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LRB097 20097 JWD 65470 r

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SENATE RESOLUTION

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WHEREAS, The 97th Illinois General Assembly passed Senate Bill 1533 and House Bill 691 with super-majority votes in both legislative chambers; Senate Bill 1533 became law on July 13, 2011 as Public Act 97-96, and House Bill 691 became law on December 8, 2011 as Public Act 97-630; and

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WHEREAS, Public Act 97-96 set forth a detailed framework for the development of a clean coal brownfield facility, commonly known as the Chicago Clean Energy project, that included a provision requiring the Illinois Commerce Commission to approve the final sourcing agreements between the Chicago Clean Energy project and gas utilities for the purchase of substitute natural gas; and

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WHEREAS, Public Act 97-630 was enacted as "trailer legislation" to Public Act 97-96 with the intent to: (1) address statutorily unauthorized early termination provisions that had been included in the final draft sourcing agreements transmitted to the Illinois Commerce Commission by the Illinois Power Agency; and (2) clarify the limited role of the Illinois Commerce Commission in approving the final sourcing agreements between the Chicago Clean Energy project and gas utilities; and

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WHEREAS, Pursuant to Public Act 97-630, the Illinois

1 Commerce Commission in reviewing and approving sourcing  
2 agreements was only to: (1) fill in the blanks in the final  
3 draft sourcing agreement based upon the previously established  
4 capital costs, operations and maintenance costs, and the rate  
5 of return for the Chicago Clean Energy project; (2) remove 2  
6 statutorily unauthorized early termination provisions from the  
7 final draft sourcing agreement; and (3) correct typographical  
8 and scrivener's errors; and

9 WHEREAS, No statutory authority was given to the Illinois  
10 Commerce Commission to modify the terms of the final draft  
11 sourcing agreement or impose other obligations upon the Chicago  
12 Clean Energy project beyond the limitations set forth in Public  
13 Acts 97-96 and 97-630; and

14 WHEREAS, The Illinois Appellate and Supreme Courts have  
15 consistently held that, because administrative agencies are  
16 creatures of statute, they possess only those powers expressly  
17 delegated by law, and they may not act beyond their statutorily  
18 delegated authority; and

19 WHEREAS, The Illinois Appellate and Supreme Courts have  
20 consistently held that public policy in Illinois is expressed  
21 by the General Assembly, and it is not the province of an  
22 administrative agency to inquire into the wisdom and propriety  
23 of the legislature's act or to substitute its own judgment for

1 that of the legislature; therefore, be it

2 RESOLVED, BY THE SENATE OF THE NINETY-SEVENTH GENERAL  
3 ASSEMBLY OF THE STATE OF ILLINOIS, that we express serious  
4 concerns that the Illinois Commerce Commission Order entered on  
5 January 10, 2012 in Docket No. 11-0710: (1) modifies the final  
6 draft sourcing agreement with respect to recovery of costs  
7 despite the Commission lacking statutory authority to do so and  
8 despite the statutory language and legislative intent of Public  
9 Act 97-96 to provide full cost recovery to the Chicago Clean  
10 Energy project; (2) fails to delete one of the 2 provisions for  
11 early termination that were contained in the final draft  
12 sourcing agreements submitted to the Commission by the Illinois  
13 Power Agency; and (3) imposes an obligation to secure a  
14 third-party guarantee that is contemplated nowhere in statute,  
15 that exceeds the limited role envisioned for the Commission,  
16 and that is in addition to the substantial consumer protections  
17 already set forth in the statutory framework for the Chicago  
18 Clean Energy project; and be it further

19 RESOLVED, That we urge that the Illinois Commerce  
20 Commission rehear the matter and, upon rehearing, the  
21 Commissioners of the Illinois Commerce Commission reach a  
22 decision that reflects statutory directives and the intent of  
23 the Illinois General Assembly in passing Public Acts 97-96 and  
24 97-630; and be it further

1           RESOLVED, That suitable copies of this resolution be  
2 delivered to the Commissioners of the Illinois Commerce  
3 Commission, the Director of the Illinois Power Agency, and the  
4 Governor.