



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

SB1485

Introduced 2/20/2015, by Sen. Don Harmon - David Koehler -  
Jacqueline Y. Collins

#### SYNOPSIS AS INTRODUCED:

See Index

Amends the Illinois Power Agency Act. Requires the Planning and Procurement Bureau to establish a long-term renewable resources procurement plan that includes all renewable energy credits necessary to meet specified goals (replacing the current renewable portfolio standards). Sets forth guidelines for what shall be included in the procurement plan. Makes changes to provisions concerning definitions, the powers of the Agency, the Illinois Power Agency Renewable Energy Resources Fund, and the duties of the Planning and Procurement Bureau. Amends the Public Utilities Act. Makes changes concerning nondiscrimination, energy efficiency and demand-response measures, natural gas efficiency programs, real-time pricing, infrastructure investment and modernization, the Illinois Smart Grid test bed, and on-bill financing programs for electric and gas utilities. Adds provisions related to renewable energy credit procurement. Amends the Environmental Protection Act. Provides that upon promulgation by the U.S. Environmental Protection Agency of a final rule regulating carbon dioxide emissions from existing electric generating units, the Illinois Environmental Protection Agency shall be authorized to implement a cap and invest program or similar market mechanism to regulate carbon dioxide emissions. Makes other changes. Effective immediately.

LRB099 06216 AMC 30867 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

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

4 Section 5. The Illinois Power Agency Act is amended by  
5 changing Sections 1-5, 1-10, 1-20, 1-56, and 1-75 as follows:

6 (20 ILCS 3855/1-5)

7 Sec. 1-5. Legislative declarations and findings. The  
8 General Assembly finds and declares:

9 (1) The health, welfare, and prosperity of all Illinois  
10 citizens require the provision of adequate, reliable,  
11 affordable, efficient, and environmentally sustainable  
12 electric service at the lowest total cost over time, taking  
13 into account any benefits of price stability.

14 (2) The transition to retail competition is not  
15 complete. Some customers, especially residential and small  
16 commercial customers, have failed to benefit from lower  
17 electricity costs from retail and wholesale competition.

18 (3) Escalating prices for electricity in Illinois pose  
19 a serious threat to the economic well-being, health, and  
20 safety of the residents of and the commerce and industry of  
21 the State.

22 (4) To protect against this threat to economic  
23 well-being, health, and safety it is necessary to improve

1 the process of procuring electricity to serve Illinois  
2 residents, to promote investment in energy efficiency and  
3 demand-response measures, and to support development of  
4 clean coal technologies and renewable resources.

5 (5) Procuring a diverse electricity supply portfolio  
6 will ensure the lowest total cost over time for adequate,  
7 reliable, efficient, and environmentally sustainable  
8 electric service.

9 (6) Including cost-effective renewable resources in  
10 that portfolio will reduce long-term direct and indirect  
11 costs to consumers by decreasing environmental impacts and  
12 by avoiding or delaying the need for new generation,  
13 transmission, and distribution infrastructure.

14 (7) Energy efficiency, demand-response measures, and  
15 renewable energy are resources currently underused in  
16 Illinois. These and other demand-side resources should be  
17 used when cost-effective to reduce costs to consumers and  
18 encourage job creation.

19 (8) The State should encourage the use of advanced  
20 clean coal technologies that capture and sequester carbon  
21 dioxide emissions to advance environmental protection  
22 goals and to demonstrate the viability of coal and  
23 coal-derived fuels in a carbon-constrained economy.

24 (9) The General Assembly enacted Public Act 96-0795 to  
25 reform the State's purchasing processes, recognizing that  
26 government procurement is susceptible to abuse if

1 structural and procedural safeguards are not in place to  
2 ensure independence, insulation, oversight, and  
3 transparency.

4 (10) The principles that underlie the procurement  
5 reform legislation apply also in the context of power  
6 purchasing.

7 The General Assembly therefore finds that it is necessary  
8 to create the Illinois Power Agency and that the goals and  
9 objectives of that Agency are to accomplish each of the  
10 following:

11 (A) Develop electricity procurement plans to ensure  
12 adequate, reliable, affordable, efficient, and  
13 environmentally sustainable electric service at the lowest  
14 total cost over time, taking into account any benefits of  
15 price stability, for electric utilities that on December  
16 31, 2005 provided electric service to at least 100,000  
17 customers in Illinois and for small multi-jurisdictional  
18 electric utilities that (i) on December 31, 2005 served  
19 less than 100,000 customers in Illinois and (ii) request a  
20 procurement plan for their Illinois jurisdictional load.  
21 The procurement plan shall be updated on an annual basis  
22 and shall include renewable energy resources sufficient to  
23 achieve the standards specified in this Act.

24 (B) Conduct competitive procurement processes to  
25 procure the supply resources identified in the procurement  
26 plan.

1 (C) Develop electric generation and co-generation  
2 facilities that use indigenous coal or renewable  
3 resources, or both, financed with bonds issued by the  
4 Illinois Finance Authority.

5 (D) Supply electricity from the Agency's facilities at  
6 cost to one or more of the following: municipal electric  
7 systems, governmental aggregators, or rural electric  
8 cooperatives in Illinois.

9 (E) Ensure that the process of power procurement is  
10 conducted in an ethical and transparent fashion, immune  
11 from improper influence.

12 (F) Continue to review its policies and practices to  
13 determine how best to meet its mission of providing the  
14 lowest cost power to the greatest number of people, at any  
15 given point in time, in accordance with applicable law.

16 (G) Operate in a structurally insulated, independent,  
17 and transparent fashion so that nothing impedes the  
18 Agency's mission to secure power at the best prices the  
19 market will bear, provided that the Agency meets all  
20 applicable legal requirements.

21 (Source: P.A. 97-325, eff. 8-12-11; 97-618, eff. 10-26-11;  
22 97-813, eff. 7-13-12.)

23 (20 ILCS 3855/1-10)

24 Sec. 1-10. Definitions.

25 "Agency" means the Illinois Power Agency.

1 "Agency loan agreement" means any agreement pursuant to  
2 which the Illinois Finance Authority agrees to loan the  
3 proceeds of revenue bonds issued with respect to a project to  
4 the Agency upon terms providing for loan repayment installments  
5 at least sufficient to pay when due all principal of, interest  
6 and premium, if any, on those revenue bonds, and providing for  
7 maintenance, insurance, and other matters in respect of the  
8 project.

9 "Authority" means the Illinois Finance Authority.

10 "Brownfield solar project" means an electric generating  
11 facility that:

12 (1) generates electricity using photovoltaic cells;

13 (2) is interconnected at the distribution system level  
14 of either an electric utility as defined in this Section, a  
15 municipal utility as defined in Section 3-105 of the Public  
16 Utilities Act, or a rural electric cooperative as defined  
17 in Section 3-119 of the Public Utilities Act; and

18 (3) is located on a site that is regulated by any of  
19 the following entities under the following programs:

20 (i) the United States Environmental Protection  
21 Agency under the federal Comprehensive Environmental  
22 Response, Compensation, and Liability Act of 1980, as  
23 amended;

24 (ii) the United States Environmental Protection  
25 Agency under the Corrective Action Program of the  
26 federal Resource Conservation and Recovery Act, as

1           amended;  
2                   (iii) the Illinois Environmental Protection Agency  
3           under the Illinois Site Remediation Program; or  
4                   (iv) the Illinois Environmental Protection Agency  
5           under the Illinois Solid Waste Program.

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

1 million btu content, unless the clean coal facility does not  
2 use gasification technology and was operating as a conventional  
3 coal-fired electric generating facility on June 1, 2009 (the  
4 effective date of Public Act 95-1027).

5 "Clean coal SNG brownfield facility" means a facility that  
6 (1) has commenced construction by July 1, 2015 on an urban  
7 brownfield site in a municipality with at least 1,000,000  
8 residents; (2) uses a gasification process to produce  
9 substitute natural gas; (3) uses coal as at least 50% of the  
10 total feedstock over the term of any sourcing agreement with a  
11 utility and the remainder of the feedstock may be either  
12 petroleum coke or coal, with all such coal having a high  
13 bituminous rank and greater than 1.7 pounds of sulfur per  
14 million Btu content unless the facility reasonably determines  
15 that it is necessary to use additional petroleum coke to  
16 deliver additional consumer savings, in which case the facility  
17 shall use coal for at least 35% of the total feedstock over the  
18 term of any sourcing agreement; and (4) captures and sequesters  
19 at least 85% of the total carbon dioxide emissions that the  
20 facility would otherwise emit.

21 "Clean coal SNG facility" means a facility that uses a  
22 gasification process to produce substitute natural gas, that  
23 sequesters at least 90% of the total carbon dioxide emissions  
24 that the facility would otherwise emit, that uses at least 90%  
25 coal as a feedstock, with all such coal having a high  
26 bituminous rank and greater than 1.7 pounds of sulfur per



1 million btu content, and that has a valid and effective permit  
2 to construct emission sources and air pollution control  
3 equipment and approval with respect to the federal regulations  
4 for Prevention of Significant Deterioration of Air Quality  
5 (PSD) for the plant pursuant to the federal Clean Air Act;  
6 provided, however, a clean coal SNG brownfield facility shall  
7 not be a clean coal SNG facility.

8 "Commission" means the Illinois Commerce Commission.

9 "Community solar project" means an electric generating  
10 facility that:

11 (1) generates electricity using photovoltaic cells;

12 (2) is interconnected at the distribution system level  
13 of an electric utility as defined in this Section;

14 (3) credits the value of electricity generated by the  
15 facility to the subscribers of the facility; and

16 (4) is limited in nameplate capacity to no more than  
17 2,000 kilowatts.

18 "Costs incurred in connection with the development and  
19 construction of a facility" means:

20 (1) the cost of acquisition of all real property,  
21 fixtures, and improvements in connection therewith and  
22 equipment, personal property, and other property, rights,  
23 and easements acquired that are deemed necessary for the  
24 operation and maintenance of the facility;

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

1           (3) all origination, commitment, utilization,  
2 facility, placement, underwriting, syndication, credit  
3 enhancement, and rating agency fees;

4           (4) engineering, design, procurement, consulting,  
5 legal, accounting, title insurance, survey, appraisal,  
6 escrow, trustee, collateral agency, interest rate hedging,  
7 interest rate swap, capitalized interest, contingency, as  
8 required by lenders, and other financing costs, and other  
9 expenses for professional services; and

10          (5) the costs of plans, specifications, site study and  
11 investigation, installation, surveys, other Agency costs  
12 and estimates of costs, and other expenses necessary or  
13 incidental to determining the feasibility of any project,  
14 together with such other expenses as may be necessary or  
15 incidental to the financing, insuring, acquisition, and  
16 construction of a specific project and starting up,  
17 commissioning, and placing that project in operation.

18          "Delivery services" has the same definition as found in  
19 Section 16-102 of the Public Utilities Act.

20          "Delivery year" means the year beginning June 1 of the year  
21 referenced and ending May 31 of the following year.

22          "Department" means the Department of Commerce and Economic  
23 Opportunity.

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

25          "Demand-response" means measures that decrease peak  
26 electricity demand or shift demand from peak to off-peak

1 periods.

2 "Distributed renewable energy generation device" means a  
3 device that is:

4 (1) powered by wind, solar thermal energy,  
5 photovoltaic cells and panels, biodiesel, crops and  
6 untreated and unadulterated organic waste biomass, tree  
7 waste, and hydropower that does not involve new  
8 construction or significant expansion of hydropower dams;

9 (2) interconnected at the distribution system level of  
10 either an electric utility as defined in this Section, ~~an~~  
11 ~~alternative retail electric supplier as defined in Section~~  
12 ~~16-102 of the Public Utilities Act,~~ a municipal utility as  
13 defined in Section 3-105 of the Public Utilities Act, or a  
14 rural electric cooperative as defined in Section 3-119 of  
15 the Public Utilities Act;

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

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

21 "Energy efficiency" means measures that reduce the amount  
22 of electricity or natural gas required to achieve a given end  
23 use. "Energy efficiency" also includes measures that reduce the  
24 total Btus of electricity and natural gas needed to meet the  
25 end use or uses.

26 "Electric utility" has the same definition as found in

1 Section 16-102 of the Public Utilities Act.

2 "Facility" means an electric generating unit or a  
3 co-generating unit that produces electricity along with  
4 related equipment necessary to connect the facility to an  
5 electric transmission or distribution system.

6 "Governmental aggregator" means one or more units of local  
7 government that individually or collectively procure  
8 electricity to serve residential retail electrical loads  
9 located within its or their jurisdiction.

10 "Local government" means a unit of local government as  
11 defined in Section 1 of Article VII of the Illinois  
12 Constitution.

13 "Municipality" means a city, village, or incorporated  
14 town.

15 "Person" means any natural person, firm, partnership,  
16 corporation, either domestic or foreign, company, association,  
17 limited liability company, joint stock company, or association  
18 and includes any trustee, receiver, assignee, or personal  
19 representative thereof.

20 "Nameplate capacity" means the aggregate inverter  
21 nameplate capacity in kilowatts AC.

22 "Project" means the planning, bidding, and construction of  
23 a facility.

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

26 "Real property" means any interest in land together with

1 all structures, fixtures, and improvements thereon, including  
2 lands under water and riparian rights, any easements,  
3 covenants, licenses, leases, rights-of-way, uses, and other  
4 interests, together with any liens, judgments, mortgages, or  
5 other claims or security interests related to real property.

6 "Renewable energy credit" means a tradable credit that  
7 represents the environmental attributes of one megawatt hour ~~a~~  
8 ~~certain amount~~ of energy produced from a renewable energy  
9 generating facility resource.

10 "Renewable energy resources" includes energy and its  
11 associated renewable energy credit or renewable energy credits  
12 from wind, solar thermal energy, photovoltaic cells and panels,  
13 biodiesel, anaerobic digestion, crops and untreated and  
14 unadulterated organic waste biomass, tree waste, hydropower  
15 that does not involve new construction or significant expansion  
16 of hydropower dams, and other alternative sources of  
17 environmentally preferable energy. For purposes of this Act,  
18 landfill gas produced in the State is considered a renewable  
19 energy resource. "Renewable energy resources" does not include  
20 the incineration or burning of tires, garbage, general  
21 household, institutional, and commercial waste, industrial  
22 lunchroom or office waste, landscape waste other than tree  
23 waste, railroad crossties, utility poles, or construction or  
24 demolition debris, other than untreated and unadulterated  
25 waste wood.

26 "Revenue bond" means any bond, note, or other evidence of

1 indebtedness issued by the Authority, the principal and  
2 interest of which is payable solely from revenues or income  
3 derived from any project or activity of the Agency.

4 "Sequester" means permanent storage of carbon dioxide by  
5 injecting it into a saline aquifer, a depleted gas reservoir,  
6 or an oil reservoir, directly or through an enhanced oil  
7 recovery process that may involve intermediate storage,  
8 regardless of whether these activities are conducted by a clean  
9 coal facility, a clean coal SNG facility, a clean coal SNG  
10 brownfield facility, or a party with which a clean coal  
11 facility, clean coal SNG facility, or clean coal SNG brownfield  
12 facility has contracted for such purposes.

13 "Service area" has the same definition as found in Section  
14 16-102 of the Public Utilities Act.

15 "Sourcing 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, (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, and (iii) in case of a gas utility,  
25 an agreement between the owner of a clean coal SNG brownfield  
26 facility and the gas utility, which agreement shall have the

1 terms and conditions meeting the requirements of subsection  
2 (h-1) of Section 9-220 of the Public Utilities Act.

3 "Standard wholesale product" means any type of product that  
4 is routinely traded in a liquid regional wholesale market,  
5 including, but not limited to, energy or demand-side resources.

6 "Subscriber" means any customer that takes delivery  
7 service from an electric utility who owns one or more  
8 subscriptions to a community solar project and who has  
9 identified an individual billing meter within the same electric  
10 utility service territory as the community solar project is  
11 located to which each subscription shall be attributed. Each  
12 subscriber to a single community solar project must have a  
13 separate legal or corporate identity, and no subscriber's  
14 subscriptions may total more than 40% of an individual  
15 community solar project.

16 "Subscription" means a percentage interest in a community  
17 solar project. Each subscription shall represent a percentage  
18 of the community solar project's generating capacity, provided  
19 that the subscription is intended to primarily offset part or  
20 all of the subscriber's electricity usage.

21 "Substitute natural gas" or "SNG" means a gas manufactured  
22 by gasification of hydrocarbon feedstock, which is  
23 substantially interchangeable in use and distribution with  
24 conventional natural gas.

25 "Total resource cost test" or "TRC test" means a standard  
26 that is met if, for an investment in energy efficiency or

1 demand-response measures, the benefit-cost ratio is greater  
2 than one. The benefit-cost ratio is the ratio of the net  
3 present value of the total benefits of the program to the net  
4 present value of the total costs as calculated over the  
5 lifetime of the measures. A total resource cost test compares  
6 the sum of avoided electric utility costs, representing the  
7 benefits that accrue to the system and the participant in the  
8 delivery of those efficiency measures, including avoided  
9 energy costs, avoided generating capacity costs, avoided  
10 transmission and distribution system investments and price  
11 suppression effects, as well as other quantifiable societal  
12 benefits, including avoided natural gas utility costs, other  
13 avoided energy costs, and reasonable estimates of non-energy  
14 benefits, such as the health, safety, comfort, operation and  
15 maintenance, business productivity, and financial security  
16 benefits to low-income and moderate-income customers of  
17 efficiency investments, to the sum of all incremental costs of  
18 end-use measures that are implemented due to the program  
19 (including both utility and participant contributions), plus  
20 costs to administer, deliver, and evaluate each demand-side  
21 program, to quantify the net savings obtained by substituting  
22 the demand-side program for supply resources. In calculating  
23 avoided costs of power and energy that an electric utility  
24 would otherwise have had to acquire, reasonable estimates shall  
25 be included of financial costs likely to be imposed by future  
26 regulations and legislation on emissions of greenhouse gases.



1 In discounting future costs and benefits for the purpose of  
2 computing net present values, a societal discount rate based on  
3 real, long-term Treasury bond yields or other appropriate  
4 indicators should be used.

5 (Source: P.A. 97-96, eff. 7-13-11; 97-239, eff. 8-2-11; 97-491,  
6 eff. 8-22-11; 97-616, eff. 10-26-11; 97-813, eff. 7-13-12;  
7 98-90, eff. 7-15-13.)

8 (20 ILCS 3855/1-20)

9 Sec. 1-20. General powers of the Agency.

10 (a) The Agency is authorized to do each of the following:

11 (1) Develop electricity procurement plans to ensure  
12 adequate, reliable, affordable, efficient, and  
13 environmentally sustainable electric service at the lowest  
14 total cost over time, taking into account any benefits of  
15 price stability, for electric utilities that on December  
16 31, 2005 provided electric service to at least 100,000  
17 customers in Illinois and for small multi-jurisdictional  
18 electric utilities that (A) on December 31, 2005 served  
19 less than 100,000 customers in Illinois and (B) request a  
20 procurement plan for their Illinois jurisdictional load.  
21 The electricity procurement plans shall be updated on an  
22 annual basis and shall, until May 31, 2016, include  
23 electricity generated from renewable resources sufficient  
24 to achieve the standards specified in this Act and shall  
25 include energy efficiency and demand response resources

1 identified under Sections 16-108.5, 16-111.5, and  
2 16-111.5B of the Public Utilities Act.

3 (1.5) Beginning with the planning process for the plan  
4 or plans to be implemented in the 2016 delivery year,  
5 develop a long-term renewable resources procurement plan  
6 in accordance with subdivision (c) of Section 1-75 of this  
7 Act for renewable energy credits in amounts sufficient to  
8 achieve the standards specified in this Act for all  
9 customers taking delivery service from an electric  
10 utility.

11 (2) Conduct competitive procurement processes to  
12 procure the supply resources identified in the electricity  
13 procurement plan, pursuant to Section 16-111.5 of the  
14 Public Utilities Act.

15 Beginning with the 2016 delivery year, conduct  
16 competitive procurement processes and implement programs  
17 to procure renewable energy credits identified in the  
18 long-term renewable resources procurement plan developed  
19 pursuant to subdivision (c) of Section 1-75 of this Act and  
20 procured pursuant to Section 16-111.5C of the Public  
21 Utilities Act.

22 (3) Develop electric generation and co-generation  
23 facilities that use indigenous coal or renewable  
24 resources, or both, financed with bonds issued by the  
25 Illinois Finance Authority.

26 (4) Supply electricity from the Agency's facilities at

1 cost to one or more of the following: municipal electric  
2 systems, governmental aggregators, or rural electric  
3 cooperatives in Illinois.

4 (b) Except as otherwise limited by this Act, the Agency has  
5 all of the powers necessary or convenient to carry out the  
6 purposes and provisions of this Act, including without  
7 limitation, each of the following:

8 (1) To have a corporate seal, and to alter that seal at  
9 pleasure, and to use it by causing it or a facsimile to be  
10 affixed or impressed or reproduced in any other manner.

11 (2) To use the services of the Illinois Finance  
12 Authority necessary to carry out the Agency's purposes.

13 (3) To negotiate and enter into loan agreements and  
14 other agreements with the Illinois Finance Authority.

15 (4) To obtain and employ personnel and hire consultants  
16 that are necessary to fulfill the Agency's purposes, and to  
17 make expenditures for that purpose within the  
18 appropriations for that purpose.

19 (5) To purchase, receive, take by grant, gift, devise,  
20 bequest, or otherwise, lease, or otherwise acquire, own,  
21 hold, improve, employ, use, and otherwise deal in and with,  
22 real or personal property whether tangible or intangible,  
23 or any interest therein, within the State.

24 (6) To acquire real or personal property, whether  
25 tangible or intangible, including without limitation  
26 property rights, interests in property, franchises,

1 obligations, contracts, and debt and equity securities,  
2 and to do so by the exercise of the power of eminent domain  
3 in accordance with Section 1-21; except that any real  
4 property acquired by the exercise of the power of eminent  
5 domain must be located within the State.

6 (7) To sell, convey, lease, exchange, transfer,  
7 abandon, or otherwise dispose of, or mortgage, pledge, or  
8 create a security interest in, any of its assets,  
9 properties, or any interest therein, wherever situated.

10 (8) To purchase, take, receive, subscribe for, or  
11 otherwise acquire, hold, make a tender offer for, vote,  
12 employ, sell, lend, lease, exchange, transfer, or  
13 otherwise dispose of, mortgage, pledge, or grant a security  
14 interest in, use, and otherwise deal in and with, bonds and  
15 other obligations, shares, or other securities (or  
16 interests therein) issued by others, whether engaged in a  
17 similar or different business or activity.

18 (9) To make and execute agreements, contracts, and  
19 other instruments necessary or convenient in the exercise  
20 of the powers and functions of the Agency under this Act,  
21 including contracts with any person, including personal  
22 service contracts, or with any local government, State  
23 agency, or other entity; and all State agencies and all  
24 local governments are authorized to enter into and do all  
25 things necessary to perform any such agreement, contract,  
26 or other instrument with the Agency. No such agreement,

1 contract, or other instrument shall exceed 40 years.

2 (10) To lend money, invest and reinvest its funds in  
3 accordance with the Public Funds Investment Act, and take  
4 and hold real and personal property as security for the  
5 payment of funds loaned or invested.

6 (11) To borrow money at such rate or rates of interest  
7 as the Agency may determine, issue its notes, bonds, or  
8 other obligations to evidence that indebtedness, and  
9 secure any of its obligations by mortgage or pledge of its  
10 real or personal property, machinery, equipment,  
11 structures, fixtures, inventories, revenues, grants, and  
12 other funds as provided or any interest therein, wherever  
13 situated.

14 (12) To enter into agreements with the Illinois Finance  
15 Authority to issue bonds whether or not the income  
16 therefrom is exempt from federal taxation.

17 (13) To procure insurance against any loss in  
18 connection with its properties or operations in such amount  
19 or amounts and from such insurers, including the federal  
20 government, as it may deem necessary or desirable, and to  
21 pay any premiums therefor.

22 (14) To negotiate and enter into agreements with  
23 trustees or receivers appointed by United States  
24 bankruptcy courts or federal district courts or in other  
25 proceedings involving adjustment of debts and authorize  
26 proceedings involving adjustment of debts and authorize

1 legal counsel for the Agency to appear in any such  
2 proceedings.

3 (15) To file a petition under Chapter 9 of Title 11 of  
4 the United States Bankruptcy Code or take other similar  
5 action for the adjustment of its debts.

6 (16) To enter into management agreements for the  
7 operation of any of the property or facilities owned by the  
8 Agency.

9 (17) To enter into an agreement to transfer and to  
10 transfer any land, facilities, fixtures, or equipment of  
11 the Agency to one or more municipal electric systems,  
12 governmental aggregators, or rural electric agencies or  
13 cooperatives, for such consideration and upon such terms as  
14 the Agency may determine to be in the best interest of the  
15 citizens of Illinois.

16 (18) To enter upon any lands and within any building  
17 whenever in its judgment it may be necessary for the  
18 purpose of making surveys and examinations to accomplish  
19 any purpose authorized by this Act.

20 (19) To maintain an office or offices at such place or  
21 places in the State as it may determine.

22 (20) To request information, and to make any inquiry,  
23 investigation, survey, or study that the Agency may deem  
24 necessary to enable it effectively to carry out the  
25 provisions of this Act.

26 (21) To accept and expend appropriations.

1           (22) To engage in any activity or operation that is  
2 incidental to and in furtherance of efficient operation to  
3 accomplish the Agency's purposes, including hiring  
4 employees that the Director deems essential for the  
5 operations of the Agency.

6           (23) To adopt, revise, amend, and repeal rules with  
7 respect to its operations, properties, and facilities as  
8 may be necessary or convenient to carry out the purposes of  
9 this Act, subject to the provisions of the Illinois  
10 Administrative Procedure Act and Sections 1-22 and 1-35 of  
11 this Act.

12           (24) To establish and collect charges and fees as  
13 described in this Act.

14           (25) To conduct competitive gasification feedstock  
15 procurement processes to procure the feedstocks for the  
16 clean coal SNG brownfield facility in accordance with the  
17 requirements of Section 1-78 of this Act.

18           (26) To review, revise, and approve sourcing  
19 agreements and mediate and resolve disputes between gas  
20 utilities and the clean coal SNG brownfield facility  
21 pursuant to subsection (h-1) of Section 9-220 of the Public  
22 Utilities Act or to fulfill its responsibilities for  
23 developing energy efficiency potential studies as required  
24 under subsection (f) of Section 8-103 of the Public  
25 Utilities Act.

26 (Source: P.A. 96-784, eff. 8-28-09; 96-1000, eff. 7-2-10;

1 97-96, eff. 7-13-11; 97-325, eff. 8-12-11; 97-618, eff.  
2 10-26-11; 97-813, eff. 7-13-12.)

3 (20 ILCS 3855/1-56)

4 Sec. 1-56. Illinois Power Agency Renewable Energy  
5 Resources Fund.

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

8 (b) The Illinois Power Agency Renewable Energy Resources  
9 Fund shall be administered by the Agency for the following  
10 purposes:

11 (1) to purchase renewable energy credits according to  
12 any approved procurement plan developed by the Agency prior  
13 to June 1, 2016; and

14 (2) to purchase renewable energy credits and pay for  
15 other applicable expenses as part of a low-income solar  
16 program; the Agency shall create a low-income solar program  
17 with the objective of bringing solar photovoltaics to  
18 low-income communities in a manner that maximizes the  
19 development of new renewable energy generating facilities,  
20 provides workforce development opportunities within  
21 low-income communities, creates a long-term, low-income  
22 solar marketplace throughout Illinois, and minimizes  
23 administrative costs; the Agency shall include the  
24 low-income solar program as part of the long-term renewable  
25 resources procurement plan authorized by subdivision (c)



1 of Section 1-75 of this Act, and the program shall be  
2 designed to grow the low-income solar market over at least  
3 10 years; for this program, the Agency shall purchase  
4 renewable energy credits from either (i) photovoltaic  
5 distributed renewable energy generation devices or (ii)  
6 community solar projects. The electricity generated by  
7 each distributed generation device or community solar  
8 project must primarily be used to offset the electricity  
9 usage of (i) lower-income households, (ii) properties  
10 where the majority of occupants are lower-income  
11 households, (iii) public sector buildings that primarily  
12 serve lower-income households, or (iv) not-for-profit  
13 corporations that primarily serve lower-income households.

14 As used in this subsection (b), "lower-income households"  
15 means persons and families whose income does not exceed 80% of  
16 area median income, adjusted for family size and revised every  
17 5 years.

18 Administrative costs associated with the low-income solar  
19 program, including, but not limited to, the Agency's general  
20 administrative expenses associated with developing and  
21 operating the program, costs associated with the program  
22 manager referenced in this Section, and costs related to the  
23 evaluation of the low-income solar program, may be paid for  
24 using the Illinois Power Agency Renewable Energy Resources  
25 Fund, but the Agency and program manager shall strive to  
26 minimize administrative expenses in the implementation of the

1 program.

2 The Agency shall purchase renewable energy credits through  
3 an upfront payment per kilowatt of installed nameplate capacity  
4 paid once the device is energized. The payment shall be in  
5 exchange for an assignment of all renewable energy credits  
6 generated by the system during the first 15 years of operation  
7 and shall be structured to overcome barriers to participation  
8 in the solar market by the low-income community. The Agency  
9 shall retire any renewable energy credits purchased from this  
10 program and shall use the renewable energy credits to reduce  
11 the obligation under subdivision (c) of Section 1-75 of this  
12 Act for the electric utility to which the project is  
13 interconnected.

14 The Agency shall establish the low-income solar program  
15 terms, conditions, and requirements, including the initial  
16 purchase price of renewable energy credits, through the  
17 development, review, and approval of the Agency's long-term  
18 renewable resources procurement plan described in subdivision  
19 (c) of Section 1-75 of this Act. The Agency may review and  
20 adjust the program terms, conditions, and requirements,  
21 including the price offered to new systems, to ensure the  
22 long-term viability and success of the program. The Commission  
23 shall review and approve any modifications to the program  
24 through the periodic plan revision process described in Section  
25 16-111.5C of the Public Utilities Act.

26 The Agency shall issue a request for qualifications for a

1 third-party program manager to administer the low-income solar  
2 program. The third-party program manager may be a government  
3 entity or a not-for-profit corporation and shall be chosen  
4 through a competitive bid process based on selection criteria  
5 and requirements developed by the Agency. In selecting a  
6 program manager, the Agency shall consider a bidder's  
7 experience in (i) administering low-income energy programs  
8 with evidence of strong consumer protection, (ii) providing  
9 low-income job training opportunities, and (iii) providing or  
10 overseeing solar installation or energy efficiency services.  
11 At least every 2 years, the Commission shall select an  
12 independent evaluator to review and report on the low-income  
13 solar program and the performance of the third-party program  
14 manager of the low-income solar program. The report shall  
15 include the number of projects installed, the total installed  
16 capacity in kilowatts, the average cost per kilowatt of  
17 installed capacity, the total number of jobs or job training  
18 opportunities, and other economic, social and environmental  
19 benefits created, and the total administrative costs expended  
20 by the Agency and program manager to implement and evaluate the  
21 program. The report shall be delivered to the Commission and  
22 posted on the Agency's website and used, as needed, to revise  
23 the low-income solar program.

24 The low-income solar program manager shall administer the  
25 low-income solar program, which shall include the development  
26 of standard contract forms, the development and implementation

1 of a marketing and outreach program for eligible low-income  
2 customers, and providing solar installation services,  
3 including subcontractor solicitations when necessary. The  
4 low-income solar program shall also include energy efficiency  
5 referral and education services, solar job training and  
6 workforce development opportunities, and consumer protection  
7 provisions.

8 (b-5) Upon the submission of all payments required by  
9 Section 16-115D of the Public Utilities Act, no funds shall be  
10 deposited into the Illinois Power Agency Renewable Energy  
11 Resources Fund unless directed by order of the Commission.

12 (b-10) Upon the balance of the Illinois Power Agency  
13 Renewable Energy Resources Fund falling below \$5,000, the Fund  
14 shall be terminated, and any remaining funds shall be  
15 transferred to the Low Income Home Energy Assistance Program,  
16 as authorized by the Energy Assistance Act.

