

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 Sections 16-115 and 19-110 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) An alternative retail electric supplier may seek  
18 confidential treatment for the following information by filing  
19 an affidavit with the Commission so long as the affidavit meets  
20 the requirements in this subsection (g):

21 (1) the total annual kilowatt-hours delivered and sold  
22 by an alternative retail electric supplier to retail  
23 customers within each utility service territory and the  
24 total annual kilowatt-hours delivered and sold by an  
25 alternative retail electric supplier to retail customers  
26 in all utility service territories in the preceding

1 calendar year as required by 83 Ill. Adm. Code 451.770;

2 (2) the total peak demand supplied by an alternative  
3 retail electric supplier during the previous year in each  
4 utility service territory as required by 83 Ill. Adm. Code  
5 465.40;

6 (3) a good faith estimate of the amount an alternative  
7 retail electric supplier expects to be obliged to pay the  
8 utility under single billing tariffs during the next 12  
9 months and the amount of any bond or letter of credit used  
10 to demonstrate an alternative retail electric supplier's  
11 credit worthiness to provide single billing services  
12 pursuant to 83 Ill. Adm. Code 451.510(a) and (b).

13 The affidavit must be filed contemporaneously with the  
14 information for which confidential treatment is sought and must  
15 clearly state that the affiant seeks confidential treatment  
16 pursuant to this subsection (g) and the information for which  
17 confidential treatment is sought must be clearly identified on  
18 the confidential version of the document filed with the  
19 Commission. The affidavit must be accompanied by a  
20 "confidential" and a "public" version of the document or  
21 documents containing the information for which confidential  
22 treatment is sought.

23 If the alternative retail electric supplier has met the  
24 affidavit requirements of this subsection (g), then the  
25 Commission shall afford confidential treatment to the  
26 information identified in the affidavit for a period of 2 years

1 after the date the affidavit is received by the Commission.

2 Nothing in this subsection (g) prevents an alternative  
3 retail electric supplier from filing a petition with the  
4 Commission seeking confidential treatment for information  
5 beyond that identified in this subsection (g) or for  
6 information contained in other reports or documents filed with  
7 the Commission.

8 Nothing in this subsection (g) prevents the Commission, on  
9 its own motion, or any party from filing a formal petition with  
10 the Commission seeking to reconsider the conferring of  
11 confidential status on an item of information afforded  
12 confidential treatment pursuant to this subsection (g).

13 The Commission, on its own motion, may at any time initiate  
14 a docketed proceeding to investigate the continued  
15 applicability of this subsection (g) to the information  
16 contained in items (i), (ii), and (iii) of this subsection (g).  
17 If, at the end of such investigation, the Commission determines  
18 that a particular item of information should no longer be  
19 eligible for the affidavit-based process outlined in this  
20 subsection (g), the Commission may enter an order to remove  
21 that item from the list of items eligible for the process set  
22 forth in this subsection (g). Notwithstanding any such order,  
23 in the event the Commission makes such a determination, nothing  
24 in this subsection (g) prevents an alternative retail electric  
25 supplier desiring confidential treatment for such information  
26 from filing a formal petition with the Commission seeking

1 confidential treatment for such information.

2 (Source: P.A. 95-130, eff. 1-1-08; 95-1027, eff. 6-1-09;  
3 96-159, eff. 8-10-09.)

4 (220 ILCS 5/19-110)

5 Sec. 19-110. Certification of alternative gas suppliers.

6 (a) The provisions of this Section shall apply only to  
7 alternative gas suppliers serving or seeking to serve  
8 residential or small commercial customers and only to the  
9 extent such alternative gas suppliers provide services to  
10 residential or small commercial customers.

