requirement for alternative retail  
16 electric suppliers, the Commission, in determining that an  
17 applicant meets the standards for certification as an  
18 alternative retail electric supplier, shall require the  
19 applicant to demonstrate (i) that the applicant is licensed to  
20 do business, and bonded, in the State of Illinois; and (ii)  
21 that the employees of the applicant that will be installing,  
22 operating, and maintaining generation, transmission, or  
23 distribution facilities within this State, or any entity with  
24 which the applicant has contracted to perform those functions  
25 within this State, have the requisite knowledge, skills,  
26 training, experience, and competence to perform those



1 functions in a safe and responsible manner in order to provide  
2 safe and reliable service, in accordance with the criteria  
3 stated above.

4 (b) The General Assembly finds, based on experience in  
5 other industries that have undergone similar transitions, that  
6 the introduction of competition into the State's electric  
7 utility industry may result in workforce reductions by electric  
8 utilities which may adversely affect persons who have been  
9 employed by this State's electric utilities in functions  
10 important to the public convenience and welfare. The General  
11 Assembly further finds that the impacts on employees and their  
12 communities of any necessary reductions in the utility  
13 workforce directly caused by this restructuring of the electric  
14 industry shall be mitigated to the extent practicable through  
15 such means as offers of voluntary severance, retraining, early  
16 retirement, outplacement and related benefits. Therefore,  
17 before any such reduction in the workforce during the  
18 transition period, an electric utility shall present to its  
19 employees or their representatives a workforce reduction plan  
20 outlining the means by which the electric utility intends to  
21 mitigate the impact of such workforce reduction on its  
22 employees.

23 (c) In the event of a sale, purchase, or any other transfer  
24 of ownership during the mandatory transition period of one or  
25 more Illinois divisions or business units, and/or generating  
26 stations or generating units, of an electric utility, the

1 electric utility's contract and/or agreements with the  
2 acquiring entity or persons shall require that the entity or  
3 persons hire a sufficient number of non-supervisory employees  
4 to operate and maintain the station, division or unit by  
5 initially making offers of employment to the non-supervisory  
6 workforce of the electric utility's division, business unit,  
7 generating station and/or generating unit at no less than the  
8 wage rates, and substantially equivalent fringe benefits and  
9 terms and conditions of employment that are in effect at the  
10 time of transfer of ownership of said division, business unit,  
11 generating station, and/or generating units; and said wage  
12 rates and substantially equivalent fringe benefits and terms  
13 and conditions of employment shall continue for at least 30  
14 months from the time of said transfer of ownership unless the  
15 parties mutually agree to different terms and conditions of  
16 employment within that 30-month period. The utility shall offer  
17 a transition plan to those employees who are not offered jobs  
18 by the acquiring entity because that entity has a need for  
19 fewer workers. If there is litigation concerning the sale, or  
20 other transfer of ownership of the electric utility's  
21 divisions, business units, generating station, or generating  
22 units, the 30-month period will begin on the date the acquiring  
23 entity or persons take control or management of the divisions,  
24 business units, generating station or generating units of the  
25 electric utility.

26 (d) If a utility transfers ownership during the mandatory

1 transition period of one or more Illinois divisions, business  
2 units, generating stations or generating units of an electric  
3 utility to a majority-owned subsidiary, that subsidiary shall  
4 continue to employ the utility's employees who were employed by  
5 the utility at such division, business unit or generating  
6 station at the time of the transfer under the same terms and  
7 conditions of employment as those employees enjoyed at the time  
8 of the transfer. If ownership of the subsidiary is subsequently  
9 sold or transferred to a third party during the transition  
10 period, the transition provisions outlined in subsection (c)  
11 shall apply.

12 (e) The plant transfer provisions set forth above shall not  
13 apply to any generating station which was the subject of a  
14 sales agreement entered into before January 1, 1997.

15 (Source: P.A. 90-561, eff. 12-16-97.)

16 (220 ILCS 5/16-128A new)

17 Sec. 16-128A. Certification of installers.

18 (a) Within 18 months of the effective date of this  
19 amendatory Act of the 97th General Assembly, the Commission  
20 shall adopt rules, including emergency rules, establishing  
21 certification requirements ensuring that entities installing  
22 distributed generation facilities are in compliance with the  
23 requirements of subsection (a) of Section 16-128 of this Act.

24 For purposes of this Section, the phrase "entities  
25 installing distributed generation facilities" shall include,

1 but not be limited to, all entities that are exempt from the  
2 definition of "alternative retail electric supplier" under  
3 item (v) of Section 16-102 of the Act. For purposes of this  
4 Section, the phrase "self-installer" means an individual who  
5 (i) leases or purchases a cogeneration facility for his or her  
6 own personal use and (ii) installs such cogeneration or  
7 self-generation facility on his or her own premises without the  
8 assistance of any other person.

9 (b) In addition to any authority granted to the Commission  
10 under the Act, the Commission is also authorized to: (1)  
11 determine which entities are subject to certification under  
12 this Section; (2) impose reasonable certification fees and  
13 penalties; (3) adopt disciplinary procedures; (4) investigate  
14 any and all activities subject to this Section, including  
15 violations thereof; (5) adopt procedures to issue or renew, or  
16 to refuse to issue or renew, a certification or to revoke,  
17 suspend, place on probation, reprimand, or otherwise  
18 discipline a certified entity under this Act or take other  
19 enforcement action against an entity subject to this Section;  
20 and (6) prescribe forms to be issued for the administration and  
21 enforcement of this Section.

22 (c) No electric utility shall provide a retail customer  
23 with net metering service related to interconnection of that  
24 customer's distributed generation facility unless the customer  
25 provides the electric utility with (i) a certification that the  
26 customer installing the distributed generation facility was a

1 self-installer or (ii) evidence that the distributed  
2 generation facility was installed by an entity certified under  
3 this Section that is also in good standing with the Commission.  
4 For purposes of this subsection, a retail customer includes  
5 that customer's employees, officers, and agents. An electric  
6 utility shall file a tariff or tariffs with the Commission  
7 setting forth the documentation that a retail customer must  
8 provide to an electric utility. The provisions of this  
9 subsection (c) shall apply on or after the effective date of  
10 the Commission's rules prescribed pursuant to subsection (a) of  
11 this Section.

12 (d) Within 180 days after the effective date of this  
13 amendatory Act of the 97th General Assembly, the Commission  
14 shall initiate a rulemaking proceeding to establish  
15 certification requirements that shall be applicable to vendors  
16 that install electric vehicle charging stations.

17 Section 99. Effective date. This Act takes effect upon  
18 becoming law."