

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.