



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB1446

Introduced 2/20/2015, by Sen. Sue Rezin

SYNOPSIS AS INTRODUCED:

220 ILCS 5/16-115

Amends the Public Utilities Act. Provides that alternative retail electric suppliers may file commercially or financially sensitive information or trade secrets contained in specified reports or filings with the Commission without also filing a formal petition with the Chief Clerk of the Commission seeking a Commission order granting confidential treatment. Provides that, if an alternative retail electric supplier elects not to file a formal petition with the Chief Clerk of the Commission seeking such a Commission order, but still desires confidential treatment for the commercially or financially sensitive information or trade secrets submitted to the Commission, it must (1) provide the Commission contemporaneously with its filing an affidavit that sets forth both the reasons for the confidentiality and a public synopsis of the information for which confidential treatment is sought; and (2) provide the Commission contemporaneously with its filing both a "confidential" and a "public" version of the report, filing, or document for which it seeks confidential treatment with all confidential information marked "Confidential". Provides that the information identified as confidential by the alternative retail electric supplier shall be afforded proprietary treatment and shall be accessible only by the Commission and the Commission staff for a 2-year period from the date of submission to the Commission. Provides that nothing prevents the Commission (A) on its own motion, after reviewing the submittal of an alternative retail electric supplier pursuant to this subsection, from requiring the alternative retail electric supplier to file a formal petition with the Chief Clerk seeking confidential treatment; (B) from entering an order expanding the list of recurring reports or filings eligible for the confidential treatment process; or (C) from entering an order adjusting the time period information may be treated by the Commission as confidential. Effective immediately.

LRB099 10192 AMC 30416 b

1 AN ACT concerning utilities.

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

4 Section 5. The Public Utilities Act is amended by changing
5 Section 16-115 as follows:

6 (220 ILCS 5/16-115)

7 Sec. 16-115. Certification of alternative retail electric
8 suppliers.

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

16 (b) An alternative retail electric supplier seeking a
17 certificate of service authority shall file with the Commission
18 a verified application containing information showing that the
19 applicant meets the requirements of this Section. The
20 alternative retail electric supplier shall publish notice of
21 its application in the official State newspaper within 10 days
22 following the date of its filing. No later than 45 days after
23 the application is properly filed with the Commission, and such

1 notice is published, the Commission shall issue its order
2 granting or denying the application.

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

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

19 (1) That the applicant possesses sufficient technical,
20 financial and managerial resources and abilities to
21 provide the service for which it seeks a certificate of
22 service authority. In determining the level of technical,
23 financial and managerial resources and abilities which the
24 applicant must demonstrate, the Commission shall consider
25 (i) the characteristics, including the size and financial
26 sophistication, of the customers that the applicant seeks

1 to serve, and (ii) whether the applicant seeks to provide
2 electric power and energy using property, plant and
3 equipment which it owns, controls or operates;

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

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

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

22 (5) That the applicant will procure renewable energy
23 resources in accordance with Section 16-115D of this Act,
24 and will source electricity from clean coal facilities, as
25 defined in Section 1-10 of the Illinois Power Agency Act,
26 in amounts at least equal to the percentages set forth in

1 subsections (c) and (d) of Section 1-75 of the Illinois
2 Power Agency Act. For purposes of this Section:

3 (i) (Blank);

4 (ii) (Blank);

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

13 (iv) all alternative retail electric suppliers
14 shall execute a sourcing agreement to source
15 electricity from the initial clean coal facility, on
16 the terms set forth in paragraphs (3) and (4) of
17 subsection (d) of Section 1-75 of the Illinois Power
18 Agency Act, except that in lieu of the requirements in
19 subparagraphs (A) (v), (B) (i), (C) (v), and (C) (vi) of
20 paragraph (3) of that subsection (d), the applicant
21 shall execute one or more of the following:

22 (1) if the sourcing agreement is a power
23 purchase agreement, a contract with the initial
24 clean coal facility to purchase in each hour an
25 amount of electricity equal to all clean coal
26 energy made available from the initial clean coal

1 facility during such hour, which the utilities are
2 not required to procure under the terms of
3 subsection (d) of Section 1-75 of the Illinois
4 Power Agency Act, multiplied by a fraction, the
5 numerator of which is the alternative retail
6 electric supplier's retail market sales of
7 electricity (expressed in kilowatthours sold) in
8 the State during the prior calendar month and the
9 denominator of which is the total sales of
10 electricity (expressed in kilowatthours sold) in
11 the State by alternative retail electric suppliers
12 during such prior month that are subject to the
13 requirements of this paragraph (5) of subsection
14 (d) of this Section and subsection (d) of Section
15 1-75 of the Illinois Power Agency Act plus the
16 total sales of electricity (expressed in
17 kilowatthours sold) by utilities outside of their
18 service areas during such prior month, pursuant to
19 subsection (c) of Section 16-116 of this Act; or

20 (2) if the sourcing agreement is a contract for
21 differences, a contract with the initial clean
22 coal facility in each hour with respect to an
23 amount of electricity equal to all clean coal
24 energy made available from the initial clean coal
25 facility during such hour, which the utilities are
26 not required to procure under the terms of