11 (b) An alternative gas supplier must obtain a certificate  
12 of service authority from the Commission in accordance with  
13 this Section before serving any customer or other user located  
14 in this State. An alternative gas supplier may request, and the  
15 Commission may grant, a certificate of service authority for  
16 the entire State or for a specified geographic area of the  
17 State. A person, corporation, or other entity acting as an  
18 alternative gas supplier on the effective date of this  
19 amendatory Act of the 92nd General Assembly shall have 180 days  
20 from the effective date of this amendatory Act of the 92nd  
21 General Assembly to comply with the requirements of this  
22 Section in order to continue to operate as an alternative gas  
23 supplier.

24 (c) An alternative gas supplier seeking a certificate of  
25 service authority shall file with the Commission a verified

1 application containing information showing that the applicant  
2 meets the requirements of this Section. The alternative gas  
3 supplier shall publish notice of its application in the  
4 official State newspaper within 10 days following the date of  
5 its filing. No later than 45 days after the application is  
6 properly filed with the Commission, and such notice is  
7 published, the Commission shall issue its order granting or  
8 denying the application.

9 (d) An application for a certificate of service authority  
10 shall identify the area or areas in which the applicant intends  
11 to offer service and the types of services it intends to offer.  
12 Applicants that seek to serve residential or small commercial  
13 customers within a geographic area that is smaller than a gas  
14 utility's service area shall submit evidence demonstrating  
15 that the designation of this smaller area does not violate  
16 Section 19-115. An applicant may state in its application for  
17 certification any limitations that will be imposed on the  
18 number of customers or maximum load to be served. The applicant  
19 shall submit as part of its application a statement indicating:

20 (1) Whether the applicant has been denied a natural gas  
21 supplier license in any state in the United States.

22 (2) Whether the applicant has had a natural gas  
23 supplier license suspended or revoked by any state in the  
24 United States.

25 (3) Where, if any, other natural gas supplier license  
26 applications are pending in the United States.

1           (4) Whether the applicant is the subject of any  
2 lawsuits filed in a court of law or formal complaints filed  
3 with a regulatory agency alleging fraud, deception or  
4 unfair marketing practices, or other similar allegations,  
5 identifying the name, case number, and jurisdiction of each  
6 such lawsuit or complaint.

7           For the purposes of this subsection (d), formal complaints  
8 include only those complaints that seek a binding determination  
9 from a state or federal regulatory body.

10          (e) The Commission shall grant the application for a  
11 certificate of service authority if it makes the findings set  
12 forth in this subsection based on the verified application and  
13 such other information as the applicant may submit.

14           (1) That the applicant possesses sufficient technical,  
15 financial, and managerial resources and abilities to  
16 provide the service for which it seeks a certificate of  
17 service authority. In determining the level of technical,  
18 financial, and managerial resources and abilities which  
19 the applicant must demonstrate, the Commission shall  
20 consider:

21           (A) the characteristics, including the size and  
22 financial sophistication of the customers that the  
23 applicant seeks to serve;

24           (B) whether the applicant seeks to provide gas  
25 using property, plant, and equipment that it owns,  
26 controls, or operates; and

1           (C) the applicant's commitment of resources to the  
2           management of sales and marketing staff, through  
3           affirmative managerial policies, independent audits,  
4           technology, hands-on field monitoring and training,  
5           and, in the case of applicants who will have sales  
6           personnel or sales agents within the State of Illinois,  
7           the applicant's managerial presence within the State.

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

13          (3) That the applicant will comply with such  
14          informational or reporting requirements as the Commission  
15          may by rule establish.

16          (4) That the area to be served by the applicant and any  
17          limitations it proposes on the number of customers or  
18          maximum amount of load to be served meet the provisions of  
19          Section 19-115, provided, that if the applicant seeks to  
20          serve an area smaller than the service area of a gas  
21          utility or proposes other limitations on the number of  
22          customers or maximum amount of load to be served, the  
23          Commission can extend the time for considering such a  
24          certificate request by up to 90 days, and can schedule  
25          hearings on such a request.

26          (5) That the applicant and the applicant's sales agents



1 will comply with all other applicable laws and rules.