17 ~~to procure renewable energy resources. Prior to June 1, 2011,~~  
18 ~~resources procured pursuant to this Section shall be procured~~  
19 ~~from facilities located in Illinois, provided the resources are~~  
20 ~~available from those facilities. If resources are not available~~  
21 ~~in Illinois, then they shall be procured in states that adjoin~~  
22 ~~Illinois. If resources are not available in Illinois or in~~  
23 ~~states that adjoin Illinois, then they may be purchased~~  
24 ~~elsewhere. Beginning June 1, 2011, resources procured pursuant~~  
25 ~~to this Section shall be procured from facilities located in~~  
26 ~~Illinois or states that adjoin Illinois. If resources are not~~

1 ~~available in Illinois or in states that adjoin Illinois, then~~  
2 ~~they may be procured elsewhere. To the extent available, at~~  
3 ~~least 75% of these renewable energy resources shall come from~~  
4 ~~wind generation. Of the renewable energy resources procured~~  
5 ~~pursuant to this Section at least the following specified~~  
6 ~~percentages shall come from photovoltaics on the following~~  
7 ~~schedule: 0.5% by June 1, 2012; 1.5% by June 1, 2013; 3% by~~  
8 ~~June 1, 2014; and 6% by June 1, 2015 and thereafter. Of the~~  
9 ~~renewable energy resources procured pursuant to this Section,~~  
10 ~~at least the following percentages shall come from distributed~~  
11 ~~renewable energy generation devices: 0.5% by June 1, 2013,~~  
12 ~~0.75% by June 1, 2014, and 1% by June 1, 2015 and thereafter.~~  
13 ~~To the extent available, half of the renewable energy resources~~  
14 ~~procured from distributed renewable energy generation shall~~  
15 ~~come from devices of less than 25 kilowatts in nameplate~~  
16 ~~capacity. Renewable energy resources procured from distributed~~  
17 ~~generation devices may also count towards the required~~  
18 ~~percentages for wind and solar photovoltaics. Procurement of~~  
19 ~~renewable energy resources from distributed renewable energy~~  
20 ~~generation devices shall be done on an annual basis through~~  
21 ~~multi-year contracts of no less than 5 years, and shall consist~~  
22 ~~solely of renewable energy credits.~~

23 ~~The Agency shall create credit requirements for suppliers~~  
24 ~~of distributed renewable energy. In order to minimize the~~  
25 ~~administrative burden on contracting entities, the Agency~~  
26 ~~shall solicit the use of third party organizations to aggregate~~

1 ~~distributed renewable energy into groups of no less than one~~  
2 ~~megawatt in installed capacity. These third-party~~  
3 ~~organizations shall administer contracts with individual~~  
4 ~~distributed renewable energy generation device owners. An~~  
5 ~~individual distributed renewable energy generation device~~  
6 ~~owner shall have the ability to measure the output of his or~~  
7 ~~her distributed renewable energy generation device.~~

8 (c) (Blank). ~~The Agency shall procure renewable energy~~  
9 ~~resources at least once each year in conjunction with a~~  
10 ~~procurement event for electric utilities required to comply~~  
11 ~~with Section 1-75 of the Act and shall, whenever possible,~~  
12 ~~enter into long-term contracts on an annual basis for a portion~~  
13 ~~of the incremental requirement for the given procurement year.~~

14 (d) (Blank). ~~The price paid to procure renewable energy~~  
15 ~~credits using monies from the Illinois Power Agency Renewable~~  
16 ~~Energy Resources Fund shall not exceed the winning bid prices~~  
17 ~~paid for like resources procured for electric utilities~~  
18 ~~required to comply with Section 1-75 of this Act.~~

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

22 (f) The selection of the third-party program manager, the  
23 selection of the independent evaluator, and the procurement  
24 process described in this Section are exempt from the  
25 requirements of Section 20-10 of the Illinois Procurement Code.  
26 ~~The procurement process described in this Section is exempt~~

1 ~~from the requirements of the Illinois Procurement Code,~~  
2 ~~pursuant to Section 20-10 of that Code.~~

3 (g) All disbursements from the Illinois Power Agency  
4 Renewable Energy Resources Fund shall be made only upon  
5 warrants of the Comptroller drawn upon the Treasurer as  
6 custodian of the Fund upon vouchers signed by the Director or  
7 by the person or persons designated by the Director for that  
8 purpose. The Comptroller is authorized to draw the warrant upon  
9 vouchers so signed. The Treasurer shall accept all warrants so  
10 signed and shall be released from liability for all payments  
11 made on those warrants.

12 (h) The Illinois Power Agency Renewable Energy Resources  
13 Fund shall not be subject to sweeps, administrative charges, or  
14 chargebacks, including, but not limited to, those authorized  
15 under Section 8h of the State Finance Act, that would in any  
16 way result in the transfer of any funds from this Fund to any  
17 other fund of this State or in having any such funds utilized  
18 for any purpose other than the express purposes set forth in  
19 this Section.

20 (i) Supplemental procurement process.

21 (1) Within 90 days after the effective date of this  
22 amendatory Act of the 98th General Assembly, the Agency  
23 shall develop a one-time supplemental procurement plan  
24 limited to the procurement of renewable energy credits, if  
25 available, from new or existing photovoltaics, including,  
26 but not limited to, distributed photovoltaic generation.

1 Nothing in this subsection (i) requires procurement of wind  
2 generation through the supplemental procurement.

3 Renewable energy credits procured from new  
4 photovoltaics, including, but not limited to, distributed  
5 photovoltaic generation, under this subsection (i) must be  
6 procured from devices installed by a qualified person. In  
7 its supplemental procurement plan, the Agency shall  
8 establish contractually enforceable mechanisms for  
9 ensuring that the installation of new photovoltaics is  
10 performed by a qualified person.

11 For the purposes of this paragraph (1), "qualified  
12 person" means a person who performs installations of  
13 photovoltaics, including, but not limited to, distributed  
14 photovoltaic generation, and who: (A) has completed an  
15 apprenticeship as a journeyman electrician from a United  
16 States Department of Labor registered electrical  
17 apprenticeship and training program and received a  
18 certification of satisfactory completion; or (B) does not  
19 currently meet the criteria under clause (A) of this  
20 paragraph (1), but is enrolled in a United States  
21 Department of Labor registered electrical apprenticeship  
22 program, provided that the person is directly supervised by  
23 a person who meets the criteria under clause (A) of this  
24 paragraph (1); or (C) has obtained one of the following  
25 credentials in addition to attesting to satisfactory  
26 completion of at least 5 years or 8,000 hours of documented



1 hands-on electrical experience: (i) a North American Board  
2 of Certified Energy Practitioners (NABCEP) Installer  
3 Certificate for Solar PV; (ii) an Underwriters  
4 Laboratories (UL) PV Systems Installer Certificate; (iii)  
5 an Electronics Technicians Association, International  
6 (ETAI) Level 3 PV Installer Certificate; or (iv) an  
7 Associate in Applied Science degree from an Illinois  
8 Community College Board approved community college program  
9 in renewable energy or a distributed generation  
10 technology.

11 For the purposes of this paragraph (1), "directly  
12 supervised" means that there is a qualified person who  
13 meets the qualifications under clause (A) of this paragraph  
14 (1) and who is available for supervision and consultation  
15 regarding the work performed by persons under clause (B) of  
16 this paragraph (1), including a final inspection of the  
17 installation work that has been directly supervised to  
18 ensure safety and conformity with applicable codes.

19 For the purposes of this paragraph (1), "install" means  
20 the major activities and actions required to connect, in  
21 accordance with applicable building and electrical codes,  
22 the conductors, connectors, and all associated fittings,  
23 devices, power outlets, or apparatuses mounted at the  
24 premises that are directly involved in delivering energy to  
25 the premises' electrical wiring from the photovoltaics,  
26 including, but not limited to, to distributed photovoltaic

1 generation.

2 The renewable energy credits procured pursuant to the  
3 supplemental procurement plan shall be procured using up to  
4 \$30,000,000 from the Illinois Power Agency Renewable  
5 Energy Resources Fund. The Agency shall not plan to use  
6 funds from the Illinois Power Agency Renewable Energy  
7 Resources Fund in excess of the monies on deposit in such  
8 fund or projected to be deposited into such fund. The  
9 supplemental procurement plan shall ensure adequate,  
10 reliable, affordable, efficient, and environmentally  
11 sustainable renewable energy resources (including credits)  
12 at the lowest total cost over time, taking into account any  
13 benefits of price stability.

14 To the extent available, 50% of the renewable energy  
15 credits procured from distributed renewable energy  
16 generation shall come from devices of less than 25  
17 kilowatts in nameplate capacity. Procurement of renewable  
18 energy credits from distributed renewable energy  
19 generation devices shall be done through multi-year  
20 contracts of no less than 5 years. The Agency shall create  
21 credit requirements for counterparties. In order to  
22 minimize the administrative burden on contracting  
23 entities, the Agency shall solicit the use of third parties  
24 to aggregate distributed renewable energy. These third  
25 parties shall enter into and administer contracts with  
26 individual distributed renewable energy generation device

1 owners. An individual distributed renewable energy  
2 generation device owner shall have the ability to measure  
3 the output of his or her distributed renewable energy  
4 generation device.

5 In developing the supplemental procurement plan, the  
6 Agency shall hold at least one workshop open to the public  
7 within 90 days after the effective date of this amendatory  
8 Act of the 98th General Assembly and shall consider any  
9 comments made by stakeholders or the public. Upon  
10 development of the supplemental procurement plan within  
11 this 90-day period, copies of the supplemental procurement  
12 plan shall be posted and made publicly available on the  
13 Agency's and Commission's websites. All interested parties  
14 shall have 14 days following the date of posting to provide  
15 comment to the Agency on the supplemental procurement plan.  
16 All comments submitted to the Agency shall be specific,  
17 supported by data or other detailed analyses, and, if  
18 objecting to all or a portion of the supplemental  
19 procurement plan, accompanied by specific alternative  
20 wording or proposals. All comments shall be posted on the  
21 Agency's and Commission's websites. Within 14 days  
22 following the end of the 14-day review period, the Agency  
23 shall revise the supplemental procurement plan as  
24 necessary based on the comments received and file its  
25 revised supplemental procurement plan with the Commission  
26 for approval.

1           (2) Within 5 days after the filing of the supplemental  
2 procurement plan at the Commission, any person objecting to  
3 the supplemental procurement plan shall file an objection  
4 with the Commission. Within 10 days after the filing, the  
5 Commission shall determine whether a hearing is necessary.  
6 The Commission shall enter its order confirming or  
7 modifying the supplemental procurement plan within 90 days  
8 after the filing of the supplemental procurement plan by  
9 the Agency.

10           (3) The Commission shall approve the supplemental  
11 procurement plan of renewable energy credits to be procured  
12 from new or existing photovoltaics, including, but not  
13 limited to, distributed photovoltaic generation, if the  
14 Commission determines that it will ensure adequate,  
15 reliable, affordable, efficient, and environmentally  
16 sustainable electric service in the form of renewable  
17 energy credits at the lowest total cost over time, taking  
18 into account any benefits of price stability.

19           (4) The supplemental procurement process under this  
20 subsection (i) shall include each of the following  
21 components:

22           (A) Procurement administrator. The Agency may  
23 retain a procurement administrator in the manner set  
24 forth in item (2) of subsection (a) of Section 1-75 of  
25 this Act to conduct the supplemental procurement or may  
26 elect to use the same procurement administrator

1 administering the Agency's annual procurement under  
2 Section 1-75.

3 (B) Procurement monitor. The procurement monitor  
4 retained by the Commission pursuant to Section  
5 16-111.5 of the Public Utilities Act shall:

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

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

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

14 (iv) assess compliance with the procurement  
15 plan approved by the Commission for the  
16 supplemental procurement process;

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

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

26 (vii) consult with the procurement

1 administrator regarding the development and use of  
2 benchmark criteria, standard form contracts,  
3 credit policies, and bid documents; and

4 (viii) perform, with respect to the  
5 supplemental procurement process, any other  
6 procurement monitor duties specifically delineated  
7 within subsection (i) of this Section.

8 (C) Solicitation, pre-qualification, and  
9 registration of bidders. The procurement administrator  
10 shall disseminate information to potential bidders to  
11 promote a procurement event, notify potential bidders  
12 that the procurement administrator may enter into a  
13 post-bid price negotiation with bidders that meet the  
14 applicable benchmarks, provide supply requirements,  
15 and otherwise explain the competitive procurement  
16 process. In addition to such other publication as the  
17 procurement administrator determines is appropriate,  
18 this information shall be posted on the Agency's and  
19 the Commission's websites. The procurement  
20 administrator shall also administer the  
21 prequalification process, including evaluation of  
22 credit worthiness, compliance with procurement rules,  
23 and agreement to the standard form contract developed  
24 pursuant to item (D) of this paragraph (4). The  
25 procurement administrator shall then identify and  
26 register bidders to participate in the procurement

1 event.

2 (D) Standard contract forms and credit terms and  
3 instruments. The procurement administrator, in  
4 consultation with the Agency, the Commission, and  
5 other interested parties and subject to Commission  
6 oversight, shall develop and provide standard contract  
7 forms for the supplier contracts that meet generally  
8 accepted industry practices as well as include any  
9 applicable State of Illinois terms and conditions that  
10 are required for contracts entered into by an agency of  
11 the State of Illinois. Standard credit terms and  
12 instruments that meet generally accepted industry  
13 practices shall be similarly developed. Contracts for  
14 new photovoltaics shall include a provision attesting  
15 that the supplier will use a qualified person for the  
16 installation of the device pursuant to paragraph (1) of  
17 subsection (i) of this Section. The procurement  
18 administrator shall make available to the Commission  
19 all written comments it receives on the contract forms,  
20 credit terms, or instruments. If the procurement  
21 administrator cannot reach agreement with the parties  
22 as to the contract terms and conditions, the  
23 procurement administrator must notify the Commission  
24 of any disputed terms and the Commission shall resolve  
25 the dispute. The terms of the contracts shall not be  
26 subject to negotiation by winning bidders, and the

1 bidders must agree to the terms of the contract in  
2 advance so that winning bids are selected solely on the  
3 basis of price.

4 (E) Requests for proposals; competitive  
5 procurement process. The procurement administrator  
6 shall design and issue requests for proposals to supply  
7 renewable energy credits in accordance with the  
8 supplemental procurement plan, as approved by the  
9 Commission. The requests for proposals shall set forth  
10 a procedure for sealed, binding commitment bidding  
11 with pay-as-bid settlement, and provision for  
12 selection of bids on the basis of price, provided,  
13 however, that no bid shall be accepted if it exceeds  
14 the benchmark developed pursuant to item (F) of this  
15 paragraph (4).

16 (F) Benchmarks. Benchmarks for each product to be  
17 procured shall be developed by the procurement  
18 administrator in consultation with Commission staff,  
19 the Agency, and the procurement monitor for use in this  
20 supplemental procurement.

21 (G) A plan for implementing contingencies in the  
22 event of supplier default, Commission rejection of  
23 results, or any other cause.

24 (5) Within 2 business days after opening the sealed  
25 bids, the procurement administrator shall submit a  
26 confidential report to the Commission. The report shall



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

17 (6) Within 3 business days after the Commission  
18 decision approving the results of a procurement event, the  
19 Agency shall enter into binding contractual arrangements  
20 with the winning suppliers using the standard form  
21 contracts.

22 (7) The names of the successful bidders and the average  
23 of the winning bid prices for each contract type and for  
24 each contract term shall be made available to the public  
25 within 2 days after the supplemental procurement event. The  
26 Commission, the procurement monitor, the procurement

1 administrator, the Agency, and all participants in the  
2 procurement process shall maintain the confidentiality of  
3 all other supplier and bidding information in a manner  
4 consistent with all applicable laws, rules, regulations,  
5 and tariffs. Confidential information, including the  
6 confidential reports submitted by the procurement  
7 administrator and procurement monitor pursuant to this  
8 Section, shall not be made publicly available and shall not  
9 be discoverable by any party in any proceeding, absent a  
10 compelling demonstration of need, nor shall those reports  
11 be admissible in any proceeding other than one for law  
12 enforcement purposes.

13 (8) The supplemental procurement provided in this  
14 subsection (i) shall not be subject to the requirements and  
15 limitations of subsections (c) and (d) of this Section.

16 (9) Expenses incurred in connection with the  
17 procurement process held pursuant to this Section,  
18 including, but not limited to, the cost of developing the  
19 supplemental procurement plan, the procurement  
20 administrator, procurement monitor, and the cost of the  
21 retirement of renewable energy credits purchased pursuant  
22 to the supplemental procurement shall be paid for from the  
23 Illinois Power Agency Renewable Energy Resources Fund. The  
24 Agency shall enter into an interagency agreement with the  
25 Commission to reimburse the Commission for its costs  
26 associated with the procurement monitor for the

1 supplemental procurement process.

2 (Source: P.A. 97-616, eff. 10-26-11; 98-672, eff. 6-30-14.)

3 (20 ILCS 3855/1-75)

4 Sec. 1-75. Planning and Procurement Bureau. The Planning  
5 and Procurement Bureau has the following duties and  
6 responsibilities:

7 (a) The Planning and Procurement Bureau shall each year,  
8 beginning in 2008, develop procurement plans and conduct  
9 competitive procurement processes in accordance with the  
10 requirements of Section 16-111.5 of the Public Utilities Act  
11 for the eligible retail customers of electric utilities that on  
12 December 31, 2005 provided electric service to at least 100,000  
13 customers in Illinois. The Planning and Procurement Bureau  
14 shall also develop procurement plans and conduct competitive  
15 procurement processes in accordance with the requirements of  
16 Section 16-111.5 of the Public Utilities Act for the eligible  
17 retail customers of small multi-jurisdictional electric  
18 utilities that (i) on December 31, 2005 served less than  
19 100,000 customers in Illinois and (ii) request a procurement  
20 plan for their Illinois jurisdictional load. This Section shall  
21 not apply to a small multi-jurisdictional utility until such  
22 time as a small multi-jurisdictional utility requests the  
23 Agency to prepare a procurement plan for their Illinois  
24 jurisdictional load. For the purposes of this Section, the term  
25 "eligible retail customers" has the same definition as found in

1 Section 16-111.5(a) of the Public Utilities Act.

2 Notwithstanding the requirements of this subdivision (a),  
3 beginning with the planning process for the plan or plans to be  
4 implemented in the 2016 delivery year, the Agency shall no  
5 longer include the procurement of renewable energy resources in  
6 the procurement plans required by this subdivision (a) and  
7 shall instead develop a long-term renewable resources  
8 procurement plan in accordance with subdivision (c) of this  
9 Section.

10 (1) The Agency shall each year, beginning in 2008, as  
11 needed, issue a request for qualifications for experts or  
12 expert consulting firms to develop the procurement plans in  
13 accordance with Section 16-111.5 of the Public Utilities  
14 Act. In order to qualify an expert or expert consulting  
15 firm must have:

16 (A) direct previous experience assembling  
17 large-scale power supply plans or portfolios for  
18 end-use customers;

19 (B) an advanced degree in economics, mathematics,  
20 engineering, risk management, or a related area of  
21 study;

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

24 (D) expertise in wholesale electricity market  
25 rules, including those established by the Federal  
26 Energy Regulatory Commission and regional transmission

1 organizations;

2 (E) expertise in credit protocols and familiarity  
3 with contract protocols;

4 (F) adequate resources to perform and fulfill the  
5 required functions and responsibilities; and

6 (G) the absence of a conflict of interest and  
7 inappropriate bias for or against potential bidders or  
8 the affected electric utilities.

9 (2) The Agency shall each year, as needed, issue a  
10 request for qualifications for a procurement administrator  
11 to conduct the competitive procurement processes in  
12 accordance with Section 16-111.5 of the Public Utilities  
13 Act. In order to qualify an expert or expert consulting  
14 firm must have:

15 (A) direct previous experience administering a  
16 large-scale competitive procurement process;

17 (B) an advanced degree in economics, mathematics,  
18 engineering, or a related area of study;

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

21 (D) expertise in wholesale electricity market  
22 rules, including those established by the Federal  
23 Energy Regulatory Commission and regional transmission  
24 organizations;

25 (E) expertise in credit and contract protocols;

26 (F) adequate resources to perform and fulfill the

1 required functions and responsibilities; and

2 (G) the absence of a conflict of interest and  
3 inappropriate bias for or against potential bidders or  
4 the affected electric utilities.

5 (3) The Agency shall provide affected utilities and  
6 other interested parties with the lists of qualified  
7 experts or expert consulting firms identified through the  
8 request for qualifications processes that are under  
9 consideration to develop the procurement plans and to serve  
10 as the procurement administrator. The Agency shall also  
11 provide each qualified expert's or expert consulting  
12 firm's response to the request for qualifications. All  
13 information provided under this subparagraph shall also be  
14 provided to the Commission. The Agency may provide by rule  
15 for fees associated with supplying the information to  
16 utilities and other interested parties. These parties  
17 shall, within 5 business days, notify the Agency in writing  
18 if they object to any experts or expert consulting firms on  
19 the lists. Objections shall be based on:

20 (A) failure to satisfy qualification criteria;

21 (B) identification of a conflict of interest; or

22 (C) evidence of inappropriate bias for or against  
23 potential bidders or the affected utilities.

24 The Agency shall remove experts or expert consulting  
25 firms from the lists within 10 days if there is a  
26 reasonable basis for an objection and provide the updated

1 lists to the affected utilities and other interested  
2 parties. If the Agency fails to remove an expert or expert  
3 consulting firm from a list, an objecting party may seek  
4 review by the Commission within 5 days thereafter by filing  
5 a petition, and the Commission shall render a ruling on the  
6 petition within 10 days. There is no right of appeal of the  
7 Commission's ruling.

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

12 (5) The Agency shall select an expert or expert  
13 consulting firm to develop procurement plans based on the  
14 proposals submitted and shall award contracts of up to 5  
15 years to those selected.

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

25 (b) The experts or expert consulting firms retained by the  
26 Agency shall, as appropriate, prepare procurement plans, and

1 conduct a competitive procurement process as prescribed in  
2 Section 16-111.5 of the Public Utilities Act, to ensure  
3 adequate, reliable, affordable, efficient, and environmentally  
4 sustainable electric service at the lowest total cost over  
5 time, taking into account any benefits of price stability, for  
6 eligible retail customers of electric utilities that on  
7 December 31, 2005 provided electric service to at least 100,000  
8 customers in the State of Illinois, and for eligible Illinois  
9 retail customers of small multi-jurisdictional electric  
10 utilities that (i) on December 31, 2005 served less than  
11 100,000 customers in Illinois and (ii) request a procurement  
12 plan for their Illinois jurisdictional load.

13 (c) Renewable portfolio standard.

14 (1) The Planning and Procurement Bureau shall develop a  
15 long-term renewable resources procurement plan that  
16 includes all renewable energy credits necessary to meet the  
17 goals set forth in this subdivision (c). The long-term  
18 renewable resources procurement plan shall include  
19 long-term programs and competitive procurement events  
20 designed to meet the renewable resources goals in this  
21 subdivision (c) from the date of the plan through the 2030  
22 delivery year. The initial long-term renewable resources  
23 procurement plan shall be released for comment no later  
24 than 120 days after the effective date of this amendatory  
25 Act of the 99th General Assembly. The Agency shall review  
26 and revise the long-term renewable resources procurement



1 plan at least every 2 years. The initial long-term  
2 renewable resources procurement plan and each revised plan  
3 shall be subject to review and approval by the Commission  
4 pursuant to Section 16-111.5C of the Public Utilities Act.

5 (1.5) The Agency shall continue to implement all  
6 procurements of renewable energy credits included in all  
7 prior procurement plans filed with the Commission prior to  
8 June 1, 2016. Any renewable energy credits procured as a  
9 result of these prior procurements, including renewable  
10 energy credits as part of bundled renewable energy  
11 resources, shall be used to meet the goals set forth in  
12 this subdivision (c) and shall be included as resources in  
13 the long-term renewable resources plan required in  
14 paragraph (1) of this subdivision (c). Any costs associated  
15 with the procurement of renewable energy credits as a  
16 result of these prior procurements, including the cost of  
17 renewable energy credits included in the cost of bundled  
18 renewable energy resources, but not including any  
19 renewable energy credits procured as a result of  
20 procurements authorized by subsection (i) of Section 1-56  
21 of this Act or paid for using funds collected as a result  
22 of paragraph (5) of this subdivision (c), shall be included  
23 in the total cost of renewable energy credits procured  
24 pursuant to the long-term procurement plan, as limited in  
25 paragraph (1.15) of this subdivision (c).

26 As used in this subdivision (c):

1           "Bundled renewable energy resources" means electricity  
2           generated by a renewable energy system and its associated  
3           renewable energy credit.

4           "Cost of renewable energy credits included in the cost  
5           of bundled renewable energy resources" means the  
6           difference between the contract price for the bundled  
7           renewable energy resources and the day-ahead locational  
8           marginal price at the load zone at which the contract is  
9           settled multiplied by the megawatt hours of electricity  
10           generated in each hour.

11           (1.10) The cost of any renewable energy credits  
12           procured through a competitive procurement event pursuant  
13           to an approved plan shall not exceed benchmarks established  
14           by the procurement administrator, in consultation with the  
15           Commission staff, Agency staff, and the procurement  
16           monitor. The benchmarks shall be based on price data for  
17           similar products for the same delivery period and same  
18           utility delivery hub or other utility delivery hubs after  
19           adjusting for that difference. The price benchmarks may  
20           also be adjusted to take into account differences between  
21           the information reflected in the underlying data sources  
22           and the specific products and procurement process being  
23           used to procure power for the Illinois utilities. The  
24           benchmarks shall be confidential, but shall be provided to  
25           the Commission and shall be subject to Commission review  
26           and approval prior to a procurement event.

1           (1.15) Notwithstanding the requirements of this  
2           subdivision (c), the total amount of renewable energy  
3           credits procured pursuant to the long-term renewable  
4           resources procurement plan shall be reduced by an amount  
5           necessary to limit the annual estimated average net  
6           increase due to the costs of these credits included in the  
7           amounts paid by all customers taking delivery service from  
8           an electric utility to no more than 2.015% of the amount  
9           paid per kilowatthour by eligible retail customers during  
10           the year ending May 31, 2007. For purposes of this  
11           subdivision (c), the amount paid per kilowatthour means the  
12           total amount paid for electric service expressed on a per  
13           kilowatthour basis, including without limitation amounts  
14           paid for supply, transmission, distribution, surcharges,  
15           and add-on taxes.

16           (1.20) The long-term renewable resources procurement  
17           plan shall include the procurement of renewable energy  
18           credits in amounts equal to at least the following  
19           percentages measured as a percentage of the projected  
20           amount of electricity in kilowatthours to be delivered by  
21           the electric utilities to all customers taking delivery  
22           service from an electric utility: 11.5% by the 2016  
23           delivery year, and increasing by at least 1.5% each  
24           delivery year thereafter to at least 25% by the 2025  
25           delivery year; and increasing at least 2% each delivery  
26           year thereafter to at least 35% by the 2030 delivery year,

1 continuing at that percentage for each delivery year  
2 thereafter.

3 (A) By the end of the 2020 delivery year:

4 (i) 75% of the total renewable energy credits  
5 procured shall come from wind generation, of which  
6 at least 25% shall come from new wind projects; and

7 (ii) 5% of the total renewable energy credits  
8 procured or the equivalent amount of renewable  
9 energy credits from 1,000 megawatts of solar  
10 photovoltaic nameplate capacity, whichever is  
11 larger, shall come from new photovoltaic projects;  
12 of that amount, to the extent possible, the Agency  
13 shall procure 75% from photovoltaic projects using  
14 the program outlined in paragraph (1.25) of this  
15 subdivision (c) from distributed renewable energy  
16 devices or community solar projects and shall give  
17 preference to brownfield solar projects that are  
18 not community solar projects for the remaining  
19 25%.

20 (B) By the end of the 2025 delivery year:

21 (i) 75% of the total renewable energy credits  
22 procured shall come from wind generation, of which  
23 at least 25% shall come from new wind projects; and

24 (ii) 6% of the total renewable energy credits  
25 procured or the equivalent amount of renewable  
26 energy credits from 1,500 megawatts of solar

1 photovoltaic nameplate capacity, whichever is  
2 larger, shall come from new photovoltaic projects;  
3 of that amount, to the extent possible the Agency  
4 shall procure 75% from photovoltaic projects using  
5 the program outlined in paragraph (1.25) of this  
6 subdivision (c) from distributed renewable energy  
7 devices or community solar projects and shall give  
8 preference to brownfield solar projects that are  
9 not community solar projects for the remaining  
10 25%.

11 (C) By the end of the 2030 delivery year:

12 (i) 75% of the total renewable energy credits  
13 procured shall come from wind generation, of which  
14 at least 25% shall come from new wind projects; and

15 (ii) 7% of the total renewable energy credits  
16 procured or the equivalent amount of renewable  
17 energy credits from 2,000 megawatts of solar  
18 photovoltaic nameplate capacity, whichever is  
19 larger, shall come from new photovoltaic projects;  
20 of that amount, to the extent possible the Agency  
21 shall procure 75% from photovoltaic projects using  
22 the program outlined in paragraph (1.25) of this  
23 subdivision (c) from distributed renewable energy  
24 devices or community solar projects and shall give  
25 preference to brownfield solar projects that are  
26 not community solar projects for the remaining

1           25%.

2           Renewable energy credits are eligible to be counted  
3 toward the renewable energy requirements of this  
4 subsection (c) if the renewable energy facility is located  
5 in Illinois, if the facility has a generator  
6 interconnection agreement with PJM or MISO, or if the  
7 renewable energy facility is located in the United States  
8 and the output of the facility is delivered to a  
9 transmission asset that is controlled by PJM or MISO, where  
10 "delivered" means the generated output of the facility has  
11 been demonstrated to have a distribution factor of 25% or  
12 greater on the transmission asset of PJM or MISO, and where  
13 "distribution factor" means a measurement of the  
14 sensitivity of the flow of electricity from a renewable  
15 energy generator to a consuming load on a transmission  
16 asset under the control of MISO or PJM. In procuring  
17 renewable energy credits, the Agency may consider bid  
18 selection criteria that include public interest factors,  
19 such as the potential to increase fuel and resource  
20 diversity in Illinois, enhance system reliability and  
21 resiliency, and contribute to a cleaner and healthier  
22 environment for the citizens of Illinois. In its long-term  
23 plan, the Agency shall develop the method for incorporating  
24 these public interest factors, in addition to bid price,  
25 into its bid selection process. The Agency's method may  
26 include, but may not be limited to, quantitatively scoring

1 the evaluation of individual bids under public interest  
2 criteria or the establishment of procurement minimums for  
3 project categories informed by the public interest factors  
4 described in this paragraph (1.15).

5 In the event that the rate impact cap in paragraph  
6 (1.15) of this subdivision (c) prevents the Agency from  
7 meeting all of the percentage goals in this subdivision  
8 (c), the Agency shall prioritize compliance with the goals  
9 for new wind and photovoltaic projects.

10 As used in this paragraph (1.20):

11 "New wind projects" means wind renewable energy  
12 projects (i) that begin energy delivery no earlier than 3  
13 years prior to the procurement date and (ii) for projects  
14 located within Illinois, for which the owner of the project  
15 has certified that not less than the prevailing wage was or  
16 will be paid to employees who are engaged in construction  
17 activities associated with the project.

18 "New photovoltaic projects" means photovoltaic  
19 renewable energy projects (i) that are interconnected at  
20 the distribution system level of either an electric  
21 utility, a municipal utility as defined in Section 3-105 of  
22 the Public Utilities Act, or a rural electric cooperative  
23 as defined in Section 3-119 of the Public Utilities Act,  
24 (ii) that are energized after January 1, 2016 for the first  
25 procurement year or within one year of the procurement date  
26 for subsequent procurement years, and (iii) for projects

1 over 1,000 kilowatts in nameplate capacity, for which the  
2 owner of the project has certified that not less than the  
3 prevailing wage was or will be paid to employees who are  
4 engaged in construction activities associated with the  
5 project.

6 "Prevailing wage" has the same definition as in  
7 subsection (F) of Section 5.5(a)(3) of the Enterprise Zone  
8 Act.

9 (1.25) The long-term renewable resources procurement  
10 plan developed by the Agency in accordance with this  
11 subdivision (c) shall include a declining block program for  
12 the procurement of renewable energy credits from  
13 photovoltaic projects that are distributed renewable  
14 energy generation devices or community solar projects. The  
15 declining block program shall be designed to provide a  
16 transparent schedule of prices and capacity to enable the  
17 photovoltaic market to scale up and for renewable energy  
18 credit prices to fall at a predictable, sustainable rate  
19 over time. The declining block program shall include for  
20 each category of eligible projects: (i) a schedule of  
21 standard, declining block purchase prices to be offered,  
22 (ii) a series of steps, with associated nameplate capacity  
23 and purchase prices that decline from step to step, and  
24 (iii) automatic opening of the next step as soon as the  
25 nameplate capacity and available purchase prices for an  
26 open step are fully committed or reserved. Only projects



1 energized on or after January 1, 2016, shall be eligible  
2 for the declining block program. For each block group the  
3 Agency shall determine the number of blocks, the amount of  
4 generation capacity in each block, and the purchase price  
5 for each block, provided that the purchase price provided  
6 and the total amount of generation in all blocks for all  
7 block groups shall be sufficient to meet the goals in  
8 paragraph (1.20) of this subdivision (c). The Agency may  
9 periodically review the purchase prices and may  
10 redistribute available funds as necessary and appropriate,  
11 subject to Commission approval as part of the periodic plan  
12 revision process described in Section 16-111.5C of the  
13 Public Utilities Act.

14 The declining block program shall include at least the  
15 following block groups, which may be adjusted upon review  
16 by the Agency and approval of the Commission:

17 (A) Distributed renewable energy generation  
18 devices with a nameplate capacity of no more than 10  
19 kilowatts.

20 (B) Distributed renewable energy generation  
21 devices with a nameplate capacity of more than 10  
22 kilowatts and no more than 100 kilowatts.

23 (C) Distributed renewable energy generation  
24 devices with a nameplate capacity of more than 100  
25 kilowatts and no more than 500 kilowatts.

26 (D) Distributed renewable energy generation

1 devices with a nameplate capacity of more than 500  
2 kilowatts and no more than 2,000 kilowatts.