1 subsection (d) of Section 1-75 of the Illinois
2 Power Agency Act, multiplied by a fraction, the
3 numerator of which is the alternative retail
4 electric supplier's retail market sales of
5 electricity (expressed in kilowatthours sold) in
6 the State during the prior calendar month and the
7 denominator of which is the total sales of
8 electricity (expressed in kilowatthours sold) in
9 the State by alternative retail electric suppliers
10 during such prior month that are subject to the
11 requirements of this paragraph (5) of subsection
12 (d) of this Section and subsection (d) of Section
13 1-75 of the Illinois Power Agency Act plus the
14 total sales of electricity (expressed in
15 kilowatthours sold) by utilities outside of their
16 service areas during such prior month, pursuant to
17 subsection (c) of Section 16-116 of this Act;

18 (v) if, in any year after the first year of
19 commercial operation, the owner of the clean coal
20 facility fails to demonstrate to the Commission that
21 the initial clean coal facility captured and
22 sequestered at least 50% of the total carbon emissions
23 that the facility would otherwise emit or that
24 sequestration of emissions from prior years has
25 failed, resulting in the release of carbon into the
26 atmosphere, the owner of the facility must offset

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

26 (vi) The Commission shall, after notice and

1 hearing, revoke the certification of any alternative
2 retail electric supplier that fails to execute a
3 sourcing agreement with the initial clean coal
4 facility as required by item (5) of subsection (d) of
5 this Section. The sourcing agreements with this
6 initial clean coal facility shall be subject to both
7 approval of the initial clean coal facility by the
8 General Assembly and satisfaction of the requirements
9 of item (4) of subsection (d) of Section 1-75 of the
10 Illinois Power Agency Act, and shall be executed within
11 90 days after any such approval by the General
12 Assembly. The Commission shall not accept an
13 application for certification from an alternative
14 retail electric supplier that has lost certification
15 under this subsection (d), or any corporate affiliate
16 thereof, for at least one year from the date of
17 revocation;

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

26 (7) That the applicant meets the requirements of

1 subsection (a) of Section 16-128; and

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

4 (d-5) (Blank).

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

24 (f) The Commission shall have the authority to promulgate
25 rules and regulations to carry out the provisions of this
26 Section. On or before May 1, 1999, the Commission shall adopt a

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

17 (g) In order to make more efficient use of the Commission's
18 resources as well as the resources of alternative retail
19 electric suppliers, with regard to the following routine
20 recurring reports or filings required to be made by an
21 alternative retail electric supplier pursuant to the rules of
22 the Commission: the annual Kilowatt-hour Reporting Requirement
23 pursuant to 83 Ill. Adm. Code 451.770; the annual net metering
24 reporting requirement pursuant to 83 Ill. Adm. Code 465.40;
25 Annual Report of Compliance with Renewable Energy Portfolio
26 Standard, 83 Ill. Adm. Code 455.120; and the annual Part 451

1 Continuing Compliance Report pursuant to 83 Ill. Adm. Code Part
2 451.710, alternative retail electric suppliers may file
3 commercially or financially sensitive information or trade
4 secrets contained in any such report or filing with the
5 Commission without also filing a formal petition with the Chief
6 Clerk of the Commission seeking a Commission order granting
7 confidential treatment. If an alternative retail electric
8 supplier elects not to file a formal petition with the Chief
9 Clerk of the Commission seeking such a Commission order, but
10 still desires confidential treatment for the commercially or
11 financially sensitive information or trade secrets submitted
12 to the Commission, it must (1) provide the Commission
13 contemporaneously with its filing an affidavit that sets forth
14 both the reasons for the confidentiality and a public synopsis
15 of the information for which confidential treatment is sought;
16 and (2) provide the Commission contemporaneously with its
17 filing both a "confidential" and a "public" version of the
18 report, filing, or document for which it seeks confidential
19 treatment with all confidential information marked
20 "Confidential". Absent notice from the Commission to the
21 alternative retail electric supplier to the contrary, and
22 provided the alternative retail electric supplier has followed
23 the requirements outlined in this subsection (g), information
24 identified as confidential by the alternative retail electric
25 supplier shall be afforded proprietary treatment and shall be
26 accessible only by the Commission and the Commission staff for

1 a 2-year period from the date of submission to the Commission.
2 Nothing in this subsection (g) prevents the Commission (A) on
3 its own motion, after reviewing the submittal of an alternative
4 retail electric supplier pursuant to this subsection (g), from
5 requiring the alternative retail electric supplier to file a
6 formal petition with the Chief Clerk seeking confidential
7 treatment; (B) from entering an order expanding the list of
8 recurring reports or filings eligible for the confidential
9 treatment process set forth in this subsection (g); or (C) from
10 entering an order adjusting the time period information may be
11 treated by the Commission as confidential.

12 (Source: P.A. 95-130, eff. 1-1-08; 95-1027, eff. 6-1-09;
13 96-159, eff. 8-10-09.)

14 Section 99. Effective date. This Act takes effect upon
15 becoming law.