2 (f) The Commission can extend the time for considering such  
3 a certificate request by up to 90 days, and can schedule  
4 hearings on such a request if:

5 (1) a party to the application proceeding has formally  
6 requested that the Commission hold hearings in a pleading  
7 that alleges that one or more of the allegations or  
8 certifications in the application is false or misleading;  
9 or

10 (2) other facts or circumstances exist that will  
11 necessitate additional time or evidence in order to  
12 determine whether a certificate should be issued.

13 (g) The Commission shall have the authority to promulgate  
14 rules to carry out the provisions of this Section. Within 30  
15 days after the effective date of this amendatory Act of the  
16 92nd General Assembly, the Commission shall adopt an emergency  
17 rule or rules applicable to the certification of those gas  
18 suppliers that seek to serve residential customers. Within 180  
19 days of the effective date of this amendatory Act of the 92nd  
20 General Assembly, the Commission shall adopt rules that specify  
21 criteria which, if met by any such alternative gas supplier,  
22 shall constitute the demonstration of technical, financial,  
23 and managerial resources and abilities to provide service  
24 required by item (1) of subsection (e) of this Section, such as  
25 a requirement to post a bond or letter of credit, from a  
26 responsible surety or financial institution, of sufficient

1 size for the nature and scope of the services to be provided,  
2 demonstration of adequate insurance for the scope and nature of  
3 the services to be provided, and experience in providing  
4 similar services in other jurisdictions.

5 (h) The Commission may deny with prejudice any application  
6 that repeatedly fails to include the attachments,  
7 documentation, and affidavits required by the application form  
8 or that repeatedly fails to provide any other information  
9 required by this Section.

10 (i) An alternative gas supplier may seek confidential  
11 treatment for the reporting to the Commission of its total  
12 annual dekatherms delivered and sold by it to residential and  
13 small commercial customers by utility service territory during  
14 the preceding year via the filing of an affidavit with the  
15 Commission so long as the affidavit meets the requirements of  
16 this subsection (i). The affidavit must be filed  
17 contemporaneously with the information for which confidential  
18 treatment is sought and must clearly state that the affiant  
19 seeks confidential treatment pursuant to this subsection (i)  
20 and the information for which confidential treatment is sought  
21 must be clearly identified on the confidential version of the  
22 document filed with the Commission. The affidavit must be  
23 accompanied by both a "confidential" and a "public" version of  
24 the document or documents containing the information for which  
25 confidential treatment is sought.

26 If the alternative gas supplier has met the affidavit

1 requirements of this subsection (i), then the Commission shall  
2 afford confidential treatment to the information identified in  
3 the affidavit for a period of 2 years after the date the  
4 affidavit is received by the Commission.

5 Nothing in this subsection (i) prevents an alternative gas  
6 supplier from filing a petition with the Commission seeking  
7 confidential treatment for information beyond that identified  
8 in this subsection (i) or for information contained in other  
9 reports or documents filed with the Commission.

10 Nothing in this subsection (i) prevents the Commission, on  
11 its own motion, or any party from filing a formal petition with  
12 the Commission seeking to reconsider the conferring of  
13 confidential status pursuant to this subsection (i).

14 The Commission, on its own motion, may at any time initiate  
15 a docketed proceeding to investigate the continued  
16 applicability of this affidavit-based process for seeking  
17 confidential treatment. If, at the end of such investigation,  
18 the Commission determines that this affidavit-based process  
19 for seeking confidential treatment for the information is no  
20 longer necessary, the Commission may enter an order to that  
21 effect. Notwithstanding any such order, in the event the  
22 Commission makes such a determination, nothing in this  
23 subsection (i) prevents an alternative gas supplier desiring  
24 confidential treatment for such information from filing a  
25 formal petition with the Commission seeking confidential  
26 treatment for such information.

1 (Source: P.A. 95-1051, eff. 4-10-09.)

2 Section 99. Effective date. This Act takes effect upon  
3 becoming law.