3 (E) Distributed renewable energy generation  
4 devices with a nameplate capacity of no more than 2,000  
5 kilowatts that are owned by a municipality, a school  
6 district, a unit of local government, a public  
7 university, or a not-for-profit corporation, and  
8 primarily used to offset their own electricity load.

9 (F) Community solar projects.

10 For projects that qualify under paragraph (A) of this  
11 paragraph (1.25), the renewable energy credit purchase  
12 price shall be paid as an upfront payment per installed  
13 kilowatt of nameplate capacity paid once the device is  
14 energized. The electric utility shall receive all  
15 renewable energy credits generated by the project for the  
16 first 15 years of operation. For projects that qualify  
17 under items (B) through (F) of this paragraph (1.25) and  
18 any additional categories included in the long-term  
19 renewable resources plan and approved by the Commission,  
20 the renewable energy credit purchase price shall be in  
21 exchange for an assignment of all renewable energy credits  
22 generated by the project for the first 15 years of  
23 operation. The Agency shall pay for those credits over the  
24 first 5 years of operation of the system through a partial  
25 payment made after the system is first energized and  
26 additional payments over the first 4 years of operation

1 based on actual energy produced. The electric utility shall  
2 receive all renewable energy credits generated by the  
3 project for the first 15 years of operation.

4 The Agency shall issue a request for qualifications for  
5 a third-party program manager to administer the declining  
6 block program. The third-party program manager shall be  
7 chosen through a competitive bid process based on selection  
8 criteria and requirements developed by the Agency,  
9 including consideration of prior experience in  
10 administering an incentive program for energy efficiency,  
11 renewable energy, or other similar resources. The  
12 third-party program manager shall be the counterparty to  
13 the contract to purchase renewable energy credits from  
14 individual systems. The utility shall transfer funds  
15 needed to cover the cost of purchasing renewable energy  
16 credits and administering the declining block program to  
17 the third-party program manager at the order of the  
18 Commission. The utility's obligation under this paragraph  
19 (1.25) shall be considered met upon transfer of funds to  
20 the third-party program manager and retirement of  
21 associated renewable energy credits. At least every 2  
22 years, the Agency shall select an independent evaluator to  
23 review and report on the declining block program and the  
24 performance of the declining block program manager. The  
25 report should include the number of projects installed, the  
26 total installed capacity in kilowatts, the average cost per

1 kilowatt of installed capacity, the total number of jobs,  
2 and other economic, social, and environmental benefits  
3 created. The report shall be posted on the Agency's website  
4 and used, as needed, to revise the declining block program.  
5 Upon order of the Commission, the utility shall provide  
6 payment for the independent evaluation of the declining  
7 block program. Costs associated with evaluation of the  
8 declining block program shall not be included in paragraph  
9 (1.15) of this subdivision (c), however these costs shall  
10 be recoverable as a utility cost of service under the  
11 Public Utilities Act. The selection of the third-party  
12 program manager, the selection of the independent  
13 evaluator, and the procurement process described in this  
14 paragraph (1.25) are exempt from the requirements of  
15 Section 20-10 of the Illinois Procurement Code.

16 (1.30) The long-term renewable resources procurement  
17 plan required by the subdivision (c) shall include a  
18 Community Solar Program. The Agency shall develop the  
19 Community Solar Program to purchase renewable energy  
20 credits from community solar projects with a goal to expand  
21 renewable energy generating facility access to a broader  
22 group of energy consumers, including those who cannot  
23 install renewable energy on their own properties, while  
24 prioritizing those persons most sensitive to market  
25 barriers.

26 The Agency shall establish the terms, conditions, and

1 program requirements for community solar projects as part  
2 of the long-term renewable resources plan required by this  
3 Section. Any plan approved by the Commission must  
4 reasonably allow for the creation, financing, and  
5 accessibility of community solar projects and shall allow  
6 subscriptions to community solar projects to be portable  
7 and transferrable. Electric utilities shall establish a  
8 tariff to provide bill credits to subscribers of community  
9 solar projects, as specified in an approved long-term  
10 renewable resources plan. The community solar bill credits  
11 shall account for the fair value of the distributed solar  
12 energy and its delivery, generation capacity, transmission  
13 capacity, transmission and distribution line losses, and  
14 environmental value. The Agency may provide an enhanced  
15 bill credit for community solar projects that are located  
16 within brownfield sites or within strategic zones  
17 identified by the utility with approval by the Commission  
18 to provide the greatest benefits to the electric  
19 distribution system. If the electrical capacity of a  
20 community solar project is not fully subscribed during the  
21 first full year of operation, the electric utility shall  
22 purchase the energy associated with the unsubscribed  
23 capacity at the electric utility's avoided cost of  
24 electricity supply over the month period or as otherwise  
25 specified by the terms of a power purchase agreement  
26 negotiated by the community solar owners or subscribers and

1 the electricity provider. After the first full year of  
2 operation, if the electrical capacity of a community solar  
3 project is not fully subscribed, the electric utility shall  
4 purchase the energy associated with the unsubscribed  
5 capacity at the electric utility's avoided cost of  
6 electricity supply over the month period unless excess  
7 capacity is otherwise provided for in a power purchase  
8 agreement. The Agency shall purchase renewable energy  
9 credits from subscribed shares of community solar projects  
10 through the declining block program described in paragraph  
11 (6) of this subdivision (c) or through the low income solar  
12 program described in Section 1-56 of this Act. The owners  
13 of and any subscribers to a community solar project shall  
14 not be considered public utilities or alternative retail  
15 electricity suppliers under the Public Utilities Act  
16 solely as a result of their interest in or subscription to  
17 a community solar project and shall not be required to  
18 become an alternative retail electric supplier by  
19 participating in a community solar project with a public  
20 utility.

21 ~~The procurement plans shall include cost effective~~  
22 ~~renewable energy resources. A minimum percentage of each~~  
23 ~~utility's total supply to serve the load of eligible retail~~  
24 ~~customers, as defined in Section 16-111.5(a) of the Public~~  
25 ~~Utilities Act, procured for each of the following years~~  
26 ~~shall be generated from cost effective renewable energy~~

1 ~~resources: at least 2% by June 1, 2008; at least 4% by June~~  
2 ~~1, 2009; at least 5% by June 1, 2010; at least 6% by June 1,~~  
3 ~~2011; at least 7% by June 1, 2012; at least 8% by June 1,~~  
4 ~~2013; at least 9% by June 1, 2014; at least 10% by June 1,~~  
5 ~~2015; and increasing by at least 1.5% each year thereafter~~  
6 ~~to at least 25% by June 1, 2025. To the extent that it is~~  
7 ~~available, at least 75% of the renewable energy resources~~  
8 ~~used to meet these standards shall come from wind~~  
9 ~~generation and, beginning on June 1, 2011, at least the~~  
10 ~~following percentages of the renewable energy resources~~  
11 ~~used to meet these standards shall come from photovoltaics~~  
12 ~~on the following schedule: 0.5% by June 1, 2012, 1.5% by~~  
13 ~~June 1, 2013; 3% by June 1, 2014; and 6% by June 1, 2015 and~~  
14 ~~thereafter. Of the renewable energy resources procured~~  
15 ~~pursuant to this Section, at least the following~~  
16 ~~percentages shall come from distributed renewable energy~~  
17 ~~generation devices: 0.5% by June 1, 2013, 0.75% by June 1,~~  
18 ~~2014, and 1% by June 1, 2015 and thereafter. To the extent~~  
19 ~~available, half of the renewable energy resources procured~~  
20 ~~from distributed renewable energy generation shall come~~  
21 ~~from devices of less than 25 kilowatts in nameplate~~  
22 ~~capacity. Renewable energy resources procured from~~  
23 ~~distributed generation devices may also count towards the~~  
24 ~~required percentages for wind and solar photovoltaics.~~  
25 ~~Procurement of renewable energy resources from distributed~~  
26 ~~renewable energy generation devices shall be done on an~~

1 ~~annual basis through multi-year contracts of no less than 5~~  
2 ~~years, and shall consist solely of renewable energy~~  
3 ~~credits.~~

4 ~~The Agency shall create credit requirements for~~  
5 ~~suppliers of distributed renewable energy. In order to~~  
6 ~~minimize the administrative burden on contracting~~  
7 ~~entities, the Agency shall solicit the use of third party~~  
8 ~~organizations to aggregate distributed renewable energy~~  
9 ~~into groups of no less than one megawatt in installed~~  
10 ~~capacity. These third party organizations shall administer~~  
11 ~~contracts with individual distributed renewable energy~~  
12 ~~generation device owners. An individual distributed~~  
13 ~~renewable energy generation device owner shall have the~~  
14 ~~ability to measure the output of his or her distributed~~  
15 ~~renewable energy generation device.~~

16 ~~For purposes of this subsection (c), "cost effective"~~  
17 ~~means that the costs of procuring renewable energy~~  
18 ~~resources do not cause the limit stated in paragraph (2) of~~  
19 ~~this subsection (c) to be exceeded and do not exceed~~  
20 ~~benchmarks based on market prices for renewable energy~~  
21 ~~resources in the region, which shall be developed by the~~  
22 ~~procurement administrator, in consultation with the~~  
23 ~~Commission staff, Agency staff, and the procurement~~  
24 ~~monitor and shall be subject to Commission review and~~  
25 ~~approval.~~

26 (2) (Blank). ~~For purposes of this subsection (c), the~~



1 ~~required procurement of cost effective renewable energy~~  
2 ~~resources for a particular year shall be measured as a~~  
3 ~~percentage of the actual amount of electricity~~  
4 ~~(megawatt hours) supplied by the electric utility to~~  
5 ~~eligible retail customers in the planning year ending~~  
6 ~~immediately prior to the procurement. For purposes of this~~  
7 ~~subsection (c), the amount paid per kilowatthour means the~~  
8 ~~total amount paid for electric service expressed on a per~~  
9 ~~kilowatthour basis. For purposes of this subsection (c),~~  
10 ~~the total amount paid for electric service includes without~~  
11 ~~limitation amounts paid for supply, transmission,~~  
12 ~~distribution, surcharges, and add on taxes.~~

13 ~~Notwithstanding the requirements of this subsection~~  
14 ~~(c), the total of renewable energy resources procured~~  
15 ~~pursuant to the procurement plan for any single year shall~~  
16 ~~be reduced by an amount necessary to limit the annual~~  
17 ~~estimated average net increase due to the costs of these~~  
18 ~~resources included in the amounts paid by eligible retail~~  
19 ~~customers in connection with electric service to:~~

20 ~~(A) in 2008, no more than 0.5% of the amount paid~~  
21 ~~per kilowatthour by those customers during the year~~  
22 ~~ending May 31, 2007;~~

23 ~~(B) in 2009, the greater of an additional 0.5% of~~  
24 ~~the amount paid per kilowatthour by those customers~~  
25 ~~during the year ending May 31, 2008 or 1% of the amount~~  
26 ~~paid per kilowatthour by those customers during the~~

1 ~~year ending May 31, 2007;~~

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

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

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

23 ~~No later than June 30, 2011, the Commission shall~~  
24 ~~review the limitation on the amount of renewable energy~~  
25 ~~resources procured pursuant to this subsection (c) and~~  
26 ~~report to the General Assembly its findings as to~~

1           ~~whether that limitation unduly constrains the~~  
2           ~~procurement of cost-effective renewable energy~~  
3           ~~resources.~~

4           (3) (Blank). ~~Through June 1, 2011, renewable energy~~  
5           ~~resources shall be counted for the purpose of meeting the~~  
6           ~~renewable energy standards set forth in paragraph (1) of~~  
7           ~~this subsection (c) only if they are generated from~~  
8           ~~facilities located in the State, provided that~~  
9           ~~cost-effective renewable energy resources are available~~  
10           ~~from those facilities. If those cost-effective resources~~  
11           ~~are not available in Illinois, they shall be procured in~~  
12           ~~states that adjoin Illinois and may be counted towards~~  
13           ~~compliance. If those cost-effective resources are not~~  
14           ~~available in Illinois or in states that adjoin Illinois,~~  
15           ~~they shall be purchased elsewhere and shall be counted~~  
16           ~~towards compliance. After June 1, 2011, cost-effective~~  
17           ~~renewable energy resources located in Illinois and in~~  
18           ~~states that adjoin Illinois may be counted towards~~  
19           ~~compliance with the standards set forth in paragraph (1) of~~  
20           ~~this subsection (c). If those cost-effective resources are~~  
21           ~~not available in Illinois or in states that adjoin~~  
22           ~~Illinois, they shall be purchased elsewhere and shall be~~  
23           ~~counted towards compliance.~~

24           (4) The electric utility shall retire all renewable  
25           energy credits used to comply with the standard.

26           (5) Beginning with the 2010 delivery year and ending

1        after the 2016 delivery year ~~year commencing June 1, 2010,~~  
2        an electric utility subject to this subsection (c) shall  
3        apply the lesser of the maximum alternative compliance  
4        payment rate or the most recent estimated alternative  
5        compliance payment rate for its service territory for the  
6        corresponding compliance period, established pursuant to  
7        subsection (d) of Section 16-115D of the Public Utilities  
8        Act to its retail customers that take service pursuant to  
9        the electric utility's hourly pricing tariff or tariffs.  
10       The electric utility shall retain all amounts collected as  
11       a result of the application of the alternative compliance  
12       payment rate or rates to such customers, and, beginning in  
13       2011, the utility shall include in the information provided  
14       under item (1) of subsection (d) of Section 16-111.5 of the  
15       Public Utilities Act the amounts collected under the  
16       alternative compliance payment rate or rates for the prior  
17       year ending May 31. Notwithstanding any limitation on the  
18       procurement of renewable energy resources imposed by item  
19       (2) of this subsection (c), the Agency shall increase its  
20       spending on the purchase of renewable energy resources to  
21       be procured by the electric utility for the next plan year  
22       by an amount equal to the amounts collected by the utility  
23       under the alternative compliance payment rate or rates in  
24       the prior year ending May 31. Beginning April 1, 2012, and  
25       each year thereafter, the Agency shall prepare a public  
26       report for the General Assembly and Illinois Commerce

1 Commission that shall include, but not necessarily be  
2 limited to:

3 (A) a comparison of the costs associated with the  
4 Agency's procurement of renewable energy resources to  
5 (1) the Agency's costs associated with electricity  
6 generated by other types of generation facilities and  
7 (2) the benefits associated with the Agency's  
8 procurement of renewable energy resources; and

9 (B) an analysis of the rate impacts associated with  
10 the Illinois Power Agency's procurement of renewable  
11 resources, including, but not limited to, any  
12 long-term contracts, on the eligible retail customers  
13 of electric utilities.

14 The analysis shall include the Agency's estimate of the  
15 total dollar impact that the Agency's procurement of  
16 renewable resources has had on the annual electricity bills  
17 of the customer classes that comprise each eligible retail  
18 customer class taking service from an electric utility. The  
19 Agency's report shall also analyze how the operation of the  
20 alternative compliance payment mechanism, any long-term  
21 contracts, or other aspects of the applicable renewable  
22 portfolio standards impacts the rates of customers of  
23 alternative retail electric suppliers.

24 (6) Costs of procuring renewable energy credits  
25 pursuant to plans approved under Section 16-111.5C of the  
26 Public Utilities Act and associated reasonable expenses

1 for implementing the procurement programs, including the  
2 costs of administering and evaluating the declining block  
3 program, shall be recoverable as a utility cost of service  
4 under the Public Utilities Act.

5 (7) In meeting the renewable energy requirements of  
6 this subdivision (c), to the extent feasible and consistent  
7 with State and federal law, the renewable energy credit  
8 procurements, declining block solar program, and community  
9 solar program shall provide employment opportunities for  
10 all segments of the population and workforce, including  
11 minority-owned and female-owned business enterprises, and  
12 shall not, consistent with State and federal law,  
13 discriminate based on race or socioeconomic status.

14 (d) Clean coal portfolio standard.

15 (1) The procurement plans shall include electricity  
16 generated using clean coal. Each utility shall enter into  
17 one or more sourcing agreements with the initial clean coal  
18 facility, as provided in paragraph (3) of this subsection  
19 (d), covering electricity generated by the initial clean  
20 coal facility representing at least 5% of each utility's  
21 total supply to serve the load of eligible retail customers  
22 in 2015 and each year thereafter, as described in paragraph  
23 (3) of this subsection (d), subject to the limits specified  
24 in paragraph (2) of this subsection (d). It is the goal of  
25 the State that by January 1, 2025, 25% of the electricity  
26 used in the State shall be generated by cost-effective

1 clean coal facilities. For purposes of this subsection (d),  
2 "cost-effective" means that the expenditures pursuant to  
3 such sourcing agreements do not cause the limit stated in  
4 paragraph (2) of this subsection (d) to be exceeded and do  
5 not exceed cost-based benchmarks, which shall be developed  
6 to assess all expenditures pursuant to such sourcing  
7 agreements covering electricity generated by clean coal  
8 facilities, other than the initial clean coal facility, by  
9 the procurement administrator, in consultation with the  
10 Commission staff, Agency staff, and the procurement  
11 monitor and shall be subject to Commission review and  
12 approval.

13 A utility party to a sourcing agreement shall  
14 immediately retire any emission credits that it receives in  
15 connection with the electricity covered by such agreement.

16 Utilities shall maintain adequate records documenting  
17 the purchases under the sourcing agreement to comply with  
18 this subsection (d) and shall file an accounting with the  
19 load forecast that must be filed with the Agency by July 15  
20 of each year, in accordance with subsection (d) of Section  
21 16-111.5 of the Public Utilities Act.

22 A utility shall be deemed to have complied with the  
23 clean coal portfolio standard specified in this subsection  
24 (d) if the utility enters into a sourcing agreement as  
25 required by this subsection (d).

26 (2) For purposes of this subsection (d), the required

1 execution of sourcing agreements with the initial clean  
2 coal facility for a particular year shall be measured as a  
3 percentage of the actual amount of electricity  
4 (megawatt-hours) supplied by the electric utility to  
5 eligible retail customers in the planning year ending  
6 immediately prior to the agreement's execution. For  
7 purposes of this subsection (d), the amount paid per  
8 kilowatthour means the total amount paid for electric  
9 service expressed on a per kilowatthour basis. For purposes  
10 of this subsection (d), the total amount paid for electric  
11 service includes without limitation amounts paid for  
12 supply, transmission, distribution, surcharges and add-on  
13 taxes.

14 Notwithstanding the requirements of this subsection  
15 (d), the total amount paid under sourcing agreements with  
16 clean coal facilities pursuant to the procurement plan for  
17 any given year shall be reduced by an amount necessary to  
18 limit the annual estimated average net increase due to the  
19 costs of these resources included in the amounts paid by  
20 eligible retail customers in connection with electric  
21 service to:

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

25 (B) in 2011, the greater of an additional 0.5% of  
26 the amount paid per kilowatthour by those customers



1 during the year ending May 31, 2010 or 1% of the amount  
2 paid per kilowatthour by those customers during the  
3 year ending May 31, 2009;

4 (C) in 2012, the greater of an additional 0.5% of  
5 the amount paid per kilowatthour by those customers  
6 during the year ending May 31, 2011 or 1.5% of the  
7 amount paid per kilowatthour by those customers during  
8 the year ending May 31, 2009;

9 (D) in 2013, the greater of an additional 0.5% of  
10 the amount paid per kilowatthour by those customers  
11 during the year ending May 31, 2012 or 2% of the amount  
12 paid per kilowatthour by those customers during the  
13 year ending May 31, 2009; and

14 (E) thereafter, the total amount paid under  
15 sourcing agreements with clean coal facilities  
16 pursuant to the procurement plan for any single year  
17 shall be reduced by an amount necessary to limit the  
18 estimated average net increase due to the cost of these  
19 resources included in the amounts paid by eligible  
20 retail customers in connection with electric service  
21 to no more than the greater of (i) 2.015% of the amount  
22 paid per kilowatthour by those customers during the  
23 year ending May 31, 2009 or (ii) the incremental amount  
24 per kilowatthour paid for these resources in 2013.  
25 These requirements may be altered only as provided by  
26 statute.

1           No later than June 30, 2015, the Commission shall  
2 review the limitation on the total amount paid under  
3 sourcing agreements, if any, with clean coal facilities  
4 pursuant to this subsection (d) and report to the General  
5 Assembly its findings as to whether that limitation unduly  
6 constrains the amount of electricity generated by  
7 cost-effective clean coal facilities that is covered by  
8 sourcing agreements.

9           (3) Initial clean coal facility. In order to promote  
10 development of clean coal facilities in Illinois, each  
11 electric utility subject to this Section shall execute a  
12 sourcing agreement to source electricity from a proposed  
13 clean coal facility in Illinois (the "initial clean coal  
14 facility") that will have a nameplate capacity of at least  
15 500 MW when commercial operation commences, that has a  
16 final Clean Air Act permit on the effective date of this  
17 amendatory Act of the 95th General Assembly, and that will  
18 meet the definition of clean coal facility in Section 1-10  
19 of this Act when commercial operation commences. The  
20 sourcing agreements with this initial clean coal facility  
21 shall be subject to both approval of the initial clean coal  
22 facility by the General Assembly and satisfaction of the  
23 requirements of paragraph (4) of this subsection (d) and  
24 shall be executed within 90 days after any such approval by  
25 the General Assembly. The Agency and the Commission shall  
26 have authority to inspect all books and records associated

1 with the initial clean coal facility during the term of  
2 such a sourcing agreement. A utility's sourcing agreement  
3 for electricity produced by the initial clean coal facility  
4 shall include:

5 (A) a formula contractual price (the "contract  
6 price") approved pursuant to paragraph (4) of this  
7 subsection (d), which shall:

8 (i) be determined using a cost of service  
9 methodology employing either a level or deferred  
10 capital recovery component, based on a capital  
11 structure consisting of 45% equity and 55% debt,  
12 and a return on equity as may be approved by the  
13 Federal Energy Regulatory Commission, which in any  
14 case may not exceed the lower of 11.5% or the rate  
15 of return approved by the General Assembly  
16 pursuant to paragraph (4) of this subsection (d);  
17 and

18 (ii) provide that all miscellaneous net  
19 revenue, including but not limited to net revenue  
20 from the sale of emission allowances, if any,  
21 substitute natural gas, if any, grants or other  
22 support provided by the State of Illinois or the  
23 United States Government, firm transmission  
24 rights, if any, by-products produced by the  
25 facility, energy or capacity derived from the  
26 facility and not covered by a sourcing agreement

1           pursuant to paragraph (3) of this subsection (d) or  
2           item (5) of subsection (d) of Section 16-115 of the  
3           Public Utilities Act, whether generated from the  
4           synthesis gas derived from coal, from SNG, or from  
5           natural gas, shall be credited against the revenue  
6           requirement for this initial clean coal facility;

7           (B) power purchase provisions, which shall:

8                 (i) provide that the utility party to such  
9                 sourcing agreement shall pay the contract price  
10                for electricity delivered under such sourcing  
11                agreement;

12               (ii) require delivery of electricity to the  
13                regional transmission organization market of the  
14                utility that is party to such sourcing agreement;

15               (iii) require the utility party to such  
16                sourcing agreement to buy from the initial clean  
17                coal facility in each hour an amount of energy  
18                equal to all clean coal energy made available from  
19                the initial clean coal facility during such hour  
20                times a fraction, the numerator of which is such  
21                utility's retail market sales of electricity  
22                (expressed in kilowatthours sold) in the State  
23                during the prior calendar month and the  
24                denominator of which is the total retail market  
25                sales of electricity (expressed in kilowatthours  
26                sold) in the State by utilities during such prior

1 month and the sales of electricity (expressed in  
2 kilowatthours sold) in the State by alternative  
3 retail electric suppliers during such prior month  
4 that are subject to the requirements of this  
5 subsection (d) and paragraph (5) of subsection (d)  
6 of Section 16-115 of the Public Utilities Act,  
7 provided that the amount purchased by the utility  
8 in any year will be limited by paragraph (2) of  
9 this subsection (d); and

10 (iv) be considered pre-existing contracts in  
11 such utility's procurement plans for eligible  
12 retail customers;

13 (C) contract for differences provisions, which  
14 shall:

15 (i) require the utility party to such sourcing  
16 agreement to contract with the initial clean coal  
17 facility in each hour with respect to an amount of  
18 energy equal to all clean coal energy made  
19 available from the initial clean coal facility  
20 during such hour times a fraction, the numerator of  
21 which is such utility's retail market sales of  
22 electricity (expressed in kilowatthours sold) in  
23 the utility's service territory in the State  
24 during the prior calendar month and the  
25 denominator of which is the total retail market  
26 sales of electricity (expressed in kilowatthours

1 sold) in the State by utilities during such prior  
2 month and the sales of electricity (expressed in  
3 kilowatthours sold) in the State by alternative  
4 retail electric suppliers during such prior month  
5 that are subject to the requirements of this  
6 subsection (d) and paragraph (5) of subsection (d)  
7 of Section 16-115 of the Public Utilities Act,  
8 provided that the amount paid by the utility in any  
9 year will be limited by paragraph (2) of this  
10 subsection (d);

11 (ii) provide that the utility's payment  
12 obligation in respect of the quantity of  
13 electricity determined pursuant to the preceding  
14 clause (i) shall be limited to an amount equal to  
15 (1) the difference between the contract price  
16 determined pursuant to subparagraph (A) of  
17 paragraph (3) of this subsection (d) and the  
18 day-ahead price for electricity delivered to the  
19 regional transmission organization market of the  
20 utility that is party to such sourcing agreement  
21 (or any successor delivery point at which such  
22 utility's supply obligations are financially  
23 settled on an hourly basis) (the "reference  
24 price") on the day preceding the day on which the  
25 electricity is delivered to the initial clean coal  
26 facility busbar, multiplied by (2) the quantity of

1 electricity determined pursuant to the preceding  
2 clause (i); and

3 (iii) not require the utility to take physical  
4 delivery of the electricity produced by the  
5 facility;

6 (D) general provisions, which shall:

7 (i) specify a term of no more than 30 years,  
8 commencing on the commercial operation date of the  
9 facility;

10 (ii) provide that utilities shall maintain  
11 adequate records documenting purchases under the  
12 sourcing agreements entered into to comply with  
13 this subsection (d) and shall file an accounting  
14 with the load forecast that must be filed with the  
15 Agency by July 15 of each year, in accordance with  
16 subsection (d) of Section 16-111.5 of the Public  
17 Utilities Act;

18 (iii) provide that all costs associated with  
19 the initial clean coal facility will be  
20 periodically reported to the Federal Energy  
21 Regulatory Commission and to purchasers in  
22 accordance with applicable laws governing  
23 cost-based wholesale power contracts;

24 (iv) permit the Illinois Power Agency to  
25 assume ownership of the initial clean coal  
26 facility, without monetary consideration and

1 otherwise on reasonable terms acceptable to the  
2 Agency, if the Agency so requests no less than 3  
3 years prior to the end of the stated contract term;

4 (v) require the owner of the initial clean coal  
5 facility to provide documentation to the  
6 Commission each year, starting in the facility's  
7 first year of commercial operation, accurately  
8 reporting the quantity of carbon emissions from  
9 the facility that have been captured and  
10 sequestered and report any quantities of carbon  
11 released from the site or sites at which carbon  
12 emissions were sequestered in prior years, based  
13 on continuous monitoring of such sites. If, in any  
14 year after the first year of commercial operation,  
15 the owner of the facility fails to demonstrate that  
16 the initial clean coal facility captured and  
17 sequestered at least 50% of the total carbon  
18 emissions that the facility would otherwise emit  
19 or that sequestration of emissions from prior  
20 years has failed, resulting in the release of  
21 carbon dioxide into the atmosphere, the owner of  
22 the facility must offset excess emissions. Any  
23 such carbon offsets must be permanent, additional,  
24 verifiable, real, located within the State of  
25 Illinois, and legally and practicably enforceable.  
26 The cost of such offsets for the facility that are



1 not recoverable shall not exceed \$15 million in any  
2 given year. No costs of any such purchases of  
3 carbon offsets may be recovered from a utility or  
4 its customers. All carbon offsets purchased for  
5 this purpose and any carbon emission credits  
6 associated with sequestration of carbon from the  
7 facility must be permanently retired. The initial  
8 clean coal facility shall not forfeit its  
9 designation as a clean coal facility if the  
10 facility fails to fully comply with the applicable  
11 carbon sequestration requirements in any given  
12 year, provided the requisite offsets are  
13 purchased. However, the Attorney General, on  
14 behalf of the People of the State of Illinois, may  
15 specifically enforce the facility's sequestration  
16 requirement and the other terms of this contract  
17 provision. Compliance with the sequestration  
18 requirements and offset purchase requirements  
19 specified in paragraph (3) of this subsection (d)  
20 shall be reviewed annually by an independent  
21 expert retained by the owner of the initial clean  
22 coal facility, with the advance written approval  
23 of the Attorney General. The Commission may, in the  
24 course of the review specified in item (vii),  
25 reduce the allowable return on equity for the  
26 facility if the facility wilfully fails to comply

1 with the carbon capture and sequestration  
2 requirements set forth in this item (v);

3 (vi) include limits on, and accordingly  
4 provide for modification of, the amount the  
5 utility is required to source under the sourcing  
6 agreement consistent with paragraph (2) of this  
7 subsection (d);

8 (vii) require Commission review: (1) to  
9 determine the justness, reasonableness, and  
10 prudence of the inputs to the formula referenced in  
11 subparagraphs (A)(i) through (A)(iii) of paragraph  
12 (3) of this subsection (d), prior to an adjustment  
13 in those inputs including, without limitation, the  
14 capital structure and return on equity, fuel  
15 costs, and other operations and maintenance costs  
16 and (2) to approve the costs to be passed through  
17 to customers under the sourcing agreement by which  
18 the utility satisfies its statutory obligations.  
19 Commission review shall occur no less than every 3  
20 years, regardless of whether any adjustments have  
21 been proposed, and shall be completed within 9  
22 months;

23 (viii) limit the utility's obligation to such  
24 amount as the utility is allowed to recover through  
25 tariffs filed with the Commission, provided that  
26 neither the clean coal facility nor the utility

1 waives any right to assert federal pre-emption or  
2 any other argument in response to a purported  
3 disallowance of recovery costs;

4 (ix) limit the utility's or alternative retail  
5 electric supplier's obligation to incur any  
6 liability until such time as the facility is in  
7 commercial operation and generating power and  
8 energy and such power and energy is being delivered  
9 to the facility busbar;

10 (x) provide that the owner or owners of the  
11 initial clean coal facility, which is the  
12 counterparty to such sourcing agreement, shall  
13 have the right from time to time to elect whether  
14 the obligations of the utility party thereto shall  
15 be governed by the power purchase provisions or the  
16 contract for differences provisions;

17 (xi) append documentation showing that the  
18 formula rate and contract, insofar as they relate  
19 to the power purchase provisions, have been  
20 approved by the Federal Energy Regulatory  
21 Commission pursuant to Section 205 of the Federal  
22 Power Act;

23 (xii) provide that any changes to the terms of  
24 the contract, insofar as such changes relate to the  
25 power purchase provisions, are subject to review  
26 under the public interest standard applied by the

1 Federal Energy Regulatory Commission pursuant to  
2 Sections 205 and 206 of the Federal Power Act; and  
3 (xiii) conform with customary lender  
4 requirements in power purchase agreements used as  
5 the basis for financing non-utility generators.

6 (4) Effective date of sourcing agreements with the  
7 initial clean coal facility.

8 Any proposed sourcing agreement with the initial clean  
9 coal facility shall not become effective unless the  
10 following reports are prepared and submitted and  
11 authorizations and approvals obtained:

12 (i) Facility cost report. The owner of the initial  
13 clean coal facility shall submit to the Commission, the  
14 Agency, and the General Assembly a front-end  
15 engineering and design study, a facility cost report,  
16 method of financing (including but not limited to  
17 structure and associated costs), and an operating and  
18 maintenance cost quote for the facility (collectively  
19 "facility cost report"), which shall be prepared in  
20 accordance with the requirements of this paragraph (4)  
21 of subsection (d) of this Section, and shall provide  
22 the Commission and the Agency access to the work  
23 papers, relied upon documents, and any other backup  
24 documentation related to the facility cost report.

25 (ii) Commission report. Within 6 months following  
26 receipt of the facility cost report, the Commission, in

1 consultation with the Agency, shall submit a report to  
2 the General Assembly setting forth its analysis of the  
3 facility cost report. Such report shall include, but  
4 not be limited to, a comparison of the costs associated  
5 with electricity generated by the initial clean coal  
6 facility to the costs associated with electricity  
7 generated by other types of generation facilities, an  
8 analysis of the rate impacts on residential and small  
9 business customers over the life of the sourcing  
10 agreements, and an analysis of the likelihood that the  
11 initial clean coal facility will commence commercial  
12 operation by and be delivering power to the facility's  
13 busbar by 2016. To assist in the preparation of its  
14 report, the Commission, in consultation with the  
15 Agency, may hire one or more experts or consultants,  
16 the costs of which shall be paid for by the owner of  
17 the initial clean coal facility. The Commission and  
18 Agency may begin the process of selecting such experts  
19 or consultants prior to receipt of the facility cost  
20 report.

21 (iii) General Assembly approval. The proposed  
22 sourcing agreements shall not take effect unless,  
23 based on the facility cost report and the Commission's  
24 report, the General Assembly enacts authorizing  
25 legislation approving (A) the projected price, stated  
26 in cents per kilowatthour, to be charged for

1 electricity generated by the initial clean coal  
2 facility, (B) the projected impact on residential and  
3 small business customers' bills over the life of the  
4 sourcing agreements, and (C) the maximum allowable  
5 return on equity for the project; and

6 (iv) Commission review. If the General Assembly  
7 enacts authorizing legislation pursuant to  
8 subparagraph (iii) approving a sourcing agreement, the  
9 Commission shall, within 90 days of such enactment,  
10 complete a review of such sourcing agreement. During  
11 such time period, the Commission shall implement any  
12 directive of the General Assembly, resolve any  
13 disputes between the parties to the sourcing agreement  
14 concerning the terms of such agreement, approve the  
15 form of such agreement, and issue an order finding that  
16 the sourcing agreement is prudent and reasonable.

17 The facility cost report shall be prepared as follows:

18 (A) The facility cost report shall be prepared by  
19 duly licensed engineering and construction firms  
20 detailing the estimated capital costs payable to one or  
21 more contractors or suppliers for the engineering,  
22 procurement and construction of the components  
23 comprising the initial clean coal facility and the  
24 estimated costs of operation and maintenance of the  
25 facility. The facility cost report shall include:

26 (i) an estimate of the capital cost of the core

1 plant based on one or more front end engineering  
2 and design studies for the gasification island and  
3 related facilities. The core plant shall include  
4 all civil, structural, mechanical, electrical,  
5 control, and safety systems.

6 (ii) an estimate of the capital cost of the  
7 balance of the plant, including any capital costs  
8 associated with sequestration of carbon dioxide  
9 emissions and all interconnects and interfaces  
10 required to operate the facility, such as  
11 transmission of electricity, construction or  
12 backfeed power supply, pipelines to transport  
13 substitute natural gas or carbon dioxide, potable  
14 water supply, natural gas supply, water supply,  
15 water discharge, landfill, access roads, and coal  
16 delivery.

17 The quoted construction costs shall be expressed  
18 in nominal dollars as of the date that the quote is  
19 prepared and shall include capitalized financing costs  
20 during construction, taxes, insurance, and other  
21 owner's costs, and an assumed escalation in materials  
22 and labor beyond the date as of which the construction  
23 cost quote is expressed.

24 (B) The front end engineering and design study for  
25 the gasification island and the cost study for the  
26 balance of plant shall include sufficient design work

1 to permit quantification of major categories of  
2 materials, commodities and labor hours, and receipt of  
3 quotes from vendors of major equipment required to  
4 construct and operate the clean coal facility.

5 (C) The facility cost report shall also include an  
6 operating and maintenance cost quote that will provide  
7 the estimated cost of delivered fuel, personnel,  
8 maintenance contracts, chemicals, catalysts,  
9 consumables, spares, and other fixed and variable  
10 operations and maintenance costs. The delivered fuel  
11 cost estimate will be provided by a recognized third  
12 party expert or experts in the fuel and transportation  
13 industries. The balance of the operating and  
14 maintenance cost quote, excluding delivered fuel  
15 costs, will be developed based on the inputs provided  
16 by duly licensed engineering and construction firms  
17 performing the construction cost quote, potential  
18 vendors under long-term service agreements and plant  
19 operating agreements, or recognized third party plant  
20 operator or operators.

21 The operating and maintenance cost quote  
22 (including the cost of the front end engineering and  
23 design study) shall be expressed in nominal dollars as  
24 of the date that the quote is prepared and shall  
25 include taxes, insurance, and other owner's costs, and  
26 an assumed escalation in materials and labor beyond the



1 date as of which the operating and maintenance cost  
2 quote is expressed.

3 (D) The facility cost report shall also include an  
4 analysis of the initial clean coal facility's ability  
5 to deliver power and energy into the applicable  
6 regional transmission organization markets and an  
7 analysis of the expected capacity factor for the  
8 initial clean coal facility.

9 (E) Amounts paid to third parties unrelated to the  
10 owner or owners of the initial clean coal facility to  
11 prepare the core plant construction cost quote,  
12 including the front end engineering and design study,  
13 and the operating and maintenance cost quote will be  
14 reimbursed through Coal Development Bonds.

15 (5) Re-powering and retrofitting coal-fired power  
16 plants previously owned by Illinois utilities to qualify as  
17 clean coal facilities. During the 2009 procurement  
18 planning process and thereafter, the Agency and the  
19 Commission shall consider sourcing agreements covering  
20 electricity generated by power plants that were previously  
21 owned by Illinois utilities and that have been or will be  
22 converted into clean coal facilities, as defined by Section  
23 1-10 of this Act. Pursuant to such procurement planning  
24 process, the owners of such facilities may propose to the  
25 Agency sourcing agreements with utilities and alternative  
26 retail electric suppliers required to comply with

1 subsection (d) of this Section and item (5) of subsection  
2 (d) of Section 16-115 of the Public Utilities Act, covering  
3 electricity generated by such facilities. In the case of  
4 sourcing agreements that are power purchase agreements,  
5 the contract price for electricity sales shall be  
6 established on a cost of service basis. In the case of  
7 sourcing agreements that are contracts for differences,  
8 the contract price from which the reference price is  
9 subtracted shall be established on a cost of service basis.  
10 The Agency and the Commission may approve any such utility  
11 sourcing agreements that do not exceed cost-based  
12 benchmarks developed by the procurement administrator, in  
13 consultation with the Commission staff, Agency staff and  
14 the procurement monitor, subject to Commission review and  
15 approval. The Commission shall have authority to inspect  
16 all books and records associated with these clean coal  
17 facilities during the term of any such contract.

18 (6) Costs incurred under this subsection (d) or  
19 pursuant to a contract entered into under this subsection  
20 (d) shall be deemed prudently incurred and reasonable in  
21 amount and the electric utility shall be entitled to full  
22 cost recovery pursuant to the tariffs filed with the  
23 Commission.

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

1 (f) The Agency shall submit the final procurement plan to  
2 the Commission. The Agency shall revise a procurement plan if  
3 the Commission determines that it does not meet the standards  
4 set forth in Section 16-111.5 of the Public Utilities Act.

5 (g) The Agency shall assess fees to each affected utility  
6 to recover the costs incurred in preparation of the annual  
7 procurement plan for the utility.

8 (h) The Agency shall assess fees to each bidder to recover  
9 the costs incurred in connection with a competitive procurement  
10 process.

11 (Source: P.A. 97-325, eff. 8-12-11; 97-616, eff. 10-26-11;  
12 97-618, eff. 10-26-11; 97-658, eff. 1-13-12; 97-813, eff.  
13 7-13-12; 98-463, eff. 8-16-13.)

14 Section 10. The Public Utilities Act is amended by changing  
15 Sections 8-101, 8-103, 8-104, 16-107, 16-108.5, 16-108.8,  
16 16-111.5, 16-111.5B, 16-111.7, 16-115D, and 19-140 and by  
17 adding Section 16-111.5C as follows:

18 (220 ILCS 5/8-101) (from Ch. 111 2/3, par. 8-101)

19 Sec. 8-101. Duties of public utilities; nondiscrimination.  
20 A public utility shall furnish, provide, and maintain such  
21 service instrumentalities, equipment, and facilities as shall  
22 promote the safety, health, comfort, and convenience of its  
23 patrons, employees, and public and as shall be in all respects  
24 adequate, efficient, just, and reasonable.

1 All rules and regulations made by a public utility  
2 affecting or pertaining to its charges or service to the public  
3 shall be just and reasonable.

4 A public utility shall, upon reasonable notice, furnish to  
5 all persons who may apply therefor and be reasonably entitled  
6 thereto, suitable facilities and service, without  
7 discrimination and without delay.

8 Nothing in this Section shall be construed to prevent a  
9 public utility from accepting payment electronically or by the  
10 use of a customer-preferred financially accredited credit or  
11 debit methodology.

12 A public utility shall not discriminate against  
13 technologies, regardless of generator, prime mover, or  
14 inverter, when presented with an application for  
15 interconnection of a distributed generation facility,  
16 including without limitation a battery or energy storage  
17 facility, that operates in parallel with the electric  
18 distribution system.

19 (Source: P.A. 92-22, eff. 6-30-01.)

20 (220 ILCS 5/8-103)

21 Sec. 8-103. Energy efficiency and demand-response  
22 measures.

23 (a) It is the policy of the State that electric utilities  
24 are required to use cost-effective energy efficiency and  
25 demand-response measures to reduce delivery load. Requiring

1 investment in cost-effective energy efficiency and  
2 demand-response measures will reduce direct and indirect costs  
3 to consumers by decreasing environmental impacts, by reducing  
4 electricity prices in the regional power market, and by  
5 avoiding or delaying the need for new generation, transmission,  
6 and distribution infrastructure. It serves the public interest  
7 to allow electric utilities to recover costs for reasonably and  
8 prudently incurred expenses for energy efficiency and  
9 demand-response measures. As used in this Section,  
10 "cost-effective" means that the measures satisfy the total  
11 resource cost test. The low-income measures described in  
12 subsection (f) (4) of this Section shall not be required to meet  
13 the total resource cost test. For purposes of this Section, the  
14 terms "energy-efficiency", "demand-response", "electric  
15 utility", and "total resource cost test" shall have the  
16 meanings set forth in the Illinois Power Agency Act. For  
17 purposes of this Section, the amount per kilowatthour means the  
18 total amount paid for electric service expressed on a per  
19 kilowatthour basis. For purposes of this Section, the total  
20 amount paid for electric service includes without limitation  
21 estimated amounts paid for supply, transmission, distribution,  
22 surcharges, and add-on-taxes.

23 (b) Electric utilities shall implement cost-effective  
24 energy efficiency measures to meet the following incremental  
25 annual energy savings goals:

26 (1) 0.2% of energy delivered in the year commencing

1 June 1, 2008;

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

4 (3) 0.6% of energy delivered in the year commencing  
5 June 1, 2010;

6 (4) 0.8% of energy delivered in the year commencing  
7 June 1, 2011;

8 (5) 1% of energy delivered in the year commencing June  
9 1, 2012;

10 (6) 1.4% of energy delivered in the year commencing  
11 June 1, 2013;

12 (7) 1.8% of energy delivered in the year commencing  
13 June 1, 2014; ~~and~~

14 (8) 2% of energy delivered in each ~~the~~ year commencing  
15 June 1, 2015 and ending on December 31, 2017; and ~~each year~~  
16 ~~thereafter.~~

17 (9) beginning in January 2018, an amount to be  
18 determined by the Illinois Commerce Commission through the  
19 process described in subsection (f) of this Section in  
20 order to achieve a cumulative annual persisting reduction  
21 in electric energy demand from efficiency measures  
22 implemented as a result of utility programs from 2012  
23 through 2025 of 20%, relative to average annual electricity  
24 sales from 2014 through 2016, by the year ending December  
25 31 2025; cumulative persisting annual reductions are the  
26 reductions realized in a given year from measures installed

1       in either the that year or in previous years that are still  
2       operational and providing savings in that year because they  
3       have not yet reached the end of their useful life; and  
4       After 2025, the incremental annual energy goal shall be an  
5       amount to be determined by the Illinois Commerce Commission in  
6       order to fully capture the cost-effective potential for  
7       electricity savings as assessed by the Illinois Power Agency  
8       under subsection (j-10) of this Section.

9       Electric utilities may comply with this subsection (b) by  
10      meeting the annual incremental savings goal in the applicable  
11      year or by showing that the total cumulative annual savings  
12      within a 3-year planning period associated with measures  
13      implemented after May 31, 2014 was equal to the sum of each  
14      annual incremental savings requirement from May 31, 2014  
15      through the end of the applicable year. Beginning January 1,  
16      2018, electric utilities may comply by showing that the total  
17      cumulative annual savings persisting the last year of the  
18      applicable 4-year planning period was equal to the cumulative  
19      persisting annual savings required in that year by the Illinois  
20      Commerce Commission pursuant to the plans approved under  
21      subsection (f) of this Section. Annually, beginning on March 1,  
22      2019, each participating utility shall file third-party  
23      evaluations of the savings achieved in the preceding year.  
24      Within 5 days after the filing, any person objecting to the  
25      filing shall file an objection. Within 10 days after the  
26      filing, the Commission shall determine whether a hearing is

1 necessary. The Commission shall enter its order confirming or  
2 modifying the savings estimates within 90 days after the filing  
3 date.

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

12 (d) Notwithstanding the requirements of subsections (b)  
13 and (c) of this Section, an electric utility shall reduce the  
14 amount of energy efficiency and demand-response measures  
15 implemented over a 3-year planning period by an amount  
16 necessary to limit the estimated average annual increase in the  
17 amounts paid by retail customers in connection with electric  
18 service due to the cost of those measures to:

19 (1) in 2008, no more than 0.5% of the amount paid per  
20 kilowatthour by those customers during the year ending May  
21 31, 2007;

22 (2) in 2009, the greater of an additional 0.5% of the  
23 amount paid per kilowatthour by those customers during the  
24 year ending May 31, 2008 or 1% of the amount paid per  
25 kilowatthour by those customers during the year ending May  
26 31, 2007;



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

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

11           (5) in 2012 and in each subsequent year through 2017  
12 ~~thereafter~~, the amount of energy efficiency and  
13 demand-response measures implemented for any single year  
14 shall be reduced by an amount necessary to limit the  
15 estimated average net increase due to the cost of these  
16 measures included in the amounts paid by eligible retail  
17 customers in connection with electric service to no more  
18 than the greater of 2.015% of the amount paid per  
19 kilowatthour by those customers during the year ending May  
20 31, 2007 or the incremental amount per kilowatthour paid  
21 for these measures in 2011.

22           No later than June 30, 2011, the Commission shall review  
23 the limitation on the amount of energy efficiency and  
24 demand-response measures implemented pursuant to this Section  
25 and report to the General Assembly its findings as to whether  
26 that limitation unduly constrains the procurement of energy

1 efficiency and demand-response measures.

2 For utility efficiency programs offered on or after January  
3 2018, the amount of savings shall be limited only to the extent  
4 necessary to ensure that the measures installed will, in the  
5 aggregate, result in net benefits to customers when the full  
6 costs of the efficiency programs are compared with the full  
7 benefits, as defined in the total resource cost test.

8 (e) Electric utilities shall be responsible for overseeing  
9 the design, development, and filing of energy efficiency and  
10 demand-response plans with the Commission. Electric utilities  
11 shall implement 100% of the demand-response measures in the  
12 plans. Electric utilities shall implement 75% of the energy  
13 efficiency measures approved by the Commission, and may, as  
14 part of that implementation, outsource various aspects of  
15 program development and implementation. The remaining 25% of  
16 those energy efficiency measures approved by the Commission  
17 shall be implemented by the Department of Commerce and Economic  
18 Opportunity, and must be designed in conjunction with the  
19 utility and the filing process. The Department may outsource  
20 development and implementation of energy efficiency measures.  
21 A minimum of 10% of the entire portfolio of cost-effective  
22 energy efficiency measures shall be procured from units of  
23 local government, municipal corporations, school districts,  
24 and community college districts. A minimum of 12.5% of the  
25 entire portfolio of cost-effective energy efficiency measures  
26 shall be allocated to programs that serve low-income

1 residential customers. The Department shall coordinate the  
2 implementation of these measures. As much as half of the  
3 minimum low-income requirement may be met through energy  
4 efficiency measures that result in savings related to fuels  
5 other than electricity if necessary:

6 (1) to comprehensively capture treatment of efficiency  
7 opportunities for low-income residential customers;

8 (2) to enable effective administration of low-income  
9 programs; or

10 (3) to address limitations on availability of other  
11 funding sources for efficiency measures to improve the  
12 efficiency of use of natural gas, fuel oil, or other fuels  
13 used by low-income residential customers.

14 The Department shall coordinate the implementation of these  
15 measures.

16 The apportionment of the dollars to cover the costs to  
17 implement the Department's share of the portfolio of energy  
18 efficiency measures shall be made to the Department once the  
19 Department has executed rebate agreements, grants, or  
20 contracts for energy efficiency measures and provided  
21 supporting documentation for those rebate agreements, grants,  
22 and contracts to the utility. The Department is authorized to  
23 adopt any rules necessary and prescribe procedures in order to  
24 ensure compliance by applicants in carrying out the purposes of  
25 rebate agreements for energy efficiency measures implemented  
26 by the Department made under this Section.

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

6           A utility providing approved energy efficiency and  
7 demand-response measures in the State before December 31, 2017  
8 shall be permitted to recover costs of those measures through  
9 an automatic adjustment clause tariff filed with and approved  
10 by the Commission. The tariff shall be established outside the  
11 context of a general rate case. Each year the Commission shall  
12 initiate a review to reconcile any amounts collected with the  
13 actual costs and to determine the required adjustment to the  
14 annual tariff factor to match annual expenditures. Beginning  
15 January 1, 2018, a participating utility providing approved  
16 energy efficiency and demand-response measures in the State  
17 that has elected to be subject to Section 16-108.5 of the  
18 Public Utilities Act may recover the costs of those measures as  
19 part of its cost of service in its performance-based formula  
20 rate as provided in paragraph (1) of subsection (c) of Section  
21 16-108.5.

22           Each utility shall include, in its recovery of costs, the  
23 costs estimated for both the utility's and the Department's  
24 implementation of energy efficiency and demand-response  
25 measures. Costs collected by the utility for measures  
26 implemented by the Department shall be submitted to the

1 Department pursuant to Section 605-323 of the Civil  
2 Administrative Code of Illinois, shall be deposited into the  
3 Energy Efficiency Portfolio Standards Fund, and shall be used  
4 by the Department solely for the purpose of implementing these  
5 measures. A utility shall not be required to advance any moneys  
6 to the Department but only to forward such funds as it has  
7 collected. The Department shall report to the Commission on an  
8 annual basis regarding the costs actually incurred by the  
9 Department in the implementation of the measures. Any changes  
10 to the costs of energy efficiency measures as a result of plan  
11 modifications shall be appropriately reflected in amounts  
12 recovered by the utility and turned over to the Department.

13 The portfolio of measures, administered by both the  
14 utilities and the Department, shall, in combination, be  
15 designed to achieve the annual savings targets described in  
16 subsections (b) and (c) of this Section, as modified by  
17 subsection (d) of this Section.

18 The utility and the Department shall agree upon a  
19 reasonable portfolio of measures and determine the measurable  
20 corresponding percentage of the savings goals associated with  
21 measures implemented by the utility or Department.

22 No utility shall be assessed a penalty under subsection (f)  
23 of this Section for failure to make a timely filing if that  
24 failure is the result of a lack of agreement with the  
25 Department with respect to the allocation of responsibilities  
26 or related costs or target assignments. In that case, the

1 Department and the utility shall file their respective plans  
2 with the Commission and the Commission shall determine an  
3 appropriate division of measures and programs that meets the  
4 requirements of this Section.

5 If the Department is unable to meet incremental annual  
6 performance goals for the portion of the portfolio implemented  
7 by the Department, then the utility and the Department shall  
8 jointly submit a modified filing to the Commission explaining  
9 the performance shortfall and recommending an appropriate  
10 course going forward, including any program modifications that  
11 may be appropriate in light of the evaluations conducted under  
12 item (7) of subsection (f) of this Section. In this case, the  
13 utility obligation to collect the Department's costs and turn  
14 over those funds to the Department under this subsection (e)  
15 shall continue only if the Commission approves the  
16 modifications to the plan proposed by the Department.

17 (f) No later than November 15, 2007, each electric utility  
18 shall file an energy efficiency and demand-response plan with  
19 the Commission to meet the energy efficiency and  
20 demand-response standards for 2008 through 2010. No later than  
21 October 1, 2010, each electric utility shall file an energy  
22 efficiency and demand-response plan with the Commission to meet  
23 the energy efficiency and demand-response standards for 2011  
24 through 2013. By September 1, 2013, each electric utility shall  
25 file an energy efficiency and demand-response plan for 2014  
26 through 2017. By January 1, 2016, the Illinois Power Agency

1 shall publish a draft statewide energy efficiency potential  
2 study that assesses the technical, economic, and maximum  
3 cost-effective achievable potential for energy efficiency for  
4 each electric utility service territory from 2018 through 2021  
5 and from 2022 through 2025. The Agency shall seek input from  
6 stakeholders in advance of conducting the study. After the  
7 draft study is published, the Agency shall accept public  
8 comments on the study through March 1, 2016 and shall transmit  
9 a final proposed study to the Commission by April 15, 2017. The  
10 Commission shall approve the study or approve with  
11 modifications by June 1, 2016. By January 1, 2017, each  
12 electric utility and the Department shall file an energy  
13 efficiency plan for the period beginning January 1, 2018  
14 through December 31, 2021 that seeks to achieve a cumulative  
15 persisting annual reduction in electricity demand in 2021, from  
16 efficiency measures installed as a result of its programs from  
17 2012 through 2021, of at least 12% compared to average annual  
18 electricity sales from 2014 through 2016, unless such levels  
19 have been clearly shown by the Illinois Power Agency's  
20 potential study to not be cost-effective or achievable, in  
21 which case the plans should be designed to capture all of the  
22 cost-effective potential for energy savings identified as  
23 achievable in the potential study completed by the Illinois  
24 Power Agency. By January 1, 2020 and every 4 years thereafter,  
25 the Illinois Power Agency shall publish a second draft  
26 statewide energy efficiency potential study updating its

1 assessment of the cost-effective achievable potential for  
2 energy efficiency for each electric utility service territory  
3 from 2022 through 2025. The agency shall seek input from  
4 stakeholders in advance of conducting the study. The agency  
5 will accept public comments on the draft study through March 1,  
6 2020 and shall transmit a final proposed study to the  
7 Commission by April 15, 2020. The Commission shall approve the  
8 study or approve with modifications by June 1, 2020. By January  
9 1, 2021, each electric utility and the Department shall file an  
10 energy efficiency plan for the period beginning January 1, 2022  
11 through December 31, 2025 that seeks to achieve a cumulative  
12 persisting annual reduction in electricity demand in 2025, from  
13 efficiency measures installed as a result of its programs from  
14 2012 through 2025, of at least 20% compared to average annual  
15 electricity sales from 2014 through 2016, unless such levels  
16 have been clearly shown by the Illinois Power Agency's study to  
17 not be cost-effective or achievable, in which case the plans  
18 should be designed to capture all of the cost-effective  
19 potential for energy savings identified in the potential study  
20 completed by the Illinois Power Agency. On January 1, 2024 and  
21 every 4 years thereafter, each electric utility and the  
22 Department shall file an energy efficiency plan covering a  
23 4-year period beginning January 1 of the following year. ~~Every~~  
24 ~~3 years thereafter, each electric utility shall file, no later~~  
25 ~~than September 1, an energy efficiency and demand response plan~~  
26 ~~with the Commission. If a utility does not file such a plan by~~



1 the deadlines described in this Section ~~September 1 of an~~  
2 ~~applicable year~~, it shall face a penalty of \$100,000 per day  
3 until the plan is filed. Each utility's plan shall set forth  
4 the utility's proposals to meet the utility's portion of the  
5 energy efficiency standards identified in subsection (b) and  
6 the demand-response standards identified in subsection (c) of  
7 this Section as modified by subsections (d) and (e), taking  
8 into account the unique circumstances of the utility's service  
9 territory. The Commission shall seek public comment on the  
10 utility's plan and shall issue an order approving or  
11 disapproving each plan within 6 ~~5~~ months after its submission.  
12 If the Commission disapproves a plan, the Commission shall,  
13 within 30 days, describe in detail the reasons for the  
14 disapproval and describe a path by which the utility may file a  
15 revised draft of the plan to address the Commission's concerns  
16 satisfactorily. If the utility does not refile with the  
17 Commission within 60 days, the utility shall be subject to  
18 penalties at a rate of \$100,000 per day until the plan is  
19 filed. This process shall continue, and penalties shall accrue,  
20 until the utility has successfully filed a portfolio of energy  
21 efficiency and demand-response measures. Penalties shall be  
22 deposited into the Energy Efficiency Trust Fund. In submitting  
23 proposed energy efficiency and demand-response plans and  
24 funding levels to meet the savings goals adopted by this Act  
25 the utility shall:

- 26 (1) Demonstrate that its proposed energy efficiency

1 and demand-response measures will achieve the requirements  
2 that are identified in subsections (b) and (c) of this  
3 Section, as modified by subsections (d) and (e).

4 (2) Present specific proposals to implement new  
5 building and appliance standards that have been placed into  
6 effect.

7 (3) Present estimates of the total amount paid for  
8 electric service expressed on a per kilowatthour basis  
9 associated with the proposed portfolio of measures  
10 designed to meet the requirements that are identified in  
11 subsections (b) and (c) of this Section, as modified by  
12 subsections (d) and (e).

13 (4) Coordinate with the Department to present a  
14 portfolio of energy efficiency measures proportionate to  
15 the share of total annual utility revenues in Illinois from  
16 households at or below 150% of the poverty level. The  
17 energy efficiency programs shall be targeted to households  
18 with incomes at or below 80% of area median income.

19 (5) Demonstrate that its overall portfolio of energy  
20 efficiency and demand-response measures, not including  
21 programs covered by item (4) of this subsection (f), are  
22 cost-effective using the total resource cost test and  
23 represent a diverse cross-section of opportunities for  
24 customers of all rate classes to participate in the  
25 programs.

26 (5.5) Include meaningful opportunities for third-party

1 energy efficiency businesses to deliver energy savings.

2 (5.10) Ensure that the portfolio as a whole, including  
3 the portion administered by the Department of Commerce and  
4 Economic Opportunity and programs offered by third-party  
5 energy service providers, include opportunities for a  
6 diverse set of building types, including both program  
7 offering tailored to the needs of specific building types  
8 and opportunities to source energy efficiency savings from  
9 building, including, but not limited to, hospitals, health  
10 care facilities, long-term care facilities, units of local  
11 government, school districts, park districts, cultural  
12 institutions, museums, facilities licensed under the Child  
13 Care Act of 1969, preschools, churches and houses of  
14 worship, public universities, private colleges, community  
15 college districts, and wastewater and drinking water  
16 treatment plant agencies and operators.

17 (5.15) Demonstrate that the utility consulted with  
18 interested stakeholders, including customer groups,  
19 environmental advocates, Commission staff, the Illinois  
20 Commission on Environmental Justice, and other entities  
21 who have participated in Commission proceedings to  
22 consider the approval of past energy efficiency plans under  
23 this Section and that those entities concerns and input  
24 have been taken into consideration during the development  
25 of the proposed plan.

26 (5.20) Ensure that the portfolio maximizes the use of

1 cost-effective measures with measure lives of 10 years or  
2 greater.

3 (6) Include a proposed cost-recovery tariff mechanism  
4 to fund the proposed energy efficiency and demand-response  
5 measures and to ensure the recovery of the prudently and  
6 reasonably incurred costs of Commission-approved programs.  
7 Beginning in 2018, a participating utility, as defined in  
8 Section 16-108.5, providing approved energy efficiency and  
9 demand-response measures in the State shall recover the  
10 costs of those measures as part of its performance-based  
11 formula rate as provided in paragraph (1) of subsection (c)  
12 of Section 16-108.5.

13 (7) Provide for an annual independent evaluation of the  
14 performance of the cost-effectiveness of the utility's  
15 portfolio of measures and the Department's portfolio of  
16 measures, as well as a full review of the full multi-year  
17 portfolio ~~3-year results of the broader net program impacts~~  
18 ~~and~~, to the extent practical, for adjustment of the  
19 measures on a going-forward basis as a result of the  
20 evaluations. The resources dedicated to evaluation shall  
21 not exceed 3% of portfolio resources in any given year. The  
22 evaluations shall be performed by independent experts that  
23 are retained for this purpose by the Illinois Commerce  
24 Commission.

25 (g) No more than 3% of energy efficiency and  
26 demand-response program revenue may be allocated for research,

1 development, or pilot deployment of new equipment or measures  
2 ~~demonstration of breakthrough equipment and devices.~~

3 (h) This Section does not apply to an electric utility that  
4 on December 31, 2005 provided electric service to fewer than  
5 100,000 customers in Illinois.

6 (i) If, after 2 years, an electric utility fails to meet  
7 the efficiency standard specified in subsection (b) of this  
8 Section, as modified by subsections (d) and (e), it shall make  
9 a contribution to the Low-Income Home Energy Assistance  
10 Program. The combined total liability for failure to meet the  
11 goal shall be \$1,000,000, which shall be assessed as follows: a  
12 large electric utility shall pay \$665,000, and a medium  
13 electric utility shall pay \$335,000. If, after 3 years, an  
14 electric utility fails to meet the efficiency standard  
15 specified in subsection (b) of this Section, as modified by  
16 subsections (d) and (e), it shall make a contribution to the  
17 Low-Income Home Energy Assistance Program. The combined total  
18 liability for failure to meet the goal shall be \$1,000,000,  
19 which shall be assessed as follows: a large electric utility  
20 shall pay \$665,000, and a medium electric utility shall pay  
21 \$335,000. In addition, the responsibility for implementing the  
22 energy efficiency measures of the utility making the payment  
23 shall be transferred to the Illinois Power Agency if, after 3  
24 years, or in any subsequent 3-year period, the utility fails to  
25 meet the efficiency standard specified in subsection (b) of  
26 this Section, as modified by subsections (d) and (e). The

1 Agency shall implement a competitive procurement program to  
2 procure resources necessary to meet the standards specified in  
3 this Section as modified by subsections (d) and (e), with costs  
4 for those resources to be recovered in the same manner as  
5 products purchased through the procurement plan as provided in  
6 Section 16-111.5. The Director shall implement this  
7 requirement in connection with the procurement plan as provided  
8 in Section 16-111.5.

9 For purposes of this Section, (i) a "large electric  
10 utility" is an electric utility that, on December 31, 2005,  
11 served more than 2,000,000 electric customers in Illinois; (ii)  
12 a "medium electric utility" is an electric utility that, on  
13 December 31, 2005, served 2,000,000 or fewer but more than  
14 100,000 electric customers in Illinois; and (iii) Illinois  
15 electric utilities that are affiliated by virtue of a common  
16 parent company are considered a single electric utility.

17 (j) If, after 3 years, or any subsequent 3-year period, the  
18 Department fails to implement the Department's share of energy  
19 efficiency measures required by the standards in subsection  
20 (b), then the Illinois Power Agency may assume responsibility  
21 for and control of the Department's share of the required  
22 energy efficiency measures. The Agency shall implement a  
23 competitive procurement program to procure resources necessary  
24 to meet the standards specified in this Section, with the costs  
25 of these resources to be recovered in the same manner as  
26 provided for the Department in this Section.

1       (j-5) By June 1, 2016 and every 4 years thereafter, the  
2       Department of Commerce and Economic Opportunity shall perform  
3       and make publicly available a study assessing the job creation  
4       impact of implementation of energy efficiency programs and  
5       policies in Illinois. The Department shall seek input from  
6       stakeholders in advance of conducting the study.

7       (j-10) For the purposes of conducting the energy efficiency  
8       potential studies required in subsection (f) of this Section,  
9       the Illinois Power Agency shall:

10       (1) base estimates of the portion of economic potential  
11       that could be achieved on document experience of the most  
12       successful programs in other jurisdictions in each of the  
13       specific efficiency markets being analyzed;

14       (2) include impacts from emergence of new technologies  
15       that can reasonably be expected to emerge after the study  
16       is conducted but during the period covered by the study;

17       (3) account for potential for measure costs to decline  
18       as volumes of sales increase;

19       (4) account for economies that could be achieved  
20       through joint electric-gas program delivery or  
21       coordination;

22       (5) include estimates of potential from behavioral  
23       changes and process improvements (in addition to  
24       technologies);

25       (6) include estimates of impacts from fuel-switching  
26       measures; and

1           (7) include estimates of impacts from either  
2           supporting adoption of stricter building codes or  
3           equipment standards or better compliance with existing  
4           codes and standards.

5           (j-15) The Commission shall issue an order extending the  
6           programs approved under subsection (f) of this Section for the  
7           period beginning June 1, 2014 and ending May 31, 2017 so that  
8           these programs continue to be offered until December 31, 2017.  
9           The savings goals and budgets associated with these approved  
10           programs shall be modified to ensure that the programs will  
11           continue to operate and acquire additional savings during this  
12           period and under the same cost-effectiveness requirements  
13           applicable when the programs were approved.

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

17           (l) In meeting the energy efficiency requirements of this  
18           Section, to the extent feasible and consistent with State and  
19           federal law, the energy efficiency credit procurements,  
20           declining block solar program, and community solar program  
21           should provide employment opportunities for all segments of the  
22           population and workforce, including minority-owned and  
23           female-owned business enterprises, and shall not, consistent  
24           with State and federal law, discriminate based on race or  
25           socioeconomic status.

26           (Source: P.A. 97-616, eff. 10-26-11; 97-841, eff. 7-20-12;



1 98-90, eff. 7-15-13.)

2 (220 ILCS 5/8-104)

3 Sec. 8-104. Natural gas energy efficiency programs.

4 (a) It is the policy of the State that natural gas  
5 utilities and the Department of Commerce and Economic  
6 Opportunity are required to use cost-effective energy  
7 efficiency to reduce direct and indirect costs to consumers. It  
8 serves the public interest to allow natural gas utilities to  
9 recover costs for reasonably and prudently incurred expenses  
10 for cost-effective energy efficiency measures.

11 (b) For purposes of this Section, "energy efficiency" means  
12 measures that reduce the amount of energy required to achieve a  
13 given end use. "Energy efficiency" also includes measures that  
14 reduce the total Btus of electricity and natural gas needed to  
15 meet the end use or uses. "Cost-effective" means that the  
16 measures satisfy the total resource cost test, which, for  
17 purposes of this Section, has the meaning given to that term in  
18 Section 1-10 of the Illinois Power Agency Act. ~~means a standard~~  
19 ~~that is met if, for an investment in energy efficiency, the~~  
20 ~~benefit-cost ratio is greater than one. The benefit-cost ratio~~  
21 ~~is the ratio of the net present value of the total benefits of~~  
22 ~~the measures to the net present value of the total costs as~~  
23 ~~calculated over the lifetime of the measures. The total~~  
24 ~~resource cost test compares the sum of avoided natural gas~~  
25 ~~utility costs, representing the benefits that accrue to the~~

1 ~~system and the participant in the delivery of those efficiency~~  
2 ~~measures, as well as other quantifiable societal benefits,~~  
3 ~~including avoided electric utility costs, to the sum of all~~  
4 ~~incremental costs of end use measures (including both utility~~  
5 ~~and participant contributions), plus costs to administer,~~  
6 ~~deliver, and evaluate each demand side measure, to quantify the~~  
7 ~~net savings obtained by substituting demand side measures for~~  
8 ~~supply resources. In calculating avoided costs, reasonable~~  
9 ~~estimates shall be included for financial costs likely to be~~  
10 ~~imposed by future regulation of emissions of greenhouse gases.~~

11 The low-income programs described in item (4) of subsection (f)  
12 of this Section shall not be required to meet the total  
13 resource cost test.

14 (c) Natural gas utilities shall implement cost-effective  
15 energy efficiency measures to meet at least the following  
16 natural gas savings requirements, which shall be based upon the  
17 total amount of gas delivered to retail customers, other than  
18 the customers described in subsection (m) of this Section,  
19 during calendar year 2009 multiplied by the applicable  
20 percentage. Natural gas utilities may comply with this Section  
21 by meeting the annual incremental savings goal in the  
22 applicable year or by showing that total cumulative annual  
23 savings within a 3-year planning period associated with  
24 measures implemented after May 31, 2011 were equal to the sum  
25 of each annual incremental savings requirement from May 31,  
26 2011 through the end of the applicable year:

- 1 (1) 0.2% by May 31, 2012;
- 2 (2) an additional 0.4% by May 31, 2013, increasing  
3 total savings to .6%;
- 4 (3) an additional 0.6% by May 31, 2014, increasing  
5 total savings to 1.2%;
- 6 (4) an additional 0.8% by May 31, 2015, increasing  
7 total savings to 2.0%;
- 8 (5) an additional 1% by May 31, 2016, increasing total  
9 savings to 3.0%;
- 10 (6) an additional 1.2% by May 31, 2017, increasing  
11 total savings to 4.2%;
- 12 (7) an additional 1.4% by May 31, 2018, increasing  
13 total savings to 5.6%;
- 14 (8) an additional 1.5% by May 31, 2019, increasing  
15 total savings to 7.1%; and
- 16 (9) an additional 1.5% in each 12-month period  
17 thereafter.

18 (d) Notwithstanding the requirements of subsection (c) of  
19 this Section, a natural gas utility shall limit the amount of  
20 energy efficiency implemented in any 3-year reporting period  
21 established by subsection (f) of Section 8-104 of this Act, by  
22 an amount necessary to limit the estimated average increase in  
23 the amounts paid by retail customers in connection with natural  
24 gas service to no more than 2% in the applicable 3-year  
25 reporting period. The energy savings requirements in  
26 subsection (c) of this Section may be reduced by the Commission

1 for the subject plan, if the utility demonstrates by  
2 substantial evidence that it is highly unlikely that the  
3 requirements could be achieved without exceeding the  
4 applicable spending limits in any 3-year reporting period. No  
5 later than September 1, 2013, the Commission shall review the  
6 limitation on the amount of energy efficiency measures  
7 implemented pursuant to this Section and report to the General  
8 Assembly, in the report required by subsection (k) of this  
9 Section, its findings as to whether that limitation unduly  
10 constrains the procurement of energy efficiency measures.

11 (e) Natural gas utilities shall be responsible for  
12 overseeing the design, development, and filing of their  
13 efficiency plans with the Commission. The utility shall utilize  
14 75% of the available funding associated with energy efficiency  
15 programs approved by the Commission, and may outsource various  
16 aspects of program development and implementation. The  
17 remaining 25% of available funding shall be used by the  
18 Department of Commerce and Economic Opportunity to implement  
19 energy efficiency measures that achieve no less than 20% of the  
20 requirements of subsection (c) of this Section. Such measures  
21 shall be designed in conjunction with the utility and approved  
22 by the Commission. The Department may outsource development and  
23 implementation of energy efficiency measures. A minimum of 10%  
24 of the entire portfolio of cost-effective energy efficiency  
25 measures shall be procured from local government, municipal  
26 corporations, school districts, and community college

1 districts. Five percent of the entire portfolio of  
2 cost-effective energy efficiency measures may be granted to  
3 local government and municipal corporations for market  
4 transformation initiatives. The Department shall coordinate  
5 the implementation of these measures and shall integrate  
6 delivery of natural gas efficiency programs with electric  
7 efficiency programs delivered pursuant to Section 8-103 of this  
8 Act, unless the Department can show that integration is not  
9 feasible.

10 The apportionment of the dollars to cover the costs to  
11 implement the Department's share of the portfolio of energy  
12 efficiency measures shall be made to the Department once the  
13 Department has executed rebate agreements, grants, or  
14 contracts for energy efficiency measures and provided  
15 supporting documentation for those rebate agreements, grants,  
16 and contracts to the utility. The Department is authorized to  
17 adopt any rules necessary and prescribe procedures in order to  
18 ensure compliance by applicants in carrying out the purposes of  
19 rebate agreements for energy efficiency measures implemented  
20 by the Department made under this Section.

21 The details of the measures implemented by the Department  
22 shall be submitted by the Department to the Commission in  
23 connection with the utility's filing regarding the energy  
24 efficiency measures that the utility implements.

25 A utility providing approved energy efficiency measures in  
26 this State shall be permitted to recover costs of those

1 measures through an automatic adjustment clause tariff filed  
2 with and approved by the Commission. The tariff shall be  
3 established outside the context of a general rate case and  
4 shall be applicable to the utility's customers other than the  
5 customers described in subsection (m) of this Section. Each  
6 year the Commission shall initiate a review to reconcile any  
7 amounts collected with the actual costs and to determine the  
8 required adjustment to the annual tariff factor to match annual  
9 expenditures.

10 Each utility shall include, in its recovery of costs, the  
11 costs estimated for both the utility's and the Department's  
12 implementation of energy efficiency measures. Costs collected  
13 by the utility for measures implemented by the Department shall  
14 be submitted to the Department pursuant to Section 605-323 of  
15 the Civil Administrative Code of Illinois, shall be deposited  
16 into the Energy Efficiency Portfolio Standards Fund, and shall  
17 be used by the Department solely for the purpose of  
18 implementing these measures. A utility shall not be required to  
19 advance any moneys to the Department but only to forward such  
20 funds as it has collected. The Department shall report to the  
21 Commission on an annual basis regarding the costs actually  
22 incurred by the Department in the implementation of the  
23 measures. Any changes to the costs of energy efficiency  
24 measures as a result of plan modifications shall be  
25 appropriately reflected in amounts recovered by the utility and  
26 turned over to the Department.

1           The portfolio of measures, administered by both the  
2 utilities and the Department, shall, in combination, be  
3 designed to achieve the annual energy savings requirements set  
4 forth in subsection (c) of this Section, as modified by  
5 subsection (d) of this Section.

6           The utility and the Department shall agree upon a  
7 reasonable portfolio of measures and determine the measurable  
8 corresponding percentage of the savings goals associated with  
9 measures implemented by the Department.

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

19           If the Department is unable to meet performance  
20 requirements for the portion of the portfolio implemented by  
21 the Department, then the utility and the Department shall  
22 jointly submit a modified filing to the Commission explaining  
23 the performance shortfall and recommending an appropriate  
24 course going forward, including any program modifications that  
25 may be appropriate in light of the evaluations conducted under  
26 item (8) of subsection (f) of this Section. In this case, the

1 utility obligation to collect the Department's costs and turn  
2 over those funds to the Department under this subsection (e)  
3 shall continue only if the Commission approves the  
4 modifications to the plan proposed by the Department.

5 (f) No later than October 1, 2010, each gas utility shall  
6 file an energy efficiency plan with the Commission to meet the  
7 energy efficiency standards through May 31, 2014. Every 3 years  
8 thereafter, each utility shall file, no later than October 1,  
9 an energy efficiency plan with the Commission, except that for  
10 plans covering 2018 through 2025, each gas utility shall file  
11 plans on the same schedule as is required for the electric  
12 utilities under subsection (f) of Section 8-103 of this Act. If  
13 a utility does not file such a plan by the statutory deadline  
14 described in this Section ~~October 1 of the applicable year,~~  
15 then it shall face a penalty of \$100,000 per day until the plan  
16 is filed. Each utility's plan shall set forth the utility's  
17 proposals to meet the utility's portion of the energy  
18 efficiency standards identified in subsection (c) of this  
19 Section, as modified by subsection (d) of this Section, taking  
20 into account the unique circumstances of the utility's service  
21 territory. The Commission shall seek public comment on the  
22 utility's plan and shall issue an order approving or  
23 disapproving each plan. If the Commission disapproves a plan,  
24 the Commission shall, within 30 days, describe in detail the  
25 reasons for the disapproval and describe a path by which the  
26 utility may file a revised draft of the plan to address the



1 Commission's concerns satisfactorily. If the utility does not  
2 refile with the Commission within 60 days after the  
3 disapproval, the utility shall be subject to penalties at a  
4 rate of \$100,000 per day until the plan is filed. This process  
5 shall continue, and penalties shall accrue, until the utility  
6 has successfully filed a portfolio of energy efficiency  
7 measures. Penalties shall be deposited into the Energy  
8 Efficiency Trust Fund and the cost of any such penalties may  
9 not be recovered from ratepayers. In submitting proposed energy  
10 efficiency plans and funding levels to meet the savings goals  
11 adopted by this Act the utility shall:

12 (1) Demonstrate that its proposed energy efficiency  
13 measures will achieve the requirements that are identified  
14 in subsection (c) of this Section, as modified by  
15 subsection (d) of this Section.

16 (2) Present specific proposals to implement new  
17 building and appliance standards that have been placed into  
18 effect.

19 (3) Present estimates of the total amount paid for gas  
20 service expressed on a per therm basis associated with the  
21 proposed portfolio of measures designed to meet the  
22 requirements that are identified in subsection (c) of this  
23 Section, as modified by subsection (d) of this Section.

24 (4) Coordinate with the Department to present a  
25 portfolio of energy efficiency measures proportionate to  
26 the share of total annual utility revenues in Illinois from

1 households at or below 150% of the poverty level. Such  
2 programs shall be targeted to households with incomes at or  
3 below 80% of area median income.

4 (5) Demonstrate that its overall portfolio of energy  
5 efficiency measures, not including programs covered by  
6 item (4) of this subsection (f), are cost-effective using  
7 the total resource cost test and represent a diverse cross  
8 section of opportunities for customers of all rate classes  
9 to participate in the programs.

10 (6) Demonstrate that a gas utility affiliated with an  
11 electric utility that is required to comply with Section  
12 8-103 of this Act has integrated gas and electric  
13 efficiency measures into a single program that reduces  
14 program or participant costs and appropriately allocates  
15 costs to gas and electric ratepayers. The Department shall  
16 integrate all gas and electric programs it delivers in any  
17 such utilities' service territories, unless the Department  
18 can show that integration is not feasible or appropriate.

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

23 (8) Provide for quarterly status reports tracking  
24 implementation of and expenditures for the utility's  
25 portfolio of measures and the Department's portfolio of  
26 measures, an annual independent review, and a full

1 independent evaluation of the 3-year results of the  
2 performance and the cost-effectiveness of the utility's  
3 and Department's portfolios of measures and broader net  
4 program impacts and, to the extent practical, for  
5 adjustment of the measures on a going forward basis as a  
6 result of the evaluations. The resources dedicated to  
7 evaluation shall not exceed 3% of portfolio resources in  
8 any given 3-year period.

9 (g) No more than 3% of expenditures on energy efficiency  
10 measures may be allocated for demonstration of breakthrough  
11 equipment and devices.

12 (h) Illinois natural gas utilities that are affiliated by  
13 virtue of a common parent company may, at the utilities'  
14 request, be considered a single natural gas utility for  
15 purposes of complying with this Section.

16 (i) If, after 3 years, a gas utility fails to meet the  
17 efficiency standard specified in subsection (c) of this Section  
18 as modified by subsection (d), then it shall make a  
19 contribution to the Low-Income Home Energy Assistance Program.  
20 The total liability for failure to meet the goal shall be  
21 assessed as follows:

- 22 (1) a large gas utility shall pay \$600,000;
- 23 (2) a medium gas utility shall pay \$400,000; and
- 24 (3) a small gas utility shall pay \$200,000.

25 For purposes of this Section, (i) a "large gas utility" is  
26 a gas utility that on December 31, 2008, served more than

1 1,500,000 gas customers in Illinois; (ii) a "medium gas  
2 utility" is a gas utility that on December 31, 2008, served  
3 fewer than 1,500,000, but more than 500,000 gas customers in  
4 Illinois; and (iii) a "small gas utility" is a gas utility that  
5 on December 31, 2008, served fewer than 500,000 and more than  
6 100,000 gas customers in Illinois. The costs of this  
7 contribution may not be recovered from ratepayers.

8 If a gas utility fails to meet the efficiency standard  
9 specified in subsection (c) of this Section, as modified by  
10 subsection (d) of this Section, in any 2 consecutive 3-year  
11 planning periods, then the responsibility for implementing the  
12 utility's energy efficiency measures shall be transferred to an  
13 independent program administrator selected by the Commission.  
14 Reasonable and prudent costs incurred by the independent  
15 program administrator to meet the efficiency standard  
16 specified in subsection (c) of this Section, as modified by  
17 subsection (d) of this Section, may be recovered from the  
18 customers of the affected gas utilities, other than customers  
19 described in subsection (m) of this Section. The utility shall  
20 provide the independent program administrator with all  
21 information and assistance necessary to perform the program  
22 administrator's duties including but not limited to customer,  
23 account, and energy usage data, and shall allow the program  
24 administrator to include inserts in customer bills. The utility  
25 may recover reasonable costs associated with any such  
26 assistance.

1 (j) No utility shall be deemed to have failed to meet the  
2 energy efficiency standards to the extent any such failure is  
3 due to a failure of the Department.

4 (k) Not later than January 1, 2012, the Commission shall  
5 develop and solicit public comment on a plan to foster  
6 statewide coordination and consistency between statutorily  
7 mandated natural gas and electric energy efficiency programs to  
8 reduce program or participant costs or to improve program  
9 performance. Not later than September 1, 2013, the Commission  
10 shall issue a report to the General Assembly containing its  
11 findings and recommendations.

12 (l) This Section does not apply to a gas utility that on  
13 January 1, 2009, provided gas service to fewer than 100,000  
14 customers in Illinois.

15 (m) Subsections (a) through (k) of this Section do not  
16 apply to customers of a natural gas utility that have a North  
17 American Industry Classification System code number that is  
18 22111 or any such code number beginning with the digits 31, 32,  
19 or 33 and (i) annual usage in the aggregate of 4 million therms  
20 or more within the service territory of the affected gas  
21 utility or with aggregate usage of 8 million therms or more in  
22 this State and complying with the provisions of item (l) of  
23 this subsection (m); or (ii) using natural gas as feedstock and  
24 meeting the usage requirements described in item (i) of this  
25 subsection (m), to the extent such annual feedstock usage is  
26 greater than 60% of the customer's total annual usage of

1 natural gas.

2 (1) Customers described in this subsection (m) of this  
3 Section shall apply, on a form approved on or before  
4 October 1, 2009 by the Department, to the Department to be  
5 designated as a self-directing customer ("SDC") or as an  
6 exempt customer using natural gas as a feedstock from which  
7 other products are made, including, but not limited to,  
8 feedstock for a hydrogen plant, on or before the 1st day of  
9 February, 2010. Thereafter, application may be made not  
10 less than 6 months before the filing date of the gas  
11 utility energy efficiency plan described in subsection (f)  
12 of this Section; however, a new customer that commences  
13 taking service from a natural gas utility after February 1,  
14 2010 may apply to become a SDC or exempt customer up to 30  
15 days after beginning service. Customers described in this  
16 subsection (m) that have not already been approved by the  
17 Department may apply to be designated a self-directing  
18 customer or exempt customer, on a form approved by the  
19 Department, between September 1, 2013 and September 30,  
20 2013. Customer applications that are approved by the  
21 Department under this amendatory Act of the 98th General  
22 Assembly shall be considered to be a self-directing  
23 customer or exempt customer, as applicable, for the current  
24 3-year planning period effective December 1, 2013. Such  
25 application shall contain the following:

26 (A) the customer's certification that, at the time

1 of its application, it qualifies to be a SDC or exempt  
2 customer described in this subsection (m) of this  
3 Section;

4 (B) in the case of a SDC, the customer's  
5 certification that it has established or will  
6 establish by the beginning of the utility's 3-year  
7 planning period commencing subsequent to the  
8 application, and will maintain for accounting  
9 purposes, an energy efficiency reserve account and  
10 that the customer will accrue funds in said account to  
11 be held for the purpose of funding, in whole or in  
12 part, energy efficiency measures of the customer's  
13 choosing, which may include, but are not limited to,  
14 projects involving combined heat and power systems  
15 that use the same energy source both for the generation  
16 of electrical or mechanical power and the production of  
17 steam or another form of useful thermal energy or the  
18 use of combustible gas produced from biomass, or both;

19 (C) in the case of a SDC, the customer's  
20 certification that annual funding levels for the  
21 energy efficiency reserve account will be equal to 2%  
22 of the customer's cost of natural gas, composed of the  
23 customer's commodity cost and the delivery service  
24 charges paid to the gas utility, or \$150,000, whichever  
25 is less;

26 (D) in the case of a SDC, the customer's

1 certification that the required reserve account  
2 balance will be capped at 3 years' worth of accruals  
3 and that the customer may, at its option, make further  
4 deposits to the account to the extent such deposit  
5 would increase the reserve account balance above the  
6 designated cap level;

7 (E) in the case of a SDC, the customer's  
8 certification that by October 1 of each year, beginning  
9 no sooner than October 1, 2012, the customer will  
10 report to the Department information, for the 12-month  
11 period ending May 31 of the same year, on all deposits  
12 and reductions, if any, to the reserve account during  
13 the reporting year, and to the extent deposits to the  
14 reserve account in any year are in an amount less than  
15 \$150,000, the basis for such reduced deposits; reserve  
16 account balances by month; a description of energy  
17 efficiency measures undertaken by the customer and  
18 paid for in whole or in part with funds from the  
19 reserve account; an estimate of the energy saved, or to  
20 be saved, by the measure; and that the report shall  
21 include a verification by an officer or plant manager  
22 of the customer or by a registered professional  
23 engineer or certified energy efficiency trade  
24 professional that the funds withdrawn from the reserve  
25 account were used for the energy efficiency measures;

26 (F) in the case of an exempt customer, the



1 customer's certification of the level of gas usage as  
2 feedstock in the customer's operation in a typical year  
3 and that it will provide information establishing this  
4 level, upon request of the Department;

5 (G) in the case of either an exempt customer or a  
6 SDC, the customer's certification that it has provided  
7 the gas utility or utilities serving the customer with  
8 a copy of the application as filed with the Department;

9 (H) in the case of either an exempt customer or a  
10 SDC, certification of the natural gas utility or  
11 utilities serving the customer in Illinois including  
12 the natural gas utility accounts that are the subject  
13 of the application; and

14 (I) in the case of either an exempt customer or a  
15 SDC, a verification signed by a plant manager or an  
16 authorized corporate officer attesting to the  
17 truthfulness and accuracy of the information contained  
18 in the application.

19 (2) The Department shall review the application to  
20 determine that it contains the information described in  
21 provisions (A) through (I) of item (1) of this subsection  
22 (m), as applicable. The review shall be completed within 30  
23 days after the date the application is filed with the  
24 Department. Absent a determination by the Department  
25 within the 30-day period, the applicant shall be considered  
26 to be a SDC or exempt customer, as applicable, for all

1 subsequent 3-year planning periods, as of the date of  
2 filing the application described in this subsection (m). If  
3 the Department determines that the application does not  
4 contain the applicable information described in provisions  
5 (A) through (I) of item (1) of this subsection (m), it  
6 shall notify the customer, in writing, of its determination  
7 that the application does not contain the required  
8 information and identify the information that is missing,  
9 and the customer shall provide the missing information  
10 within 15 working days after the date of receipt of the  
11 Department's notification.

12 (3) The Department shall have the right to audit the  
13 information provided in the customer's application and  
14 annual reports to ensure continued compliance with the  
15 requirements of this subsection. Based on the audit, if the  
16 Department determines the customer is no longer in  
17 compliance with the requirements of items (A) through (I)  
18 of item (1) of this subsection (m), as applicable, the  
19 Department shall notify the customer in writing of the  
20 noncompliance. The customer shall have 30 days to establish  
21 its compliance, and failing to do so, may have its status  
22 as a SDC or exempt customer revoked by the Department. The  
23 Department shall treat all information provided by any  
24 customer seeking SDC status or exemption from the  
25 provisions of this Section as strictly confidential.

26 (4) Upon request, or on its own motion, the Commission

1           may open an investigation, no more than once every 3 years  
2           and not before October 1, 2014, to evaluate the  
3           effectiveness of the self-directing program described in  
4           this subsection (m).

5           Customers described in this subsection (m) that applied to  
6           the Department on January 3, 2013, were approved by the  
7           Department on February 13, 2013 to be a self-directing customer  
8           or exempt customer, and receive natural gas from a utility that  
9           provides gas service to at least 500,000 retail customers in  
10          Illinois and electric service to at least 1,000,000 retail  
11          customers in Illinois shall be considered to be a  
12          self-directing customer or exempt customer, as applicable, for  
13          the current 3-year planning period effective December 1, 2013.

14          (n) The applicability of this Section to customers  
15          described in subsection (m) of this Section is conditioned on  
16          the existence of the SDC program. In no event will any  
17          provision of this Section apply to such customers after January  
18          1, 2020.

19          (Source: P.A. 97-813, eff. 7-13-12; 97-841, eff. 7-20-12;  
20          98-90, eff. 7-15-13; 98-225, eff. 8-9-13; 98-604, eff.  
21          12-17-13.)

22                 (220 ILCS 5/16-107)

23                 Sec. 16-107. Real-time pricing.

24                 (a) Each electric utility shall file, on or before May 1,  
25                 1998, a tariff or tariffs which allow nonresidential retail

1 customers in the electric utility's service area to elect  
2 real-time pricing beginning October 1, 1998.

3 (b) Each electric utility shall file, on or before May 1,  
4 2000, a tariff or tariffs which allow residential retail  
5 customers in the electric utility's service area to elect  
6 real-time pricing beginning October 1, 2000.

7 (b-5) Each electric utility shall file a tariff or tariffs  
8 allowing residential retail customers in the electric  
9 utility's service area to elect real-time pricing beginning  
10 January 2, 2007. ~~A customer who elects real time pricing shall~~  
11 ~~remain on such rate for a minimum of 12 months.~~ The Commission  
12 may, after notice and hearing, approve the tariff or tariffs,  
13 provided that the Commission finds that the potential for  
14 demand reductions will result in net economic benefits to all  
15 residential customers of the electric utility. In examining  
16 economic benefits from demand reductions, the Commission  
17 shall, at a minimum, consider the following: improvements to  
18 system reliability and power quality, reduction in wholesale  
19 market prices and price volatility, electric utility cost  
20 avoidance and reductions, market power mitigation, and other  
21 benefits of demand reductions, but only to the extent that the  
22 effects of reduced demand can be demonstrated to lower the cost  
23 of electricity delivered to residential customers. A tariff or  
24 tariffs approved pursuant to this subsection (b-5) shall, at a  
25 minimum, describe (i) the methodology for determining the  
26 market price of energy to be reflected in the real-time rate

1 and (ii) the manner in which customers who elect real-time  
2 pricing will be provided with ready access to hourly market  
3 prices, including, but not limited to, day-ahead hourly energy  
4 prices.

5 A proceeding under this subsection (b-5) may not exceed 120  
6 days in length.

7 (b-10) Each electric utility providing real-time pricing  
8 pursuant to subsection (b-5) shall install a meter capable of  
9 recording hourly interval energy use at the service location of  
10 each customer that elects real-time pricing pursuant to this  
11 subsection.

12 (b-15) If the Commission issues an order pursuant to  
13 subsection (b-5), the affected electric utility shall contract  
14 with an entity not affiliated with the electric utility to  
15 serve as a program administrator to develop and implement a  
16 program to provide consumer outreach, enrollment, and  
17 education concerning real-time pricing and to establish and  
18 administer an information system and technical and other  
19 customer assistance that is necessary to enable customers to  
20 manage electricity use. The program administrator: (i) shall be  
21 selected and compensated by the electric utility, subject to  
22 Commission approval; (ii) shall have demonstrated technical  
23 and managerial competence in the development and  
24 administration of demand management programs; and (iii) may  
25 develop and implement risk management, energy efficiency, and  
26 other services related to energy use management for which the

1 program administrator shall be compensated by participants in  
2 the program receiving such services. The electric utility shall  
3 provide the program administrator with all information and  
4 assistance necessary to perform the program administrator's  
5 duties, including, but not limited to, customer, account, and  
6 energy use data. The electric utility shall permit the program  
7 administrator to include inserts in residential customer bills  
8 2 times per year to assist with customer outreach and  
9 enrollment.

10 The program administrator shall submit an annual report to  
11 the electric utility no later than April 1 of each year  
12 describing the operation and results of the program, including  
13 information concerning the number and types of customers using  
14 real-time pricing, changes in customers' energy use patterns,  
15 an assessment of the value of the program to both participants  
16 and non-participants, and recommendations concerning  
17 modification of the program and the tariff or tariffs filed  
18 under subsection (b-5). This report shall be filed by the  
19 electric utility with the Commission within 30 days of receipt  
20 and shall be available to the public on the Commission's web  
21 site.

22 (b-20) The Commission shall monitor the performance of  
23 programs established pursuant to subsection (b-15) and shall  
24 order the termination or modification of a program if it  
25 determines that the program is not, after a reasonable period  
26 of time for development not to exceed 4 years, resulting in net

1 benefits to the residential customers of the electric utility.

2 (b-25) An electric utility shall be entitled to recover  
3 reasonable costs incurred in complying with this Section,  
4 provided that recovery of the costs is fairly apportioned among  
5 its residential customers as provided in this subsection  
6 (b-25). The electric utility may apportion greater costs on the  
7 residential customers who elect real-time pricing, but may also  
8 impose some of the costs of real-time pricing on customers who  
9 do not elect real-time pricing, provided that the Commission  
10 determines that the cost savings resulting from real-time  
11 pricing will exceed the costs imposed on customers for  
12 maintaining the program.

13 (c) The electric utility's tariff or tariffs filed pursuant  
14 to this Section shall be subject to Article IX.

15 (d) This Section does not apply to any electric utility  
16 providing service to 100,000 or fewer customers.

17 (Source: P.A. 94-977, eff. 6-30-06.)

18 (220 ILCS 5/16-108.5)

19 Sec. 16-108.5. Infrastructure investment and  
20 modernization; regulatory reform.

21 (a) (Blank).

22 (b) For purposes of this Section, "participating utility"  
23 means an electric utility or a combination utility serving more  
24 than 1,000,000 customers in Illinois that voluntarily elects  
25 and commits to undertake (i) the infrastructure investment

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

17 During the infrastructure investment program's peak  
18 program year, a participating utility other than a combination  
19 utility shall create 2,000 full-time equivalent jobs in  
20 Illinois, and a participating utility that is a combination  
21 utility shall create 450 full-time equivalent jobs in Illinois  
22 related to the provision of electric service. These jobs shall  
23 include direct jobs, contractor positions, and induced jobs,  
24 but shall not include any portion of a job commitment, not  
25 specifically contingent on an amendatory Act of the 97th  
26 General Assembly becoming law, between a participating utility



1 and a labor union that existed on the effective date of this  
2 amendatory Act of the 97th General Assembly and that has not  
3 yet been fulfilled. A portion of the full-time equivalent jobs  
4 created by each participating utility shall include  
5 incremental personnel hired subsequent to the effective date of  
6 this amendatory Act of the 97th General Assembly. For purposes  
7 of this Section, "peak program year" means the consecutive  
8 12-month period with the highest number of full-time equivalent  
9 jobs that occurs between the beginning of investment year 2 and  
10 the end of investment year 4.

11 A participating utility shall meet one of the following  
12 commitments, as applicable:

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

22 (A) over a 5-year period, invest an estimated  
23 \$1,300,000,000 in electric system upgrades,  
24 modernization projects, and training facilities,  
25 including, but not limited to:

26 (i) distribution infrastructure improvements

1 totaling an estimated \$1,000,000,000, including  
2 underground residential distribution cable  
3 injection and replacement and mainline cable  
4 system refurbishment and replacement projects;

5 (ii) training facility construction or upgrade  
6 projects totaling an estimated \$10,000,000,  
7 provided that, at a minimum, one such facility  
8 shall be located in a municipality having a  
9 population of more than 2 million residents and one  
10 such facility shall be located in a municipality  
11 having a population of more than 150,000 residents  
12 but fewer than 170,000 residents; any such new  
13 facility located in a municipality having a  
14 population of more than 2 million residents must be  
15 designed for the purpose of obtaining, and the  
16 owner of the facility shall apply for,  
17 certification under the United States Green  
18 Building Council's Leadership in Energy Efficiency  
19 Design Green Building Rating System;

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

22 (iv) an estimated \$200,000,000 for reducing  
23 the susceptibility of certain circuits to  
24 storm-related damage, including, but not limited  
25 to, high winds, thunderstorms, and ice storms;  
26 improvements may include, but are not limited to,

1 overhead to underground conversion and other  
2 engineered outcomes for circuits; the  
3 participating utility shall prioritize the  
4 selection of circuits based on each circuit's  
5 historical susceptibility to storm-related damage  
6 and the ability to provide the greatest customer  
7 benefit upon completion of the improvements; to be  
8 eligible for improvement, the participating  
9 utility's ability to maintain proper tree  
10 clearances surrounding the overhead circuit must  
11 not have been impeded by third parties; and

12 (B) over a 10-year period, invest an estimated  
13 \$1,300,000,000 to upgrade and modernize its  
14 transmission and distribution infrastructure and in  
15 Smart Grid electric system upgrades, including, but  
16 not limited to:

- 17 (i) additional smart meters;  
18 (ii) distribution automation;  
19 (iii) associated cyber secure data  
20 communication network; and  
21 (iv) substation micro-processor relay  
22 upgrades.

23 (2) Beginning no later than 180 days after a  
24 participating utility that is a combination utility files a  
25 performance-based formula rate tariff pursuant to  
26 subsection (c) of this Section, or, beginning no later than

1           January 1, 2012 if such utility files such  
2           performance-based formula rate tariff within 14 days of the  
3           effective date of this amendatory Act of the 97th General  
4           Assembly, the participating utility shall, except as  
5           provided in subsection (b-5):

6                   (A) over a 10-year period, invest an estimated  
7                   \$265,000,000 in electric system upgrades,  
8                   modernization projects, and training facilities,  
9                   including, but not limited to:

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

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

26                           (iii) wood pole inspection, treatment, and

1 replacement programs; and  
2 (B) over a 10-year period, invest an estimated  
3 \$360,000,000 to upgrade and modernize its transmission  
4 and distribution infrastructure and in Smart Grid  
5 electric system upgrades, including, but not limited  
6 to:

- 7 (i) additional smart meters;  
8 (ii) distribution automation;  
9 (iii) associated cyber secure data  
10 communication network; and  
11 (iv) substation micro-processor relay  
12 upgrades.

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

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

1 reasonable construction ramp-up and ramp-down time to the  
2 investment periods specified in this subsection (b). For each  
3 such investment period, the ramp-up and ramp-down time shall  
4 not exceed a total of 6 months.

5       Within 60 days after filing a tariff under subsection (c)  
6 of this Section, a participating utility shall submit to the  
7 Commission its plan, including scope, schedule, and staffing,  
8 for satisfying its infrastructure investment program  
9 commitments pursuant to this subsection (b). The submitted plan  
10 shall include a schedule and staffing plan for the next  
11 calendar year. The plan shall also include a plan for the  
12 creation, operation, and administration of a Smart Grid test  
13 bed as described in subsection (c) of Section 16-108.8. The  
14 plan need not allocate the work equally over the respective  
15 periods, but should allocate material increments throughout  
16 such periods commensurate with the work to be undertaken. No  
17 later than April 1 of each subsequent year, the utility shall  
18 submit to the Commission a report that includes any updates to  
19 the plan, a schedule for the next calendar year, the  
20 expenditures made for the prior calendar year and cumulatively,  
21 and the number of full-time equivalent jobs created for the  
22 prior calendar year and cumulatively. If the utility is  
23 materially deficient in satisfying a schedule or staffing plan,  
24 then the report must also include a corrective action plan to  
25 address the deficiency. The fact that the plan, implementation  
26 of the plan, or a schedule changes shall not imply the

1 imprudence or unreasonableness of the infrastructure  
2 investment program, plan, or schedule. Further, no later than  
3 45 days following the last day of the first, second, and third  
4 quarters of each year of the plan, a participating utility  
5 shall submit to the Commission a verified quarterly report for  
6 the prior quarter that includes (i) the total number of  
7 full-time equivalent jobs created during the prior quarter,  
8 (ii) the total number of employees as of the last day of the  
9 prior quarter, (iii) the total number of full-time equivalent  
10 hours in each job classification or job title, (iv) the total  
11 number of incremental employees and contractors in support of  
12 the investments undertaken pursuant to this subsection (b) for  
13 the prior quarter, and (v) any other information that the  
14 Commission may require by rule.

15 With respect to the participating utility's peak job  
16 commitment, if, after considering the utility's corrective  
17 action plan and compliance thereunder, the Commission enters an  
18 order finding, after notice and hearing, that a participating  
19 utility did not satisfy its peak job commitment described in  
20 this subsection (b) for reasons that are reasonably within its  
21 control, then the Commission shall also determine, after  
22 consideration of the evidence, including, but not limited to,  
23 evidence submitted by the Department of Commerce and Economic  
24 Opportunity and the utility, the deficiency in the number of  
25 full-time equivalent jobs during the peak program year due to  
26 such failure. The Commission shall notify the Department of any

1 proceeding that is initiated pursuant to this paragraph. For  
2 each full-time equivalent job deficiency during the peak  
3 program year that the Commission finds as set forth in this  
4 paragraph, the participating utility shall, within 30 days  
5 after the entry of the Commission's order, pay \$6,000 to a fund  
6 for training grants administered under Section 605-800 of The  
7 Department of Commerce and Economic Opportunity Law, which  
8 shall not be a recoverable expense.

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

22 If the Commission finds that a participating utility is no  
23 longer eligible to update the performance-based formula rate  
24 tariff pursuant to subsection (d) of this Section, or the  
25 performance-based formula rate is otherwise terminated, then  
26 the participating utility's voluntary commitments and



1 obligations under this subsection (b) shall immediately  
2 terminate, except for the utility's obligation to pay an amount  
3 already owed to the fund for training grants pursuant to a  
4 Commission order.

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

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

23 If the participating utility finds that it is implementing  
24 its plan for satisfying the infrastructure investment program  
25 commitments described in subsection (b) of this Section at a  
26 cost below the estimated amounts specified in subsection (b) of

1 this Section, then the utility may file a petition with the  
2 Commission requesting that it be permitted to satisfy its  
3 commitments by spending less than the estimated amounts  
4 specified in subsection (b) of this Section. The Commission  
5 shall, after notice and hearing, enter its order approving, or  
6 approving as modified, or denying each such petition within 150  
7 days after the filing of the petition.

8 In no event, absent General Assembly approval, shall the  
9 capital investment costs incurred by a participating utility  
10 other than a combination utility in satisfying its  
11 infrastructure investment program commitments described in  
12 subsection (b) of this Section exceed \$3,000,000,000 or, for a  
13 participating utility that is a combination utility,  
14 \$720,000,000. If the participating utility's updated cost  
15 estimates for satisfying its infrastructure investment program  
16 commitments described in subsection (b) of this Section exceed  
17 the limitation imposed by this subsection (b-5), then it shall  
18 submit a report to the Commission that identifies the increased  
19 costs and explains the reason or reasons for the increased  
20 costs no later than the year in which the utility estimates it  
21 will exceed the limitation. The Commission shall review the  
22 report and shall, within 90 days after the participating  
23 utility files the report, report to the General Assembly its  
24 findings regarding the participating utility's report. If the  
25 General Assembly does not amend the limitation imposed by this  
26 subsection (b-5), then the utility may modify its plan so as

1 not to exceed the limitation imposed by this subsection (b-5)  
2 and may propose corresponding changes to the metrics  
3 established pursuant to subparagraphs (5) through (8) of  
4 subsection (f) of this Section, and the Commission may modify  
5 the metrics and incremental savings goals established pursuant  
6 to subsection (f) of this Section accordingly.

7 (b-10) All participating utilities shall make  
8 contributions for an energy low-income and support program in  
9 accordance with this subsection. Beginning no later than 180  
10 days after a participating utility files a performance-based  
11 formula rate tariff pursuant to subsection (c) of this Section,  
12 or beginning no later than January 1, 2012 if such utility  
13 files such performance-based formula rate tariff within 14 days  
14 of the effective date of this amendatory Act of the 97th  
15 General Assembly, and without obtaining any approvals from the  
16 Commission or any other agency other than as set forth in this  
17 Section, regardless of whether any such approval would  
18 otherwise be required, a participating utility other than a  
19 combination utility shall pay \$10,000,000 per year for 5 years  
20 and a participating utility that is a combination utility shall  
21 pay \$1,000,000 per year for 10 years to the energy low-income  
22 and support program, which is intended to fund customer  
23 assistance programs with the primary purpose being avoidance of  
24 imminent disconnection. Such programs may include:

- 25 (1) a residential hardship program that may partner  
26 with community-based organizations, including senior

1 citizen organizations, and provides grants to low-income  
2 residential customers, including low-income senior  
3 citizens, who demonstrate a hardship;

4 (2) a program that provides grants and other bill  
5 payment concessions to disabled veterans who demonstrate a  
6 hardship and members of the armed services or reserve  
7 forces of the United States or members of the Illinois  
8 National Guard who are on active duty pursuant to an  
9 executive order of the President of the United States, an  
10 act of the Congress of the United States, or an order of  
11 the Governor and who demonstrate a hardship;

12 (3) a budget assistance program that provides tools and  
13 education to low-income senior citizens to assist them with  
14 obtaining information regarding energy usage and effective  
15 means of managing energy costs;

16 (4) a non-residential special hardship program that  
17 provides grants to non-residential customers such as small  
18 businesses and non-profit organizations that demonstrate a  
19 hardship, including those providing services to senior  
20 citizen and low-income customers; and

21 (5) a performance-based assistance program that  
22 provides grants to encourage residential customers to make  
23 on-time payments by matching a portion of the customer's  
24 payments or providing credits towards arrearages.

25 The payments made by a participating utility pursuant to  
26 this subsection (b-10) shall not be a recoverable expense. A

1 participating utility may elect to fund either new or existing  
2 customer assistance programs, including, but not limited to,  
3 those that are administered by the utility.

4 Programs that use funds that are provided by a  
5 participating utility to reduce utility bills shall ~~may~~ be  
6 implemented through tariffs that are filed with and reviewed by  
7 the Commission. If a utility elects to file tariffs with the  
8 Commission to implement all or a portion of the programs, those  
9 tariffs shall, regardless of the date actually filed, be deemed  
10 accepted and approved, and shall become effective on the  
11 effective date of this amendatory Act of the 97th General  
12 Assembly. The participating utilities whose customers benefit  
13 from the funds that are disbursed as contemplated in this  
14 Section shall file annual reports documenting the disbursement  
15 of those funds with the Commission. The Commission has the  
16 authority to audit disbursement of the funds to ensure they  
17 were disbursed consistently with this Section.

18 If the Commission finds that a participating utility is no  
19 longer eligible to update the performance-based formula rate  
20 tariff pursuant to subsection (d) of this Section, or the  
21 performance-based formula rate is otherwise terminated, then  
22 the participating utility's voluntary commitments and  
23 obligations under this subsection (b-10) shall immediately  
24 terminate.

25 (c) A participating utility shall ~~may elect to~~ recover its  
26 delivery services costs through a performance-based formula

1 rate approved by the Commission, which shall specify the cost  
2 components that form the basis of the rate charged to customers  
3 with sufficient specificity to operate in a standardized manner  
4 and be updated annually with transparent information that  
5 reflects the utility's actual costs to be recovered during the  
6 applicable rate year, which is the period beginning with the  
7 first billing day of January and extending through the last  
8 billing day of the following December. In the event the utility  
9 recovers a portion of its costs through automatic adjustment  
10 clause tariffs on the effective date of this amendatory Act of  
11 the 97th General Assembly, the utility may elect to continue to  
12 recover these costs through such tariffs, but then these costs  
13 shall not be recovered through the performance-based formula  
14 rate. In the event the participating utility, prior to the  
15 effective date of this amendatory Act of the 97th General  
16 Assembly, filed electric delivery services tariffs with the  
17 Commission pursuant to Section 9-201 of this Act that are  
18 related to the recovery of its electric delivery services costs  
19 that are still pending on the effective date of this amendatory  
20 Act of the 97th General Assembly, the participating utility  
21 shall, at the time it files its performance-based formula rate  
22 tariff with the Commission, also file a notice of withdrawal  
23 with the Commission to withdraw the electric delivery services  
24 tariffs previously filed pursuant to Section 9-201 of this Act.  
25 Upon receipt of such notice, the Commission shall dismiss with  
26 prejudice any docket that had been initiated to investigate the

1 electric delivery services tariffs filed pursuant to Section  
2 9-201 of this Act, and such tariffs and the record related  
3 thereto shall not be the subject of any further hearing,  
4 investigation, or proceeding of any kind related to rates for  
5 electric delivery services.

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

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

1 investment.

2 (2) Reflect the utility's actual year-end capital  
3 structure for the applicable calendar year, excluding  
4 goodwill, subject to a determination of prudence and  
5 reasonableness consistent with Commission practice and  
6 law.

7 (3) Include a cost of equity, which shall be calculated  
8 as the sum of the following:

9 (A) the average for the applicable calendar year of  
10 the monthly average yields of 30-year U.S. Treasury  
11 bonds published by the Board of Governors of the  
12 Federal Reserve System in its weekly H.15 Statistical  
13 Release or successor publication; and

14 (B) 580 basis points.

15 At such time as the Board of Governors of the Federal  
16 Reserve System ceases to include the monthly average yields  
17 of 30-year U.S. Treasury bonds in its weekly H.15  
18 Statistical Release or successor publication, the monthly  
19 average yields of the U.S. Treasury bonds then having the  
20 longest duration published by the Board of Governors in its  
21 weekly H.15 Statistical Release or successor publication  
22 shall instead be used for purposes of this paragraph (3).

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

26 (A) recovery of incentive compensation expense



1 that is based on the achievement of operational  
2 metrics, including metrics related to budget controls,  
3 outage duration and frequency, safety, customer  
4 service, efficiency and productivity, and  
5 environmental compliance. Incentive compensation  
6 expense that is based on net income or an affiliate's  
7 earnings per share shall not be recoverable under the  
8 performance-based formula rate;

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

12 (C) recovery of severance costs, provided that if  
13 the amount is over \$3,700,000 for a participating  
14 utility that is a combination utility or \$10,000,000  
15 for a participating utility that serves more than 3  
16 million retail customers, then the full amount shall be  
17 amortized consistent with subparagraph (F) of this  
18 paragraph (4);

19 (D) investment return at a rate equal to the  
20 utility's weighted average cost of long-term debt, on  
21 the pension assets as, and in the amount, reported in  
22 Account 186 (or in such other Account or Accounts as  
23 such asset may subsequently be recorded) of the  
24 utility's most recently filed FERC Form 1, net of  
25 deferred tax benefits;

26 (E) recovery of the expenses related to the

1 Commission proceeding under this subsection (c) to  
2 approve this performance-based formula rate and  
3 initial rates or to subsequent proceedings related to  
4 the formula, provided that the recovery shall be  
5 amortized over a 3-year period; recovery of expenses  
6 related to the annual Commission proceedings under  
7 subsection (d) of this Section to review the inputs to  
8 the performance-based formula rate shall be expensed  
9 and recovered through the performance-based formula  
10 rate;

11 (F) amortization over a 5-year period of the full  
12 amount of each charge or credit that exceeds \$3,700,000  
13 for a participating utility that is a combination  
14 utility or \$10,000,000 for a participating utility  
15 that serves more than 3 million retail customers in the  
16 applicable calendar year and that relates to a  
17 workforce reduction program's severance costs, changes  
18 in accounting rules, changes in law, compliance with  
19 any Commission-initiated audit, or a single storm or  
20 other similar expense, provided that any unamortized  
21 balance shall be reflected in rate base. For purposes  
22 of this subparagraph (F), changes in law includes any  
23 enactment, repeal, or amendment in a law, ordinance,  
24 rule, regulation, interpretation, permit, license,  
25 consent, or order, including those relating to taxes,  
26 accounting, or to environmental matters, or in the

1 interpretation or application thereof by any  
2 governmental authority occurring after the effective  
3 date of this amendatory Act of the 97th General  
4 Assembly;

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

7 (H) historical weather normalized billing  
8 determinants; and

9 (I) allocation methods for common costs.

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

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

1 adjusting for any penalties to the rate of return on common  
2 equity applied pursuant to the performance metrics  
3 provision of subsection (f) of this Section) for the prior  
4 rate year, adjusted for taxes.

5 (6) Provide for an annual reconciliation, as described  
6 in subsection (d) of this Section, with interest, of the  
7 revenue requirement reflected in rates for each calendar  
8 year, beginning with the calendar year in which the utility  
9 files its performance-based formula rate tariff pursuant  
10 to subsection (c) of this Section, with what the revenue  
11 requirement would have been had the actual cost information  
12 for the applicable calendar year been available at the  
13 filing date.

14 The utility shall file, together with its tariff, final  
15 data based on its most recently filed FERC Form 1, plus  
16 projected plant additions and correspondingly updated  
17 depreciation reserve and expense for the calendar year in which  
18 the tariff and data are filed, that shall populate the  
19 performance-based formula rate and set the initial delivery  
20 services rates under the formula. For purposes of this Section,  
21 "FERC Form 1" means the Annual Report of Major Electric  
22 Utilities, Licensees and Others that electric utilities are  
23 required to file with the Federal Energy Regulatory Commission  
24 under the Federal Power Act, Sections 3, 4(a), 304 and 209,  
25 modified as necessary to be consistent with 83 Ill. Admin. Code  
26 Part 415 as of May 1, 2011. Nothing in this Section is intended

1 to allow costs that are not otherwise recoverable to be  
2 recoverable by virtue of inclusion in FERC Form 1.

3 After the utility files its proposed performance-based  
4 formula rate structure and protocols and initial rates, the  
5 Commission shall initiate a docket to review the filing. The  
6 Commission shall enter an order approving, or approving as  
7 modified, the performance-based formula rate, including the  
8 initial rates, as just and reasonable within 270 days after the  
9 date on which the tariff was filed, or, if the tariff is filed  
10 within 14 days after the effective date of this amendatory Act  
11 of the 97th General Assembly, then by May 31, 2012. Such review  
12 shall be based on the same evidentiary standards, including,  
13 but not limited to, those concerning the prudence and  
14 reasonableness of the costs incurred by the utility, the  
15 Commission applies in a hearing to review a filing for a  
16 general increase in rates under Article IX of this Act. The  
17 initial rates shall take effect within 30 days after the  
18 Commission's order approving the performance-based formula  
19 rate tariff.

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

26 Subsequent changes to the performance-based formula rate

1 structure or protocols shall be made as set forth in Section  
2 9-201 of this Act, but nothing in this subsection (c) is  
3 intended to limit the Commission's authority under Article IX  
4 and other provisions of this Act to initiate an investigation  
5 of a participating utility's performance-based formula rate  
6 tariff, provided that any such changes shall be consistent with  
7 paragraphs (1) through (6) of this subsection (c). Any change  
8 ordered by the Commission shall be made at the same time new  
9 rates take effect following the Commission's next order  
10 pursuant to subsection (d) of this Section, provided that the  
11 new rates take effect no less than 30 days after the date on  
12 which the Commission issues an order adopting the change.

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

17 In the event the performance-based formula rate is  
18 terminated, the then current rates shall remain in effect until  
19 such time as new rates are set pursuant to Article IX of this  
20 Act, subject to retroactive rate adjustment, with interest, to  
21 reconcile rates charged with actual costs. At such time that  
22 the performance-based formula rate is terminated, the  
23 participating utility's voluntary commitments and obligations  
24 under subsection (b) of this Section shall immediately  
25 terminate, except for the utility's obligation to pay an amount  
26 already owed to the fund for training grants pursuant to a

1 Commission order issued under subsection (b) of this Section.

2 (d) Subsequent to the Commission's issuance of an order  
3 approving the utility's performance-based formula rate  
4 structure and protocols, and initial rates under subsection (c)  
5 of this Section, the utility shall file, on or before May 1 of  
6 each year, with the Chief Clerk of the Commission its updated  
7 cost inputs to the performance-based formula rate for the  
8 applicable rate year and the corresponding new charges. Each  
9 such filing shall conform to the following requirements and  
10 include the following information:

11 (1) The inputs to the performance-based formula rate  
12 for the applicable rate year shall be based on final  
13 historical data reflected in the utility's most recently  
14 filed annual FERC Form 1 plus projected plant additions and  
15 correspondingly updated depreciation reserve and expense  
16 for the calendar year in which the inputs are filed. The  
17 filing shall also include a reconciliation of the revenue  
18 requirement that was in effect for the prior rate year (as  
19 set by the cost inputs for the prior rate year) with the  
20 actual revenue requirement for the prior rate year  
21 (determined using a year-end rate base) that uses amounts  
22 reflected in the applicable FERC Form 1 that reports the  
23 actual costs for the prior rate year. Any over-collection  
24 or under-collection indicated by such reconciliation shall  
25 be reflected as a credit against, or recovered as an  
26 additional charge to, respectively, with interest



1           calculated at a rate equal to the utility's weighted  
2           average cost of capital approved by the Commission for the  
3           prior rate year, the charges for the applicable rate year.  
4           Provided, however, that the first such reconciliation  
5           shall be for the calendar year in which the utility files  
6           its performance-based formula rate tariff pursuant to  
7           subsection (c) of this Section and shall reconcile (i) the  
8           revenue requirement or requirements established by the  
9           rate order or orders in effect from time to time during  
10          such calendar year (weighted, as applicable) with (ii) the  
11          revenue requirement determined using a year-end rate base  
12          for that calendar year calculated pursuant to the  
13          performance-based formula rate using (A) actual costs for  
14          that year as reflected in the applicable FERC Form 1, and  
15          (B) for the first such reconciliation only, the cost of  
16          equity, which shall be calculated as the sum of 590 basis  
17          points plus the average for the applicable calendar year of  
18          the monthly average yields of 30-year U.S. Treasury bonds  
19          published by the Board of Governors of the Federal Reserve  
20          System in its weekly H.15 Statistical Release or successor  
21          publication. The first such reconciliation is not intended  
22          to provide for the recovery of costs previously excluded  
23          from rates based on a prior Commission order finding of  
24          imprudence or unreasonableness. Each reconciliation shall  
25          be certified by the participating utility in the same  
26          manner that FERC Form 1 is certified. The filing shall also

1 include the charge or credit, if any, resulting from the  
2 calculation required by paragraph (6) of subsection (c) of  
3 this Section.

4 Notwithstanding anything that may be to the contrary,  
5 the intent of the reconciliation is to ultimately reconcile  
6 the revenue requirement reflected in rates for each  
7 calendar year, beginning with the calendar year in which  
8 the utility files its performance-based formula rate  
9 tariff pursuant to subsection (c) of this Section, with  
10 what the revenue requirement determined using a year-end  
11 rate base for the applicable calendar year would have been  
12 had the actual cost information for the applicable calendar  
13 year been available at the filing date.

14 (2) The new charges shall take effect beginning on the  
15 first billing day of the following January billing period  
16 and remain in effect through the last billing day of the  
17 next December billing period regardless of whether the  
18 Commission enters upon a hearing pursuant to this  
19 subsection (d).

20 (3) The filing shall include relevant and necessary  
21 data and documentation for the applicable rate year that is  
22 consistent with the Commission's rules applicable to a  
23 filing for a general increase in rates or any rules adopted  
24 by the Commission to implement this Section. Normalization  
25 adjustments shall not be required. Notwithstanding any  
26 other provision of this Section or Act or any rule or other

1 requirement adopted by the Commission, a participating  
2 utility that is a combination utility with more than one  
3 rate zone shall not be required to file a separate set of  
4 such data and documentation for each rate zone and may  
5 combine such data and documentation into a single set of  
6 schedules.

7 Within 45 days after the utility files its annual update of  
8 cost inputs to the performance-based formula rate, the  
9 Commission shall have the authority, either upon complaint or  
10 its own initiative, but with reasonable notice, to enter upon a  
11 hearing concerning the prudence and reasonableness of the costs  
12 incurred by the utility to be recovered during the applicable  
13 rate year that are reflected in the inputs to the  
14 performance-based formula rate derived from the utility's FERC  
15 Form 1. During the course of the hearing, each objection shall  
16 be stated with particularity and evidence provided in support  
17 thereof, after which the utility shall have the opportunity to  
18 rebut the evidence. Discovery shall be allowed consistent with  
19 the Commission's Rules of Practice, which Rules shall be  
20 enforced by the Commission or the assigned hearing examiner.  
21 The Commission shall apply the same evidentiary standards,  
22 including, but not limited to, those concerning the prudence  
23 and reasonableness of the costs incurred by the utility, in the  
24 hearing as it would apply in a hearing to review a filing for a  
25 general increase in rates under Article IX of this Act. The  
26 Commission shall not, however, have the authority in a

1 proceeding under this subsection (d) to consider or order any  
2 changes to the structure or protocols of the performance-based  
3 formula rate approved pursuant to subsection (c) of this  
4 Section. In a proceeding under this subsection (d), the  
5 Commission shall enter its order no later than the earlier of  
6 240 days after the utility's filing of its annual update of  
7 cost inputs to the performance-based formula rate or December  
8 31. The Commission's determinations of the prudence and  
9 reasonableness of the costs incurred for the applicable  
10 calendar year shall be final upon entry of the Commission's  
11 order and shall not be subject to reopening, reexamination, or  
12 collateral attack in any other Commission proceeding, case,  
13 docket, order, rule or regulation, provided, however, that  
14 nothing in this subsection (d) shall prohibit a party from  
15 petitioning the Commission to rehear or appeal to the courts  
16 the order pursuant to the provisions of this Act.

17 In the event the Commission does not, either upon complaint  
18 or its own initiative, enter upon a hearing within 45 days  
19 after the utility files the annual update of cost inputs to its  
20 performance-based formula rate, then the costs incurred for the  
21 applicable calendar year shall be deemed prudent and  
22 reasonable, and the filed charges shall not be subject to  
23 reopening, reexamination, or collateral attack in any other  
24 proceeding, case, docket, order, rule, or regulation.

25 A participating utility's first filing of the updated cost  
26 inputs, and any Commission investigation of such inputs

1 pursuant to this subsection (d) shall proceed notwithstanding  
2 the fact that the Commission's investigation under subsection  
3 (c) of this Section is still pending and notwithstanding any  
4 other law, order, rule, or Commission practice to the contrary.

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

1 rate design.

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

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

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

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

22 (3.5) For a participating utility other than a  
23 combination utility, 20% improvement in the System Average  
24 Interruption Frequency Index for its Northeastern Region,  
25 using a baseline of the average of the data from 2001  
26 through 2010. For purposes of this paragraph (3.5),

1 Northeastern Region shall have the meaning set forth in the  
2 participating utility's most recent report filed pursuant  
3 to Section 16-125 of this Act.

4 (4) Seventy-five percent improvement in the total  
5 number of customers who exceed the service reliability  
6 targets as set forth in subparagraphs (A) through (C) of  
7 paragraph (4) of subsection (b) of 83 Ill. Admin. Code Part  
8 411.140 as of May 1, 2011, using 2010 as the baseline year.

9 (5) Reduction in issuance of estimated electric bills:  
10 90% improvement for a participating utility other than a  
11 combination utility, and 56% improvement for a  
12 participating utility that is a combination utility, using  
13 a baseline of the average number of estimated bills for the  
14 years 2008 through 2010.

15 (6) Consumption on inactive meters: 90% improvement  
16 for a participating utility other than a combination  
17 utility, and 56% improvement for a participating utility  
18 that is a combination utility, using a baseline of the  
19 average unbilled kilowatthours for the years 2009 and 2010.

20 (7) Unaccounted for energy: 50% improvement for a  
21 participating utility other than a combination utility  
22 using a baseline of the non-technical line loss unaccounted  
23 for energy kilowatthours for the year 2009.

24 (8) Uncollectible expense: reduce uncollectible  
25 expense by at least \$30,000,000 for a participating utility  
26 other than a combination utility and by at least \$3,500,000

1 for a participating utility that is a combination utility,  
2 using a baseline of the average uncollectible expense for  
3 the years 2008 through 2010.

4 (9) Opportunities for minority-owned and female-owned  
5 business enterprises: design a performance metric  
6 regarding the creation of opportunities for minority-owned  
7 and female-owned business enterprises consistent with  
8 State and federal law using a base performance value of the  
9 percentage of the participating utility's capital  
10 expenditures that were paid to minority-owned and  
11 female-owned business enterprises in 2010.

12 (10) Achieving cost-effective energy efficiency  
13 savings consistent with Section 8-103 of this Act. By  
14 January 1, 2018, each participating utility shall file with  
15 the Commission a proposed set of performance metrics  
16 designed to align financial rewards with the utility's  
17 performance relative to the goal provided in Section 8-103  
18 of this Act.

19 (11) Improve load shape by achieving a 20% reduction in  
20 peak load by January 1, 2025 as compared to the baseline  
21 year of 2009 through annual incremental reductions.

22 The definitions set forth in 83 Ill. Admin. Code Part  
23 411.20 as of May 1, 2011 shall be used for purposes of  
24 calculating performance under paragraphs (1) through (3.5) of  
25 this subsection (f), provided, however, that the participating  
26 utility may exclude up to 9 extreme weather event days from



1 such calculation for each year, and provided further that the  
2 participating utility shall exclude 9 extreme weather event  
3 days when calculating each year of the baseline period to the  
4 extent that there are 9 such days in a given year of the  
5 baseline period. For purposes of this Section, an extreme  
6 weather event day is a 24-hour calendar day (beginning at 12:00  
7 a.m. and ending at 11:59 p.m.) during which any weather event  
8 (e.g., storm, tornado) caused interruptions for 10,000 or more  
9 of the participating utility's customers for 3 hours or more.  
10 If there are more than 9 extreme weather event days in a year,  
11 then the utility may choose no more than 9 extreme weather  
12 event days to exclude, provided that the same extreme weather  
13 event days are excluded from each of the calculations performed  
14 under paragraphs (1) through (3.5) of this subsection (f).

15 The metrics shall include incremental performance goals  
16 for each year of the 10-year period, which shall be designed to  
17 demonstrate that the utility is on track to achieve the  
18 performance goal in each category at the end of the 10-year  
19 period. The utility shall elect when the 10-year period shall  
20 commence for the metrics set forth in subparagraphs (1) through  
21 (4) and (9) of this subsection (f), provided that it begins no  
22 later than 14 months following the date on which the utility  
23 begins investing pursuant to subsection (b) of this Section,  
24 and when the 10-year period shall commence for the metrics set  
25 forth in subparagraphs (5) through (8) of this subsection (f),  
26 provided that it begins no later than 14 months following the

1 date on which the Commission enters its order approving the  
2 utility's Advanced Metering Infrastructure Deployment Plan  
3 pursuant to subsection (c) of Section 16-108.6 of this Act.

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

17 (f-5) The financial penalties applicable to the metrics  
18 described in subparagraphs (1) through (8) of subsection (f) of  
19 this Section, as applicable, shall be applied through an  
20 adjustment to the participating utility's return on equity of  
21 no more than a total of 30 basis points in each of the first 3  
22 years, of no more than a total of 34 basis points in each of the  
23 3 years thereafter, and of no more than a total of 38 basis  
24 points in each of the 4 years thereafter, as follows:

25 (1) With respect to each of the incremental annual  
26 performance goals established pursuant to paragraph (1) of

1 subsection (f) of this Section,

2 (A) for each year that a participating utility  
3 other than a combination utility does not achieve the  
4 annual goal, the participating utility's return on  
5 equity shall be reduced as follows: during years 1  
6 through 3, by 5 basis points; during years 4 through 6,  
7 by 6 basis points; and during years 7 through 10, by 7  
8 basis points; and

9 (B) for each year that a participating utility that  
10 is a combination utility does not achieve the annual  
11 goal, the participating utility's return on equity  
12 shall be reduced as follows: during years 1 through 3,  
13 by 10 basis points; during years 4 through 6, by 12  
14 basis points; and during years 7 through 10, by 14  
15 basis points.

16 (2) With respect to each of the incremental annual  
17 performance goals established pursuant to paragraph (2) of  
18 subsection (f) of this Section, for each year that the  
19 participating utility does not achieve each such goal, the  
20 participating utility's return on equity shall be reduced  
21 as follows: during years 1 through 3, by 5 basis points;  
22 during years 4 through 6, by 6 basis points; and during  
23 years 7 through 10, by 7 basis points.

24 (3) With respect to each of the incremental annual  
25 performance goals established pursuant to paragraphs (3)  
26 and (3.5) of subsection (f) of this Section, for each year

1           that a participating utility other than a combination  
2           utility does not achieve both such goals, the participating  
3           utility's return on equity shall be reduced as follows:  
4           during years 1 through 3, by 5 basis points; during years 4  
5           through 6, by 6 basis points; and during years 7 through  
6           10, by 7 basis points.

7           (4) With respect to each of the incremental annual  
8           performance goals established pursuant to paragraph (4) of  
9           subsection (f) of this Section, for each year that the  
10          participating utility does not achieve each such goal, the  
11          participating utility's return on equity shall be reduced  
12          as follows: during years 1 through 3, by 5 basis points;  
13          during years 4 through 6, by 6 basis points; and during  
14          years 7 through 10, by 7 basis points.

15          (5) With respect to each of the incremental annual  
16          performance goals established pursuant to subparagraph (5)  
17          of subsection (f) of this Section, for each year that the  
18          participating utility does not achieve at least 95% of each  
19          such goal, the participating utility's return on equity  
20          shall be reduced by 5 basis points for each such unachieved  
21          goal.

22          (6) 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, which together measure non-operational  
26          customer savings and benefits relating to the

1 implementation of the Advanced Metering Infrastructure  
2 Deployment Plan, as defined in Section 16-108.6 of this  
3 Act, the performance under each such goal shall be  
4 calculated in terms of the percentage of the goal achieved.  
5 The percentage of goal achieved for each of the goals shall  
6 be aggregated, and an average percentage value calculated,  
7 for each year of the 10-year period. If the utility does  
8 not achieve an average percentage value in a given year of  
9 at least 95%, the participating utility's return on equity  
10 shall be reduced by 5 basis points.

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

23 The Commission shall, after notice and hearing, enter an  
24 order within 120 days after the metrics are filed approving, or  
25 approving with modification, a participating utility's tariff  
26 or mechanism to satisfy the metrics set forth in subsection (f)

1 of this Section. On June 1 of each subsequent year, each  
2 participating utility shall file a report with the Commission  
3 that includes, among other things, a description of how the  
4 participating utility performed under each metric and an  
5 identification of any extraordinary events that adversely  
6 impacted the utility's performance. Whenever a participating  
7 utility does not satisfy the metrics required pursuant to  
8 subsection (f) of this Section, the Commission shall, after  
9 notice and hearing, enter an order approving financial  
10 penalties in accordance with this subsection (f-5). The  
11 Commission-approved financial penalties shall be applied  
12 beginning with the next rate year. Nothing in this Section  
13 shall authorize the Commission to reduce or otherwise obviate  
14 the imposition of financial penalties for failing to achieve  
15 one or more of the metrics established pursuant to subparagraph  
16 (1) through (4) of subsection (f) of this Section.

17 (g) On or before July 31, 2014, each participating utility  
18 shall file a report with the Commission that sets forth the  
19 average annual increase in the average amount paid per  
20 kilowatthour for residential eligible retail customers,  
21 exclusive of the effects of energy efficiency programs,  
22 comparing the 12-month period ending May 31, 2012; the 12-month  
23 period ending May 31, 2013; and the 12-month period ending May  
24 31, 2014. For a participating utility that is a combination  
25 utility with more than one rate zone, the weighted average  
26 aggregate increase shall be provided. The report shall be filed

1 together with a statement from an independent auditor attesting  
2 to the accuracy of the report. The cost of the independent  
3 auditor shall be borne by the participating utility and shall  
4 not be a recoverable expense. "The average amount paid per  
5 kilowatthour" shall be based on the participating utility's  
6 tariffed rates actually in effect and shall not be calculated  
7 using any hypothetical rate or adjustments to actual charges  
8 (other than as specified for energy efficiency) as an input.

9 In the event that the average annual increase exceeds 2.5%  
10 as calculated pursuant to this subsection (g), then Sections  
11 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of this Act, other  
12 than this subsection, shall be inoperative as they relate to  
13 the utility and its service area as of the date of the report  
14 due to be submitted pursuant to this subsection and the utility  
15 shall no longer be eligible to annually update the  
16 performance-based formula rate tariff pursuant to subsection  
17 (d) of this Section. In such event, the then current rates  
18 shall remain in effect until such time as new rates are set  
19 pursuant to Article IX of this Act, subject to retroactive  
20 adjustment, with interest, to reconcile rates charged with  
21 actual costs, and the participating utility's voluntary  
22 commitments and obligations under subsection (b) of this  
23 Section shall immediately terminate, except for the utility's  
24 obligation to pay an amount already owed to the fund for  
25 training grants pursuant to a Commission order issued under  
26 subsection (b) of this Section.

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

5           For purposes of this Section, the amount per kilowatthour  
6           means the total amount paid for electric service expressed on a  
7           per kilowatthour basis, and the total amount paid for electric  
8           service includes without limitation amounts paid for supply,  
9           transmission, distribution, surcharges, and add-on taxes  
10          exclusive of any increases in taxes or new taxes imposed after  
11          the effective date of this amendatory Act of the 97th General  
12          Assembly. For purposes of this Section, "eligible retail  
13          customers" shall have the meaning set forth in Section 16-111.5  
14          of this Act.

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

19          (h) Sections 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of  
20          this Act, other than this subsection, are inoperative after  
21          December 31, 2017 for every participating utility, after which  
22          time a participating utility shall no longer be eligible to  
23          annually update the performance-based formula rate tariff  
24          pursuant to subsection (d) of this Section. At such time, the  
25          then current rates shall remain in effect until such time as  
26          new rates are set pursuant to Article IX of this Act, subject



1 to retroactive adjustment, with interest, to reconcile rates  
2 charged with actual costs.

3 By December 31, 2017, the Commission shall prepare and file  
4 with the General Assembly a report on the infrastructure  
5 program and the performance-based formula rate. The report  
6 shall include the change in the average amount per kilowatthour  
7 paid by residential customers between June 1, 2011 and May 31,  
8 2017. If the change in the total average rate paid exceeds 2.5%  
9 compounded annually, the Commission shall include in the report  
10 an analysis that shows the portion of the change due to the  
11 delivery services component and the portion of the change due  
12 to the supply component of the rate. The report shall include  
13 separate sections for each participating utility.

14 In the event Sections 16-108.5, 16-108.6, 16-108.7, and  
15 16-108.8 of this Act do not become inoperative after December  
16 31, 2017, then these Sections are inoperative after December  
17 31, 2022 for every participating utility, after which time a  
18 participating utility shall no longer be eligible to annually  
19 update the performance-based formula rate tariff pursuant to  
20 subsection (d) of this Section. At such time, the then current  
21 rates shall remain in effect until such time as new rates are  
22 set pursuant to Article IX of this Act, subject to retroactive  
23 adjustment, with interest, to reconcile rates charged with  
24 actual costs.

25 The fact that this Section becomes inoperative as set forth  
26 in this subsection shall not be construed to mean that the

1 Commission may reexamine or otherwise reopen prudence or  
2 reasonableness determinations already made. The fact that this  
3 Section becomes inoperative, as set forth in this Section,  
4 shall not eliminate a utility's obligations under Section 8-103  
5 of this Act.

6 (i) While a participating utility may use, develop, and  
7 maintain broadband systems and the delivery of broadband  
8 services, voice-over-internet-protocol services,  
9 telecommunications services, and cable and video programming  
10 services for use in providing delivery services and Smart Grid  
11 functionality or application to its retail customers,  
12 including, but not limited to, the installation,  
13 implementation and maintenance of Smart Grid electric system  
14 upgrades as defined in Section 16-108.6 of this Act, a  
15 participating utility is prohibited from offering to its retail  
16 customers broadband services or the delivery of broadband  
17 services, voice-over-internet-protocol services,  
18 telecommunications services, or cable or video programming  
19 services, unless they are part of a service directly related to  
20 delivery services or Smart Grid functionality or applications  
21 as defined in Section 16-108.6 of this Act, and from recovering  
22 the costs of such offerings from retail customers.

23 (j) Nothing in this Section is intended to legislatively  
24 overturn the opinion issued in Commonwealth Edison Co. v. Ill.  
25 Commerce Comm'n, Nos. 2-08-0959, 2-08-1037, 2-08-1137,  
26 1-08-3008, 1-08-3030, 1-08-3054, 1-08-3313 cons. (Ill. App.

1 Ct. 2d Dist. Sept. 30, 2010). This amendatory Act of the 97th  
2 General Assembly shall not be construed as creating a contract  
3 between the General Assembly and the participating utility, and  
4 shall not establish a property right in the participating  
5 utility.

6 (k) The changes made in subsections (c) and (d) of this  
7 Section by this amendatory Act of the 98th General Assembly are  
8 intended to be a restatement and clarification of existing law,  
9 and intended to give binding effect to the provisions of House  
10 Resolution 1157 adopted by the House of Representatives of the  
11 97th General Assembly and Senate Resolution 821 adopted by the  
12 Senate of the 97th General Assembly that are reflected in  
13 paragraph (3) of this subsection. In addition, this amendatory  
14 Act of the 98th General Assembly preempts and supersedes any  
15 final Commission orders entered in Docket Nos. 11-0721,  
16 12-0001, 12-0293, and 12-0321 to the extent inconsistent with  
17 the amendatory language added to subsections (c) and (d).

18 (1) No earlier than 5 business days after the effective  
19 date of this amendatory Act of the 98th General Assembly,  
20 each participating utility shall file any tariff changes  
21 necessary to implement the amendatory language set forth in  
22 subsections (c) and (d) of this Section by this amendatory  
23 Act of the 98th General Assembly and a revised revenue  
24 requirement under the participating utility's  
25 performance-based formula rate. The Commission shall enter  
26 a final order approving such tariff changes and revised

1 revenue requirement within 21 days after the participating  
2 utility's filing.

3 (2) Notwithstanding anything that may be to the  
4 contrary, a participating utility may file a tariff to  
5 retroactively recover its previously unrecovered actual  
6 costs of delivery service that are no longer subject to  
7 recovery through a reconciliation adjustment under  
8 subsection (d) of this Section. This retroactive recovery  
9 shall include any derivative adjustments resulting from  
10 the changes to subsections (c) and (d) of this Section by  
11 this amendatory Act of the 98th General Assembly. Such  
12 tariff shall allow the utility to assess, on current  
13 customer bills over a period of 12 monthly billing periods,  
14 a charge or credit related to those unrecovered costs with  
15 interest at the utility's weighted average cost of capital  
16 during the period in which those costs were unrecovered. A  
17 participating utility may file a tariff that implements a  
18 retroactive charge or credit as described in this paragraph  
19 for amounts not otherwise included in the tariff filing  
20 provided for in paragraph (1) of this subsection (k). The  
21 Commission shall enter a final order approving such tariff  
22 within 21 days after the participating utility's filing.

23 (3) The tariff changes described in paragraphs (1) and  
24 (2) of this subsection (k) shall relate only to, and be  
25 consistent with, the following provisions of this  
26 amendatory Act of the 98th General Assembly: paragraph (2)

1 of subsection (c) regarding year-end capital structure,  
2 subparagraph (D) of paragraph (4) of subsection (c)  
3 regarding pension assets, and subsection (d) regarding the  
4 reconciliation components related to year-end rate base  
5 and interest calculated at a rate equal to the utility's  
6 weighted average cost of capital.

7 (4) Nothing in this subsection is intended to effect a  
8 dismissal of or otherwise affect an appeal from any final  
9 Commission orders entered in Docket Nos. 11-0721, 12-0001,  
10 12-0293, and 12-0321 other than to the extent of the  
11 amendatory language contained in subsections (c) and (d) of  
12 this amendatory Act of the 98th General Assembly.

13 (1) Each participating utility shall be deemed to have been  
14 in full compliance with all requirements of subsection (b) of  
15 this Section, subsection (c) of this Section, Section 16-108.6  
16 of this Act, and all Commission orders entered pursuant to  
17 Sections 16-108.5 and 16-108.6 of this Act, up to and including  
18 the effective date of this amendatory Act of the 98th General  
19 Assembly. The Commission shall not undertake any investigation  
20 of such compliance and no penalty shall be assessed or adverse  
21 action taken against a participating utility for noncompliance  
22 with Commission orders associated with subsection (b) of this  
23 Section, subsection (c) of this Section, and Section 16-108.6  
24 of this Act prior to such date. Each participating utility  
25 other than a combination utility shall be permitted, without  
26 penalty, a period of 12 months after such effective date to

1 take actions required to ensure its infrastructure investment  
2 program is in compliance with subsection (b) of this Section  
3 and with Section 16-108.6 of this Act. Provided further:

4 (1) if this amendatory Act of the 98th General Assembly  
5 takes effect on or before June 15, 2013, the following  
6 subparagraphs shall apply to a participating utility other  
7 than a combination utility:

8 (A) if the Commission has initiated a proceeding  
9 pursuant to subsection (e) of Section 16-108.6 of this  
10 Act that is pending as of the effective date of this  
11 amendatory Act of the 98th General Assembly, then the  
12 order entered in such proceeding shall, after notice  
13 and hearing, accelerate the commencement of the meter  
14 deployment schedule approved in the final Commission  
15 order on rehearing entered in Docket No. 12-0298;

16 (B) if the Commission has entered an order pursuant  
17 to subsection (e) of Section 16-108.6 of this Act prior  
18 to the effective date of this amendatory Act of the  
19 98th General Assembly that does not accelerate the  
20 commencement of the meter deployment schedule approved  
21 in the final Commission order on rehearing entered in  
22 Docket No. 12-0298, then the utility shall file with  
23 the Commission, within 45 days after such effective  
24 date, a plan for accelerating the commencement of the  
25 utility's meter deployment schedule approved in the  
26 final Commission order on rehearing entered in Docket

1 No. 12-0298; the Commission shall reopen the  
2 proceeding in which it entered its order pursuant to  
3 subsection (e) of Section 16-108.6 of this Act and  
4 shall, after notice and hearing, enter an amendatory  
5 order that approves or approves as modified such  
6 accelerated plan within 90 days after the utility's  
7 filing; or

8 (C) if the Commission has not initiated a  
9 proceeding pursuant to subsection (e) of Section  
10 16-108.6 of this Act prior to the effective date of  
11 this amendatory Act of the 98th General Assembly, then  
12 the utility shall file with the Commission, within 45  
13 days after such effective date, a plan for accelerating  
14 the commencement of the utility's meter deployment  
15 schedule approved in the final Commission order on  
16 rehearing entered in Docket No. 12-0298 and the  
17 Commission shall, after notice and hearing, approve or  
18 approve as modified such plan within 90 days after the  
19 utility's filing;

20 (2) if this amendatory Act of the 98th General Assembly  
21 takes effect after June 15, 2013, then each participating  
22 utility other than a combination utility shall file with  
23 the Commission, within 45 days after such effective date, a  
24 plan for accelerating the commencement of the utility's  
25 meter deployment schedule approved in the final Commission  
26 order on rehearing entered in Docket No. 12-0298; the

1 Commission shall reopen the most recent proceeding in which  
2 it entered an order pursuant to subsection (e) of Section  
3 16-108.6 of this Act and within 90 days after the utility's  
4 filing shall, after notice and hearing, enter an amendatory  
5 order that approves or approves as modified such  
6 accelerated plan, provided that if there was no such prior  
7 proceeding the Commission shall open a new proceeding and  
8 within 90 days after the utility's filing shall, after  
9 notice and hearing, enter an order that approves or  
10 approves as modified such accelerated plan.

11 Any schedule for meter deployment approved by the  
12 Commission pursuant to subparagraphs (1) or (2) of this  
13 subsection (1) shall take into consideration procurement times  
14 for meters and other equipment and operational issues. Nothing  
15 in this amendatory Act of the 98th General Assembly shall  
16 shorten or extend the end dates for the 5-year or 10-year  
17 periods set forth in subsection (b) of this Section or Section  
18 16-108.6 of this Act. Nothing in this subsection is intended to  
19 address whether a participating utility has, or has not,  
20 satisfied any or all of the metrics and performance goals  
21 established pursuant to subsection (f) of this Section.

22 (m) The provisions of this amendatory Act of the 98th  
23 General Assembly are severable under Section 1.31 of the  
24 Statute on Statutes.

25 (Source: P.A. 97-616, eff. 10-26-11; 97-646, eff. 12-30-11;  
26 98-15, eff. 5-22-13.)



1 (220 ILCS 5/16-108.8)

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

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

10 (1) provide an open, unbiased opportunity for testing  
11 programs, technologies, business models, and other Smart  
12 Grid-related activities;

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

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

23 (4) offer opportunities to test and showcase Smart Grid  
24 technologies and services, especially those likely to  
25 support the economic development goals of the State of

1 Illinois.

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

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

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

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

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

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

24 (5) the engineering and operations support that the  
25 utility will provide to test bed users, including provision  
26 of customer data; and

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

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

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

22          (f) At the end of the fourth year of operation the test bed  
23          shall be subject to an independent evaluation to determine if  
24          the test bed is meeting the objectives of this Section or is  
25          likely to meet the objectives in the future. The evaluation  
26          shall include the performance of the utility as test bed

1 operator. Subject to the findings, the utility and the trust or  
2 foundation established pursuant to Section 16-108.7 of this Act  
3 may choose to continue operating the test bed.

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

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

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

22 (j) To the extent practicable, the utility and trust or  
23 foundation established pursuant to Section 16-108.7 of this Act  
24 shall jointly pursue resources that enhance the capabilities  
25 and capacity of the test bed.

26 (k) If Section 16-108.5 of this Act becomes inoperative

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

6 (Source: P.A. 97-616, eff. 10-26-11.)

7 (220 ILCS 5/16-111.5)

8 Sec. 16-111.5. Provisions relating to electricity  
9 procurement.

10 (a) An electric utility that on December 31, 2005 served at  
11 least 100,000 customers in Illinois shall procure power and  
12 energy for its eligible retail customers in accordance with the  
13 applicable provisions set forth in Section 1-75 of the Illinois  
14 Power Agency Act and this Section. A small multi-jurisdictional  
15 electric utility that on December 31, 2005 served less than  
16 100,000 customers in Illinois may elect to procure power and  
17 energy for all or a portion of its eligible Illinois retail  
18 customers in accordance with the applicable provisions set  
19 forth in this Section and Section 1-75 of the Illinois Power  
20 Agency Act. This Section shall not apply to a small  
21 multi-jurisdictional utility until such time as a small  
22 multi-jurisdictional utility requests the Illinois Power  
23 Agency to prepare an electricity procurement plan for its  
24 eligible retail customers. "Eligible retail customers" for the  
25 purposes of this Section means those retail customers that

1 purchase power and energy from the electric utility under  
2 fixed-price bundled service tariffs, other than those retail  
3 customers whose service is declared or deemed competitive under  
4 Section 16-113 and those other customer groups specified in  
5 this Section, including self-generating customers, customers  
6 electing hourly pricing, or those customers who are otherwise  
7 ineligible for fixed-price bundled tariff service. Those  
8 customers that are excluded from the definition of "eligible  
9 retail customers" shall not be included in the electricity  
10 procurement plan load requirements, and the utility shall  
11 procure any supply requirements, including capacity, ancillary  
12 services, and hourly priced energy, in the applicable markets  
13 as needed to serve those customers, provided that the utility  
14 may include in its electricity procurement plan load  
15 requirements for the load that is associated with those retail  
16 customers whose service has been declared or deemed competitive  
17 pursuant to Section 16-113 of this Act to the extent that those  
18 customers are purchasing power and energy during one of the  
19 transition periods identified in subsection (b) of Section  
20 16-113 of this Act.

21 (b) An electricity A procurement plan shall be prepared for  
22 each electric utility consistent with the applicable  
23 requirements of the Illinois Power Agency Act and this Section.  
24 For purposes of this Section, Illinois electric utilities that  
25 are affiliated by virtue of a common parent company are  
26 considered to be a single electric utility. Small

1 multi-jurisdictional utilities may request an electricity a  
2 procurement plan for a portion of or all of its Illinois load.  
3 Each electricity procurement plan shall analyze the projected  
4 balance of supply and demand for eligible retail customers over  
5 a 5-year period with the first planning year beginning on June  
6 1 of the year following the year in which the plan is filed.  
7 The plan shall specifically identify the wholesale products to  
8 be procured following plan approval, and shall follow all the  
9 requirements set forth in the Public Utilities Act and all  
10 applicable State and federal laws, statutes, rules, or  
11 regulations, as well as Commission orders. Nothing in this  
12 Section precludes consideration of contracts longer than 5  
13 years and related forecast data. Unless specified otherwise in  
14 this Section, in the electricity procurement plan or in the  
15 implementing tariff, any procurement occurring in accordance  
16 with this plan shall be competitively bid through a request for  
17 proposals process. Approval and implementation of the  
18 electricity procurement plan shall be subject to review and  
19 approval by the Commission according to the provisions set  
20 forth in this Section. An electricity A procurement plan shall  
21 include each of the following components:

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

23 (i) multi-year historical analysis of hourly  
24 loads;

25 (ii) switching trends and competitive retail  
26 market analysis;

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

2 and

3 (iv) growth forecasts by customer class.

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

6 (i) the impact of demand response programs and  
7 energy efficiency programs, both current and  
8 projected; for small multi-jurisdictional utilities,  
9 the impact of demand response and energy efficiency  
10 programs approved pursuant to Section 8-408 of this  
11 Act, both current and projected; and

12 (ii) supply side needs that are projected to be  
13 offset by purchases of renewable energy resources, if  
14 any.

15 (3) A plan for meeting the expected load requirements  
16 that will not be met through preexisting contracts. This  
17 plan shall include:

18 (i) definitions of the different Illinois retail  
19 customer classes for which supply is being purchased;

20 (ii) the proposed mix of demand-response products  
21 for which contracts will be executed during the next  
22 year. For small multi-jurisdictional electric  
23 utilities that on December 31, 2005 served fewer than  
24 100,000 customers in Illinois, these shall be defined  
25 as demand-response products offered in an energy  
26 efficiency plan approved pursuant to Section 8-408 of



1           this Act. The cost-effective demand-response measures  
2           shall be procured whenever the cost is lower than  
3           procuring comparable capacity products, provided that  
4           such products shall:

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

7                   (B) at least satisfy the demand-response  
8                   requirements of the regional transmission  
9                   organization market in which the utility's service  
10                  territory is located, including, but not limited  
11                  to, any applicable capacity or dispatch  
12                  requirements;

13                  (C) provide for customers' participation in  
14                  the stream of benefits produced by the  
15                  demand-response products;

16                  (D) provide for reimbursement by the  
17                  demand-response provider of the utility for any  
18                  costs incurred as a result of the failure of the  
19                  supplier of such products to perform its  
20                  obligations thereunder; and

21                  (E) meet the same credit requirements as apply  
22                  to suppliers of capacity, in the applicable  
23                  regional transmission organization market;

24                  (iii) monthly forecasted system supply  
25                  requirements, including expected minimum, maximum, and  
26                  average values for the planning period;

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

12 (v) proposed term structures for each wholesale  
13 product type included in the proposed electricity  
14 procurement plan portfolio of products; and

15 (vi) an assessment of the price risk, load  
16 uncertainty, and other factors that are associated  
17 with the proposed electricity procurement plan; this  
18 assessment, to the extent possible, shall include an  
19 analysis of the following factors: contract terms,  
20 time frames for securing products or services, fuel  
21 costs, weather patterns, transmission costs, market  
22 conditions, and the governmental regulatory  
23 environment; the proposed electricity procurement plan  
24 shall also identify alternatives for those portfolio  
25 measures that are identified as having significant  
26 price risk.

1           (4) Proposed procedures for balancing loads. The  
2           electricity procurement plan shall include, for load  
3           requirements included in the electricity procurement plan,  
4           the process for (i) hourly balancing of supply and demand  
5           and (ii) the criteria for portfolio re-balancing in the  
6           event of significant shifts in load.

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

11          (1) The procurement administrator shall:

12               (i) design the final procurement process in  
13               accordance with Section 1-75 of the Illinois Power  
14               Agency Act and subsection (e) of this Section following  
15               Commission approval of the electricity procurement  
16               plan;

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

22               (iii) serve as the interface between the electric  
23               utility and suppliers;

24               (iv) manage the bidder pre-qualification and  
25               registration process;

26               (v) obtain the electric utilities' agreement to

1 the final form of all supply contracts and credit  
2 collateral agreements;

3 (vi) administer the request for proposals process;

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

16 (viii) maintain confidentiality of supplier and  
17 bidding information in a manner consistent with all  
18 applicable laws, rules, regulations, and tariffs;

19 (ix) submit a confidential report to the  
20 Commission recommending acceptance or rejection of  
21 bids;

22 (x) notify the utility of contract counterparties  
23 and contract specifics; and

24 (xi) administer related contingency procurement  
25 events.

26 (2) The procurement monitor, who shall be retained by

1 the Commission, shall:

2 (i) monitor interactions among the procurement  
3 administrator, suppliers, and utility;

4 (ii) monitor and report to the Commission on the  
5 progress of the procurement process;

6 (iii) provide an independent confidential report  
7 to the Commission regarding the results of the  
8 procurement event;

9 (iv) assess compliance with the electricity  
10 procurement plans approved by the Commission for each  
11 utility that on December 31, 2005 provided electric  
12 service to a least 100,000 customers in Illinois and  
13 for each small multi-jurisdictional utility that on  
14 December 31, 2005 served less than 100,000 customers in  
15 Illinois;

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

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

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

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

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

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

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

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

1           (4) The Commission shall approve the electricity  
2 procurement plan, including expressly the forecast used in  
3 the electricity procurement plan, if the Commission  
4 determines that it will ensure adequate, reliable,  
5 affordable, efficient, and environmentally sustainable  
6 electric service at the lowest total cost over time, taking  
7 into account any benefits of price stability.

8           (e) The procurement process shall include each of the  
9 following components:

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



1 identify and register bidders to participate in the  
2 procurement event.

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

23 (3) Establishment of a market-based price benchmark.  
24 As part of the development of the procurement process, the  
25 procurement administrator, in consultation with the  
26 Commission staff, Agency staff, and the procurement

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

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

23 (5) A plan for implementing contingencies in the event  
24 of supplier default or failure of the procurement process  
25 to fully meet the expected load requirement due to  
26 insufficient supplier participation, Commission rejection

1 of results, or any other cause.

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

25 (ii) Failure of the procurement process to fully  
26 meet the expected load requirement: If the procurement

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

21 (iii) In all cases where there is insufficient  
22 supply provided under contracts awarded through the  
23 procurement process to fully meet the electric  
24 utility's load requirement, the utility shall meet the  
25 load requirement by procuring power and energy from the  
26 applicable regional transmission organization market,

1 including ancillary services, capacity, and day-ahead  
2 or real time energy or both; provided, however, that if  
3 a needed product is not available through the regional  
4 transmission organization market it shall be purchased  
5 from the wholesale market.

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

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

26 (g) Within 3 business days after the Commission decision

1 approving the results of a procurement event, the utility shall  
2 enter into binding contractual arrangements with the winning  
3 suppliers using the standard form contracts; except that the  
4 utility shall not be required either directly or indirectly to  
5 execute the contracts if a tariff that is consistent with  
6 subsection (l) of this Section has not been approved and placed  
7 into effect for that utility.

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

25 (i) Within 2 business days after a Commission decision  
26 approving the results of a procurement event or such other date

1 as may be required by the Commission from time to time, the  
2 utility shall file for informational purposes with the  
3 Commission its actual or estimated retail supply charges, as  
4 applicable, by customer supply group reflecting the costs  
5 associated with the procurement and computed in accordance with  
6 the tariffs filed pursuant to subsection (l) of this Section  
7 and approved by the Commission.

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

1 that extend beyond May 2009.

2 (i) Within 14 days following filing of the initial  
3 electricity procurement plan, any person may file a  
4 detailed objection with the Commission contesting the  
5 electricity procurement plan submitted by the electric  
6 utility. All objections to the electric utility's plan  
7 shall be specific, supported by data or other detailed  
8 analyses. The electric utility may file a response to any  
9 objections to its electricity procurement plan within 7  
10 days after the date objections are due to be filed. Within  
11 7 days after the date the utility's response is due, the  
12 Commission shall determine whether a hearing is necessary.  
13 If it determines that a hearing is necessary, it shall  
14 require the hearing to be completed and issue an order on  
15 the electricity procurement plan within 60 days after the  
16 filing of the electricity procurement plan by the electric  
17 utility.

18 (ii) The order shall approve or modify the electricity  
19 procurement plan, approve an independent procurement  
20 administrator, and approve or modify the electric  
21 utility's tariffs that are proposed with the initial  
22 electricity procurement plan. The Commission shall approve  
23 the electricity procurement plan if the Commission  
24 determines that it will ensure adequate, reliable,  
25 affordable, efficient, and environmentally sustainable  
26 electric service at the lowest total cost over time, taking



1           into account any benefits of price stability.

2           (k) In order to promote price stability for residential and  
3 small commercial customers during the transition to  
4 competition in Illinois, and notwithstanding any other  
5 provision of this Act, each electric utility subject to this  
6 Section shall enter into one or more multi-year financial swap  
7 contracts that become effective on the effective date of this  
8 amendatory Act. These contracts may be executed with generators  
9 and power marketers, including affiliated interests of the  
10 electric utility. These contracts shall be for a term of no  
11 more than 5 years and shall, for each respective utility or for  
12 any Illinois electric utilities that are affiliated by virtue  
13 of a common parent company and that are thereby considered a  
14 single electric utility for purposes of this subsection (k),  
15 not exceed in the aggregate 3,000 megawatts for any hour of the  
16 year. The contracts shall be financial contracts and not energy  
17 sales contracts. The contracts shall be executed as  
18 transactions under a negotiated master agreement based on the  
19 form of master agreement for financial swap contracts sponsored  
20 by the International Swaps and Derivatives Association, Inc.  
21 and shall be considered pre-existing contracts in the  
22 utilities' electricity procurement plans for residential and  
23 small commercial customers. Costs incurred pursuant to a  
24 contract authorized by this subsection (k) shall be deemed  
25 prudently incurred and reasonable in amount and the electric  
26 utility shall be entitled to full cost recovery pursuant to the

1 tariffs filed with the Commission.

2 (k-5) In order to promote price stability for residential  
3 and small commercial customers during the infrastructure  
4 investment program described in subsection (b) of Section  
5 16-108.5 of this Act, and notwithstanding any other provision  
6 of this Act or the Illinois Power Agency Act, for each electric  
7 utility that serves more than one million retail customers in  
8 Illinois, the Illinois Power Agency shall conduct a procurement  
9 event within 120 days after October 26, 2011 (the effective  
10 date of Public Act 97-616) and may procure contracts for energy  
11 and renewable energy credits for the period June 1, 2013  
12 through December 31, 2017 that satisfy the requirements of this  
13 subsection (k-5), including the benchmarks described in this  
14 subsection. These contracts shall be entered into as the result  
15 of a competitive procurement event, and, to the extent that any  
16 provisions of this Section or the Illinois Power Agency Act do  
17 not conflict with this subsection (k-5), such provisions shall  
18 apply to the procurement event. The energy contracts shall be  
19 for 24 hour by 7 day supply over a term that runs from the first  
20 delivery year through December 31, 2017. For a utility that  
21 serves over 2 million customers, the energy contracts shall be  
22 multi-year with pricing escalating at 2.5% per annum. The  
23 energy contracts may be designed as financial swaps or may  
24 require physical delivery.

25 Within 30 days of October 26, 2011 (the effective date of  
26 Public Act 97-616), each such utility shall submit to the

1 Agency updated load forecasts for the period June 1, 2013  
2 through December 31, 2017. The megawatt volume of the contracts  
3 shall be based on the updated load forecasts of the minimum  
4 monthly on-peak or off-peak average load requirements shown in  
5 the forecasts, taking into account any existing energy  
6 contracts in effect as well as the expected migration of the  
7 utility's customers to alternative retail electric suppliers.  
8 The renewable energy credit volume shall be based on the number  
9 of credits that would satisfy the requirements of subsection  
10 (c) of Section 1-75 of the Illinois Power Agency Act, subject  
11 to the rate impact caps and other provisions of subsection (c)  
12 of Section 1-75 of the Illinois Power Agency Act. The  
13 evaluation of contract bids in the competitive procurement  
14 events for energy and for renewable energy credits shall  
15 incorporate price benchmarks set collaboratively by the  
16 Agency, the procurement administrator, the staff of the  
17 Commission, and the procurement monitor. If the contracts are  
18 swap contracts, then they shall be executed as transactions  
19 under a negotiated master agreement based on the form of master  
20 agreement for financial swap contracts sponsored by the  
21 International Swaps and Derivatives Association, Inc. Costs  
22 incurred pursuant to a contract authorized by this subsection  
23 (k-5) shall be deemed prudently incurred and reasonable in  
24 amount and the electric utility shall be entitled to full cost  
25 recovery pursuant to the tariffs filed with the Commission.

26 The cost of administering the procurement event described

1 in this subsection (k-5) shall be paid by the winning supplier  
2 or suppliers to the procurement administrator through a  
3 supplier fee. In the event that there is no winning supplier  
4 for a particular utility, such utility will pay the procurement  
5 administrator for the costs associated with the procurement  
6 event, and those costs shall not be a recoverable expense.  
7 Nothing in this subsection (k-5) is intended to alter the  
8 recovery of costs for any other procurement event.

9 (1) An electric utility shall recover its costs incurred  
10 under this Section, including, but not limited to, the costs of  
11 procuring power and energy demand-response resources under  
12 this Section. The utility shall file with the initial  
13 electricity procurement plan its proposed tariffs through  
14 which its costs of procuring power that are incurred pursuant  
15 to a Commission-approved electricity procurement plan and  
16 those other costs identified in this subsection (1), will be  
17 recovered. The tariffs shall include a formula rate or charge  
18 designed to pass through both the costs incurred by the utility  
19 in procuring a supply of electric power and energy for the  
20 applicable customer classes with no mark-up or return on the  
21 price paid by the utility for that supply, plus any just and  
22 reasonable costs that the utility incurs in arranging and  
23 providing for the supply of electric power and energy. The  
24 formula rate or charge shall also contain provisions that  
25 ensure that its application does not result in over or under  
26 recovery due to changes in customer usage and demand patterns,

1 and that provide for the correction, on at least an annual  
2 basis, of any accounting errors that may occur. A utility shall  
3 recover through the tariff all reasonable costs incurred to  
4 implement or comply with any electricity procurement plan that  
5 is developed and put into effect pursuant to Section 1-75 of  
6 the Illinois Power Agency Act and this Section, including any  
7 fees assessed by the Illinois Power Agency, costs associated  
8 with load balancing, and contingency plan costs. The electric  
9 utility shall also recover its full costs of procuring electric  
10 supply for which it contracted before the effective date of  
11 this Section in conjunction with the provision of full  
12 requirements service under fixed-price bundled service tariffs  
13 subsequent to December 31, 2006. All such costs shall be deemed  
14 to have been prudently incurred. The pass-through tariffs that  
15 are filed and approved pursuant to this Section shall not be  
16 subject to review under, or in any way limited by, Section  
17 16-111(i) of this Act.

18 (m) The Commission has the authority to adopt rules to  
19 carry out the provisions of this Section. For the public  
20 interest, safety, and welfare, the Commission also has  
21 authority to adopt rules to carry out the provisions of this  
22 Section on an emergency basis immediately following the  
23 effective date of this amendatory Act.

24 (n) Notwithstanding any other provision of this Act, any  
25 affiliated electric utilities that submit a single electricity  
26 procurement plan covering their combined needs may procure for

1 those combined needs in conjunction with that plan, and may  
2 enter jointly into power supply contracts, purchases, and other  
3 procurement arrangements, and allocate capacity and energy and  
4 cost responsibility therefor among themselves in proportion to  
5 their requirements.

6 (o) On or before June 1 of each year, the Commission shall  
7 hold an informal hearing for the purpose of receiving comments  
8 on the prior year's procurement process and any recommendations  
9 for change.

10 (p) An electric utility subject to this Section may propose  
11 to invest, lease, own, or operate an electric generation  
12 facility as part of its electricity procurement plan, provided  
13 the utility demonstrates that such facility is the least-cost  
14 option to provide electric service to eligible retail  
15 customers. If the facility is shown to be the least-cost option  
16 and is included in an electricity ~~a~~ procurement plan prepared  
17 in accordance with Section 1-75 of the Illinois Power Agency  
18 Act and this Section, then the electric utility shall make a  
19 filing pursuant to Section 8-406 of this Act, and may request  
20 of the Commission any statutory relief required thereunder. If  
21 the Commission grants all of the necessary approvals for the  
22 proposed facility, such supply shall thereafter be considered  
23 as a pre-existing contract under subsection (b) of this  
24 Section. The Commission shall in any order approving a proposal  
25 under this subsection specify how the utility will recover the  
26 prudently incurred costs of investing in, leasing, owning, or

1 operating such generation facility through just and reasonable  
2 rates charged to eligible retail customers. Cost recovery for  
3 facilities included in the utility's electricity procurement  
4 plan pursuant to this subsection shall not be subject to review  
5 under or in any way limited by the provisions of Section  
6 16-111(i) of this Act. Nothing in this Section is intended to  
7 prohibit a utility from filing for a fuel adjustment clause as  
8 is otherwise permitted under Section 9-220 of this Act.

9 (g) Notwithstanding any other provisions of this Section,  
10 beginning with the 2016 delivery year, the procurement of  
11 renewable energy credits in accordance with subdivision (c) of  
12 Section 1-75 of the Illinois Power Agency Act shall not be  
13 subject to this Section. For the purposes of this Section,  
14 "delivery year" has the same meaning as in Section 1-10 of the  
15 Illinois Power Agency Act.

16 (Source: P.A. 97-325, eff. 8-12-11; 97-616, eff. 10-26-11;  
17 97-813, eff. 7-13-12.)

18 (220 ILCS 5/16-111.5B)

19 Sec. 16-111.5B. Provisions relating to energy efficiency  
20 procurement.

21 (a) Beginning in 2012, procurement plans prepared pursuant  
22 to Section 16-111.5 of this Act shall be subject to the  
23 following additional requirements, except that beginning in  
24 2018, any utility that has achieved the performance metrics  
25 under paragraph (10) of subsection (f) of Section 16-108.5 of

1 this Act shall be exempt from this Section:

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

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

13 (3) In addition to the information provided pursuant to  
14 paragraph (1) of subsection (d) of Section 16-111.5 of this  
15 Act, each Illinois utility procuring power pursuant to that  
16 Section shall annually provide to the Illinois Power Agency  
17 by July 15 of each year, or such other date as may be  
18 required by the Commission or Agency, an assessment of  
19 cost-effective energy efficiency programs or measures that  
20 could be included in the procurement plan. The assessment  
21 shall include the following:

22 (A) A comprehensive energy efficiency potential  
23 study for the utility's service territory that was  
24 completed within the past 3 years.

25 (B) Beginning in 2014, the most recent analysis  
26 submitted pursuant to Section 8-103A of this Act and



1 approved by the Commission under subsection (f) of  
2 Section 8-103 of this Act.

3 (C) Identification of new or expanded  
4 cost-effective energy efficiency programs or measures  
5 that are incremental to those included in energy  
6 efficiency and demand-response plans approved by the  
7 Commission pursuant to Section 8-103 of this Act and  
8 that would be offered to all retail customers whose  
9 electric service has not been declared competitive  
10 under Section 16-113 of this Act and who are eligible  
11 to purchase power and energy from the utility under  
12 fixed-price bundled service tariffs, regardless of  
13 whether such customers actually do purchase such power  
14 and energy from the utility.

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

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

23 (F) An energy savings goal, expressed in  
24 megawatt-hours, for the year in which the measures will  
25 be implemented.

26 (G) For each expanded or new program, the estimated

1 amount that the program may reduce the agency's need to  
2 procure supply.

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

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

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

1 cost-effective savings, to the extent practicable, and  
2 otherwise satisfy the requirements of Section 8-103 of this  
3 Act.

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

14 (6) An electric utility shall recover its costs  
15 incurred under this Section related to the implementation  
16 of energy efficiency programs and measures approved by the  
17 Commission in its order approving the procurement plan  
18 under Section 16-111.5 of this Act, including, but not  
19 limited to, all costs associated with complying with this  
20 Section and all start-up and administrative costs and the  
21 costs for any evaluation, measurement, and verification of  
22 the measures, from all retail customers whose electric  
23 service has not been declared competitive under Section  
24 16-113 of this Act and who are eligible to purchase power  
25 and energy from the utility under fixed-price bundled  
26 service tariffs, regardless of whether such customers

1 actually do purchase such power and energy from the utility  
2 through the automatic adjustment clause tariff established  
3 pursuant to Section 8-103 of this Act, provided, however,  
4 that the limitations described in subsection (d) of that  
5 Section shall not apply to the costs incurred pursuant to  
6 this Section or Section 16-111.7 of this Act.

7 (b) For purposes of this Section, the term "energy  
8 efficiency" shall have the meaning set forth in Section 1-10 of  
9 the Illinois Power Agency Act, and the term "cost-effective"  
10 shall have the meaning set forth in subsection (a) of Section  
11 8-103 of this Act.

12 (Source: P.A. 97-616, eff. 10-26-11; 97-824, eff. 7-18-12.)

13 (220 ILCS 5/16-111.5C new)

14 Sec. 16-111.5C. Provisions related to renewable energy  
15 credit procurement.

16 (a) Beginning with the planning process to develop a plan  
17 or plans for implementation starting in the 2016 delivery year,  
18 a long-term renewable resources procurement plan for the  
19 procurement of renewable energy credits shall be prepared  
20 consistent with the applicable requirements of the Illinois  
21 Power Agency Act and this Section. The long-term renewable  
22 resources procurement plan and all subsequent revisions shall  
23 be subject to review and approval by the Commission according  
24 to the provisions set forth in this Section. For the purposes  
25 of this Section, "delivery year" has the same meaning as in

1 Section 1-10 of the Illinois Power Agency Act.

2 (b) The long-term renewable resources planning process  
3 shall be conducted as follows:

4 (1) Electric utilities shall provide a range of load  
5 forecasts to the Illinois Power Agency within 30 days after  
6 the effective date of this amendatory Act of the 99th  
7 General Assembly and on July 15 of each year thereafter or  
8 upon such other date as may be required by the Commission  
9 or Agency. The load forecasts shall cover the procurement  
10 planning period through the 2030 delivery year and beyond  
11 and shall include a high-load, low-load, and expected-load  
12 scenario for the load of all customers taking delivery  
13 service from the electric utility. The utility shall  
14 provide supporting data and assumptions for each of the  
15 scenarios.

16 (2) The Illinois Power Agency shall publish for comment  
17 the initial long-term renewable resources plan no later  
18 than 120 days after the effective date of this amendatory  
19 Act of the 99th General Assembly and shall make revisions  
20 to the plan at least every 2 years thereafter. The  
21 long-term renewable resources procurement plan shall  
22 identify the procurement programs and competitive  
23 procurement events consistent with the applicable  
24 requirements of the Illinois Power Agency Act and designed  
25 to achieve the goals set forth in subdivision (c) of  
26 Section 1-75 of that Act. Copies of the long-term renewable

1 resources procurement plan shall be posted and made  
2 publicly available on the Agency's and Commission's  
3 websites, and copies shall also be provided to each  
4 affected electric utility. An affected utility and other  
5 interested parties shall have 30 days following the date of  
6 posting to provide comment to the Agency on the procurement  
7 plan. All comments submitted to the Agency shall be  
8 specific, supported by data or other detailed analyses,  
9 and, if objecting to all or a portion of the procurement  
10 plan, accompanied by specific alternative wording or  
11 proposals. All comments shall be posted on the Agency's and  
12 Commission's websites. During this 30-day comment period,  
13 the Agency shall hold at least one public hearing within  
14 each utility's service area for the purpose of receiving  
15 public comment on the long-term renewable resources  
16 procurement plan. Within 14 days following the end of the  
17 30-day review period, the Agency shall revise the long-term  
18 renewable resources procurement plan as necessary based on  
19 the comments received and file the plan with the Commission  
20 for review and approval.

21 (3) Within 14 days after the filing of the long-term  
22 renewable resources procurement plan, any person objecting  
23 to the plan shall file an objection with the Commission.  
24 Within 21 days after the filing, the Commission shall  
25 determine whether a hearing is necessary. The Commission  
26 shall enter its order confirming or modifying the

1 procurement plan within 120 days after the filing of the  
2 procurement plan by the Illinois Power Agency.

3 (4) The Commission shall approve the long-term  
4 renewable resources procurement plan if the Commission  
5 determines that the plan will reasonably and prudently  
6 fulfill the relevant requirements of Section 1-56 and  
7 subdivision (c) of Section 1-75 of the Illinois Power  
8 Agency Act.

9 (c) The Agency or third parties contracted by the Agency  
10 shall implement all programs authorized by the Commission in an  
11 approved long-term renewable resources procurement plan. For  
12 those renewable energy credits subject to procurement through a  
13 competitive bid process under the plan, the Agency shall follow  
14 the procurement process specified in the provisions relating to  
15 electricity procurement in subsections (e) through (i) of  
16 Section 16-111.5 of this Act.

17 (d) An electric utility shall recover its costs incurred  
18 under this Section, including, but not limited to, the costs of  
19 procuring renewable energy credits under this Section, as a  
20 utility cost of service under the Illinois Public Utilities  
21 Act.

22 (e) The Commission has the authority to adopt rules to  
23 carry out the provisions of this Section. For the public  
24 interest, safety, and welfare, the Commission also has  
25 authority to adopt rules to carry out the provisions of this  
26 Section on an emergency basis immediately following the

1 effective date of this amendatory Act of the 99th General  
2 Assembly.

3 (f) On or before July 1 of each year, the Commission shall  
4 hold an informal hearing for the purpose of receiving comments  
5 on the prior year's procurement process and any recommendations  
6 for change.

7 (220 ILCS 5/16-111.7)

8 Sec. 16-111.7. On-bill financing program; electric  
9 utilities.

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

20 (a-5) As used in this Section:

21 "Eligible electric energy efficiency measure" or "measure"  
22 means a product or service for which one or more of the  
23 following is true:

24 (1) a building energy assessment, performed by an  
25 energy auditor who is certified by the Building Performance



1 Institute or who holds a similar certification, has  
2 recommended the product or service as likely to be  
3 cost-effective over the course of its installed life for  
4 the building in which the measure is to be installed;

5 (2) the projected electricity savings (determined by  
6 rates in effect at the time of purchase) are sufficient to  
7 cover the costs of implementing the measures, including  
8 finance charges and any program fees not recovered pursuant  
9 to subsection (g) of this Section;

10 (3) the product or service is included in a  
11 Commission-approved energy efficiency and demand-response  
12 plan under Section 8-103 of this Act and is cost-effective  
13 as that term is defined by that Section; or

14 (4) the product or service is necessary to safely or  
15 correctly install to code or industry standard an  
16 efficiency measure, including, but not limited to,  
17 installation work; changes needed to plumbing or  
18 electrical connections; upgrades to wiring or fixtures;  
19 removal of hazardous materials; correction of leaks;  
20 changes to thermostats, controls or similar devices; and  
21 changes to venting or exhaust necessitated by the measure.

22 "Small commercial customer" means, for an electric utility  
23 servicing more than 3,000,000 retail customers, those customers  
24 having peak demand of less than 100 kilowatts, and, for an  
25 electric utility servicing less than 3,000,000 retail customers,  
26 those customers having peak demand of less than 150 kilowatts;

1 provided, however, that in the event the Commission, after  
2 August 27, 2013 (the effective date of Public Act 98-586),  
3 approves changes to a utility's tariffs that reflect new or  
4 revised demand criteria for the utility's customer rate  
5 classifications, then the utility may file a petition with the  
6 Commission to revise the applicable definition of a small  
7 commercial customer to reflect the new or revised demand  
8 criteria for the purposes of this Section. After notice and  
9 hearing, the Commission shall enter an order approving, or  
10 approving with modification, the revised definition within 60  
11 days after the utility files the petition.

12 (b) Notwithstanding any other provision of this Act, an  
13 electric utility serving more than 100,000 customers on January  
14 1, 2009 shall offer a Commission-approved on-bill financing  
15 program ("program") that allows its eligible retail customers,  
16 as that term is defined in Section 16-111.5 of this Act, who  
17 own a residential single family home, duplex, or other  
18 residential building with 4 or less units, or condominium at  
19 which the electric service is being provided (i) to borrow  
20 funds from a third party lender in order to purchase electric  
21 energy efficiency measures approved under the program for  
22 installation in such home or condominium without any required  
23 upfront payment and (ii) to pay back such funds over time  
24 through the electric utility's bill. Based upon the process  
25 described in subsection (b-5) of this Section, small commercial  
26 customers who own the premises at which electric service is

1 being provided may be included in such program. After receiving  
2 a request from an electric utility for approval of a proposed  
3 program and tariffs pursuant to this Section, the Commission  
4 shall render its decision within 120 days. If no decision is  
5 rendered within 120 days, then the request shall be deemed to  
6 be approved.

7 Beginning no later than December 31, 2013, an electric  
8 utility subject to this subsection (b) shall also offer its  
9 program to eligible retail customers that own multifamily  
10 residential or mixed-use buildings ~~with no more than 50~~  
11 ~~residential units~~, provided, however, that such customers must  
12 either be a residential customer or small commercial customer  
13 and may not use the program in such a way that repayment of the  
14 cost of energy efficiency measures is made through tenants'  
15 utility bills. ~~An electric utility may impose a per site loan~~  
16 ~~limit not to exceed \$150,000.~~ The program, and loans issued  
17 thereunder, shall only be offered to customers of the utility  
18 that meet the requirements of this Section and that also have  
19 an electric service account at the premises where the energy  
20 efficiency measures being financed shall be installed.

21 Beginning no later than December 31, 2015, an electric  
22 utility subject to this subsection (b) shall also offer its  
23 program to eligible retail customers that are Unit Owners'  
24 Associations, as defined in subsection (o) of Section 2 of the  
25 Condominium Property Act, or Master Associations, as defined in  
26 subsection (u) of Section 2 of the Condominium Property Act;

1 however, such customers must either be residential customers or  
2 small commercial customers and may not use the program in such  
3 a way that repayment of the cost of energy efficiency measures  
4 is made through unit owners' utility bills. The program and  
5 loans issued under the program shall only be offered to  
6 customers of the utility that meet the requirements of this  
7 Section and that also have an electric service account at the  
8 premises where the energy efficiency measures being financed  
9 shall be installed.

10 ~~For purposes of this Section, "small commercial customer"~~  
11 ~~means, for an electric utility serving more than 3,000,000~~  
12 ~~retail customers, those customers having peak demand of less~~  
13 ~~than 100 kilowatts, and, for an electric utility serving less~~  
14 ~~than 3,000,000 retail customers, those customers having peak~~  
15 ~~demand of less than 150 kilowatts; provided, however, that in~~  
16 ~~the event the Commission, after the effective date of this~~  
17 ~~amendatory Act of the 98th General Assembly, approves changes~~  
18 ~~to a utility's tariffs that reflects new or revised demand~~  
19 ~~criteria for the utility's customer rate classifications, then~~  
20 ~~the utility may file a petition with the Commission to revise~~  
21 ~~the applicable definition of a small commercial customer to~~  
22 ~~reflect the new or revised demand criteria for the purposes of~~  
23 ~~this Section. After notice and hearing, the Commission shall~~  
24 ~~enter an order approving, or approving with modification, the~~  
25 ~~revised definition within 60 days after the utility files the~~  
26 ~~petition.~~

1 (b-5) Within 30 days after the effective date of this  
2 amendatory Act of the 96th General Assembly, the Commission  
3 shall convene a workshop process during which interested  
4 participants may discuss issues related to the program,  
5 including program design, eligible electric energy efficiency  
6 measures, vendor qualifications, and a methodology for  
7 ensuring ongoing compliance with such qualifications,  
8 financing, sample documents such as request for proposals,  
9 contracts and agreements, dispute resolution, pre-installment  
10 and post-installment verification, and evaluation. The  
11 workshop process shall be completed within 150 days after the  
12 effective date of this amendatory Act of the 96th General  
13 Assembly.

14 (c) Not later than 60 days following completion of the  
15 workshop process described in subsection (b-5) of this Section,  
16 each electric utility subject to subsection (b) of this Section  
17 shall submit a proposed program to the Commission that contains  
18 the following components:

19 (1) A description of how the program will determine if  
20 measures to be financed are eligible electric energy  
21 efficiency measures, as defined in subsection (b) of this  
22 Section. A list of recommended electric energy efficiency  
23 measures that will be eligible for on-bill financing. An  
24 eligible electric energy efficiency measure ("measure")  
25 shall be a product or service for which one or more of the  
26 following is true:

1                   ~~(A) (blank);~~

2                   ~~(B) the projected electricity savings (determined~~  
3 ~~by rates in effect at the time of purchase) are~~  
4 ~~sufficient to cover the costs of implementing the~~  
5 ~~measures, including finance charges and any program~~  
6 ~~fees not recovered pursuant to subsection (f) of this~~  
7 ~~Section; or~~

8                   ~~(C) the product or service is included in a~~  
9 ~~Commission approved energy efficiency and~~  
10 ~~demand response plan under Section 8-103 of this Act.~~

11           (2) The electric utility shall issue a request for  
12 proposals ("RFP") to lenders for purposes of providing  
13 financing to participants to pay for approved measures.  
14 Lenders may be for-profit or not-for-profit institutions  
15 which can accept, manage, and lend utility funds consistent  
16 with applicable financial regulations. The RFP criteria  
17 shall include, but not be limited to, the interest rate,  
18 origination fees, and credit terms. The utility shall  
19 select the winning bidders based on its evaluation of these  
20 criteria, with a preference for those bids containing the  
21 rates, fees, and terms most favorable to participants;

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

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

7 (4) The lender shall determine loan eligibility by  
8 first examining customer utility bill payment history,  
9 unless untimely to do so, and then by conducting ~~conduct~~  
10 credit checks or undertaking ~~undertake~~ other appropriate  
11 measures to limit credit risk, and shall review and approve  
12 or deny financing applications submitted by customers  
13 identified in subsection (b) of this Section. If a customer  
14 is not approved for financing as a result of a credit  
15 check, the lender shall determine whether to approve or  
16 deny financing by considering the customer's utility bill  
17 repayment history and the bill reductions likely from the  
18 energy efficiency measures to be financed and other  
19 appropriate measures. Following the lender's approval of  
20 financing and the participant's purchase of the measure or  
21 measures, the lender shall forward payment information to  
22 the electric utility, and the utility shall add as a  
23 separate line item on the participant's utility bill a  
24 charge showing the amount due under the program each month.

25 (5) A loan issued to a participant pursuant to the  
26 program shall be the sole responsibility of the

1 participant, and any dispute that may arise concerning the  
2 loan's terms, conditions, or charges shall be resolved  
3 between the participant and lender. Upon transfer of the  
4 property title for the premises at which the participant  
5 receives electric service from the utility or the  
6 participant's request to terminate service at such  
7 premises, the participant shall pay in full its electric  
8 utility bill, including all amounts due under the program,  
9 provided that this obligation may be modified as provided  
10 in subsection (g) of this Section. Amounts due under the  
11 program shall be deemed amounts owed for residential and,  
12 as appropriate, small commercial electric service.

13 (6) The electric utility shall remit payment in full to  
14 the lender each month on behalf of the participant. In the  
15 event a participant defaults on payment of its electric  
16 utility bill, the electric utility shall continue to remit  
17 all payments due under the program to the lender, up to the  
18 larger of \$10,000,000 or 50% of the total allowable  
19 outstanding amount financed under paragraph (7) of this  
20 subsection (c), and the utility shall be entitled to  
21 recover all costs related to a participant's nonpayment, up  
22 to the larger of \$10,000,000 or 50% of the total allowable  
23 outstanding amount financed under paragraph (7) of this  
24 subsection (c), through the automatic adjustment clause  
25 tariff established pursuant to Section 16-111.8 of this  
26 Act. In addition, the electric utility shall retain a



1 security interest in the measure or measures purchased  
2 under the program, and the utility retains its right to  
3 disconnect a participant that defaults on the payment of  
4 its utility bill.

5 (7) The total annual outstanding amount financed under  
6 the program in this subsection and subsection (c-5) of this  
7 Section shall not exceed \$20,000,000 ~~\$2.5 million~~ for an  
8 electric utility or electric utilities under a single  
9 holding company, provided that the electric utility or  
10 electric utilities may petition the Commission for an  
11 increase in such amount. A utility may meet the annual  
12 obligation using funds repaid through this program or  
13 through additional contributions.

14 (c-5) Within 120 days after the effective date of this  
15 amendatory Act of the 98th General Assembly, each electric  
16 utility subject to the requirements of this Section shall  
17 submit an informational filing to the Commission that describes  
18 its plan for implementing the provisions of this amendatory Act  
19 of the 98th General Assembly on or before December 31, 2013.  
20 Such filing shall also describe how the electric utility shall  
21 coordinate its program with any gas utility or utilities that  
22 provide gas service to buildings within the electric utility's  
23 service territory so that it is practical and feasible for the  
24 owner of a multifamily building to make a single application to  
25 access loans for both gas and electric energy efficiency  
26 measures in any individual building.

1       Within 60 days after the effective date of this amendatory  
2 Act of the 99th General Assembly, each electric utility subject  
3 to the requirements of this Section shall submit a filing to  
4 the Commission that describes its plan for implementing the  
5 provisions of this amendatory Act of the 99th General Assembly  
6 on or before December 31, 2015. The Commission shall seek  
7 public comment on the utility's plan and shall issue an order  
8 approving or disapproving each plan within 120 days of its  
9 submission. If the Commission disapproves a plan, the  
10 Commission shall, within 30 days, describe in detail the  
11 reasons for the disapproval and describe a path by which the  
12 utility may file a revised draft of the plan to address the  
13 Commission's concerns satisfactorily.

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

16           (1) guidelines for financing of measures installed  
17 under a program, including, but not limited to, RFP  
18 criteria and limits on both individual loan amounts and the  
19 duration of the loans;

20           (2) criteria and standards for identifying and  
21 approving measures;

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

25           (4) sample contracts and agreements necessary to  
26 implement the measures and program; and

1           (5) the types of data and information that utilities  
2           and vendors participating in the program shall collect for  
3           purposes of preparing the reports required under  
4           subsection (g) of this Section.

5           (e) The proposed program submitted by each electric utility  
6           shall be consistent with the provisions of this Section that  
7           define operational, financial and billing arrangements between  
8           and among program participants, vendors, lenders, and the  
9           electric utility.

10          (f) An electric utility shall recover all of the prudently  
11          incurred costs of offering a program approved by the Commission  
12          pursuant to this Section, including, but not limited to, all  
13          start-up and administrative costs and the costs for program  
14          evaluation. All prudently incurred costs under this Section  
15          shall be recovered from the residential and small commercial  
16          retail customer classes eligible to participate in the program  
17          through the automatic adjustment clause tariff established  
18          pursuant to Section 8-103 of this Act.

19          (g) An independent evaluation of a program shall be  
20          conducted after 3 years of the program's operation. The  
21          electric utility shall retain an independent evaluator who  
22          shall evaluate the effects of the measures installed under the  
23          program and the overall operation of the program, including,  
24          but not limited to, customer eligibility criteria and whether  
25          the payment obligation for permanent electric energy  
26          efficiency measures that will continue to provide benefits of

1 energy savings should attach to the meter location. As part of  
2 the evaluation process, the evaluator shall also solicit  
3 feedback from participants and interested stakeholders. The  
4 evaluator shall issue a report to the Commission on its  
5 findings no later than 4 years after the date on which the  
6 program commenced, and the Commission shall issue a report to  
7 the Governor and General Assembly including a summary of the  
8 information described in this Section as well as its  
9 recommendations as to whether the program should be  
10 discontinued, continued with modification or modifications or  
11 continued without modification, provided that any recommended  
12 modifications shall only apply prospectively and to measures  
13 not yet installed or financed. The Commission's report shall  
14 discuss changes to the program that were not considered in the  
15 independent evaluation, if any.

16 (h) An electric utility offering a Commission-approved  
17 program pursuant to this Section shall not be required to  
18 comply with any other statute, order, rule, or regulation of  
19 this State that may relate to the offering of such program,  
20 provided that nothing in this Section is intended to limit the  
21 electric utility's obligation to comply with this Act and the  
22 Commission's orders, rules, and regulations, including Part  
23 280 of Title 83 of the Illinois Administrative Code.

24 (i) The source of a utility customer's electric supply  
25 shall not disqualify a customer from participation in the  
26 utility's on-bill financing program. Customers of alternative

1 retail electric suppliers may participate in the program under  
2 the same terms and conditions applicable to the utility's  
3 supply customers.

4 (Source: P.A. 97-616, eff. 10-26-11; 98-586, eff. 8-27-13.)

5 (220 ILCS 5/16-115D)

6 Sec. 16-115D. Renewable portfolio standard for alternative  
7 retail electric suppliers and electric utilities operating  
8 outside their service territories.

9 (a) In conjunction with energy deliveries under contracts  
10 with customers for the period through May 31, 2016, an An  
11 alternative retail electric supplier shall be responsible for  
12 procuring cost-effective renewable energy resources as  
13 required under item (5) of subsection (d) of Section 16-115 of  
14 this Act as outlined herein:

15 (1) The definition of renewable energy resources  
16 contained in Section 1-10 of the Illinois Power Agency Act  
17 applies to all renewable energy resources required to be  
18 procured by alternative retail electric suppliers.

19 (2) The quantity of renewable energy resources shall be  
20 measured as a percentage of the actual amount of metered  
21 electricity (megawatt-hours) delivered by the alternative  
22 retail electric supplier to Illinois retail customers  
23 during the 12-month period June 1 through May 31,  
24 commencing June 1, 2009, and the comparable 12-month period  
25 in each year thereafter except as provided in item (6) of

1           this subsection (a).

2           (3) The quantity of renewable energy resources shall be  
3           in amounts at least equal to the annual percentages set  
4           forth in item (1) of subsection (c) of Section 1-75 of the  
5           Illinois Power Agency Act. At least 60% of the renewable  
6           energy resources procured pursuant to items (1) through (3)  
7           of subsection (b) of this Section shall come from wind  
8           generation and, starting June 1, 2015, at least 6% of the  
9           renewable energy resources procured pursuant to items (1)  
10          through (3) of subsection (b) of this Section shall come  
11          from solar photovoltaics. If, in any given year, an  
12          alternative retail electric supplier does not purchase at  
13          least these levels of renewable energy resources, then the  
14          alternative retail electric supplier shall make  
15          alternative compliance payments, as described in  
16          subsection (d) of this Section.

17          (4) The quantity and source of renewable energy  
18          resources shall be independently verified through the PJM  
19          Environmental Information System Generation Attribute  
20          Tracking System (PJM-GATS) or the Midwest Renewable Energy  
21          Tracking System (M-RETS), which shall document the  
22          location of generation, resource type, month, and year of  
23          generation for all qualifying renewable energy resources  
24          that an alternative retail electric supplier uses to comply  
25          with this Section. No later than June 1, 2009, the Illinois  
26          Power Agency shall provide PJM-GATS, M-RETS, and

1 alternative retail electric suppliers with all information  
2 necessary to identify resources located in Illinois,  
3 within states that adjoin Illinois or within portions of  
4 the PJM and MISO footprint in the United States that  
5 qualify under the definition of renewable energy resources  
6 in Section 1-10 of the Illinois Power Agency Act for  
7 compliance with this Section 16-115D. Alternative retail  
8 electric suppliers shall not be subject to the requirements  
9 in item (3) of subsection (c) of Section 1-75 of the  
10 Illinois Power Agency Act.

11 (5) All renewable energy credits used to comply with  
12 this Section shall be permanently retired.

13 (6) The required procurement of renewable energy  
14 resources by an alternative retail electric supplier shall  
15 apply to all metered electricity delivered to Illinois  
16 retail customers by the alternative retail electric  
17 supplier pursuant to contracts executed or extended after  
18 March 15, 2009.

19 (b) For deliveries to customers through May 31, 2016, an An  
20 alternative retail electric supplier shall comply with the  
21 renewable energy portfolio standards by making an alternative  
22 compliance payment, as described in subsection (d) of this  
23 Section, to cover at least one-half of the alternative retail  
24 electric supplier's compliance obligation and any one or  
25 combination of the following means to cover the remainder of  
26 the alternative retail electric supplier's compliance

1 obligation:

2 (1) Generating electricity using renewable energy  
3 resources identified pursuant to item (4) of subsection (a)  
4 of this Section.

5 (2) Purchasing electricity generated using renewable  
6 energy resources identified pursuant to item (4) of  
7 subsection (a) of this Section through an energy contract.

8 (3) Purchasing renewable energy credits from renewable  
9 energy resources identified pursuant to item (4) of  
10 subsection (a) of this Section.

11 (4) Making an alternative compliance payment as  
12 described in subsection (d) of this Section.

13 (c) Use of renewable energy credits.

14 (1) Renewable energy credits that are not used by an  
15 alternative retail electric supplier to comply with a  
16 renewable portfolio standard in a compliance year may be  
17 banked and carried forward up to 2 12-month compliance  
18 periods after the compliance period in which the credit was  
19 generated for the purpose of complying with a renewable  
20 portfolio standard in those 2 subsequent compliance  
21 periods. For the 2009-2010 and 2010-2011 compliance  
22 periods, an alternative retail electric supplier may use  
23 renewable credits generated after December 31, 2008 and  
24 before June 1, 2009 to comply with this Section.

25 (2) An alternative retail electric supplier is  
26 responsible for demonstrating that a renewable energy



1 credit used to comply with a renewable portfolio standard  
2 is derived from a renewable energy resource and that the  
3 alternative retail electric supplier has not used, traded,  
4 sold, or otherwise transferred the credit.

5 (3) The same renewable energy credit may be used by an  
6 alternative retail electric supplier to comply with a  
7 federal renewable portfolio standard and a renewable  
8 portfolio standard established under this Act. An  
9 alternative retail electric supplier that uses a renewable  
10 energy credit to comply with a renewable portfolio standard  
11 imposed by any other state may not use the same credit to  
12 comply with a renewable portfolio standard established  
13 under this Act.

14 (d) Alternative compliance payments.

15 (1) The Commission shall establish and post on its  
16 website, within 5 business days after entering an order  
17 approving a procurement plan pursuant to Section 1-75 of  
18 the Illinois Power Agency Act, maximum alternative  
19 compliance payment rates, expressed on a per kilowatt-hour  
20 basis, that will be applicable in the first compliance  
21 period following the plan approval. A separate maximum  
22 alternative compliance payment rate shall be established  
23 for the service territory of each electric utility that is  
24 subject to subsection (c) of Section 1-75 of the Illinois  
25 Power Agency Act. Each maximum alternative compliance  
26 payment rate shall be equal to the maximum allowable annual

1 estimated average net increase due to the costs of the  
2 utility's purchase of renewable energy resources included  
3 in the amounts paid by eligible retail customers in  
4 connection with electric service, as described in item (2)  
5 of subsection (c) of Section 1-75 of the Illinois Power  
6 Agency Act for the compliance period, and as established in  
7 the approved procurement plan. Following each procurement  
8 event through which renewable energy resources are  
9 purchased for one or more of these utilities for the  
10 compliance period, the Commission shall establish and post  
11 on its website estimates of the alternative compliance  
12 payment rates, expressed on a per kilowatt-hour basis, that  
13 shall apply for that compliance period. Posting of the  
14 estimates shall occur no later than 10 business days  
15 following the procurement event, however, the Commission  
16 shall not be required to establish and post such estimates  
17 more often than once per calendar month. By July 1 of each  
18 year, the Commission shall establish and post on its  
19 website the actual alternative compliance payment rates  
20 for the preceding compliance year. For compliance years  
21 beginning prior to June 1, 2014, each alternative  
22 compliance payment rate shall be equal to the total amount  
23 of dollars that the utility contracted to spend on  
24 renewable resources, excepting the additional incremental  
25 cost attributable to solar resources, for the compliance  
26 period divided by the forecasted load of eligible retail

1 customers, at the customers' meters, as previously  
2 established in the Commission-approved procurement plan  
3 for that compliance year. For compliance years commencing  
4 on or after June 1, 2014, each alternative compliance  
5 payment rate shall be equal to the total amount of dollars  
6 that the utility contracted to spend on all renewable  
7 resources for the compliance period divided by the  
8 forecasted load of eligible retail customers, at the  
9 customers' meters, as previously established in the  
10 Commission-approved procurement plan for that compliance  
11 year. The actual alternative compliance payment rates may  
12 not exceed the maximum alternative compliance payment  
13 rates established for the compliance period. For purposes  
14 of this subsection (d), the term "eligible retail  
15 customers" has the same meaning as found in Section  
16 16-111.5 of this Act.

17 (2) In any given compliance year, an alternative retail  
18 electric supplier may elect to use alternative compliance  
19 payments to comply with all or a part of the applicable  
20 renewable portfolio standard. In the event that an  
21 alternative retail electric supplier elects to make  
22 alternative compliance payments to comply with all or a  
23 part of the applicable renewable portfolio standard, such  
24 payments shall be made by September 1, 2010 for the period  
25 of June 1, 2009 to May 1, 2010 and by September 1 of each  
26 year thereafter for the subsequent compliance period, in

1 the manner and form as determined by the Commission. Any  
2 election by an alternative retail electric supplier to use  
3 alternative compliance payments is subject to review by the  
4 Commission under subsection (e) of this Section.

5 (3) An alternative retail electric supplier's  
6 alternative compliance payments shall be computed  
7 separately for each electric utility's service territory  
8 within which the alternative retail electric supplier  
9 provided retail service during the compliance period,  
10 provided that the electric utility was subject to  
11 subsection (c) of Section 1-75 of the Illinois Power Agency  
12 Act. For each service territory, the alternative retail  
13 electric supplier's alternative compliance payment shall  
14 be equal to (i) the actual alternative compliance payment  
15 rate established in item (1) of this subsection (d),  
16 multiplied by (ii) the actual amount of metered electricity  
17 delivered by the alternative retail electric supplier to  
18 retail customers within the service territory during the  
19 compliance period, multiplied by (iii) the result of one  
20 minus the ratios of the quantity of renewable energy  
21 resources used by the alternative retail electric supplier  
22 to comply with the requirements of this Section within the  
23 service territory to the product of the percentage of  
24 renewable energy resources required under item (3) of  
25 subsection (a) of this Section and the actual amount of  
26 metered electricity delivered by the alternative retail

1 electric supplier to retail customers within the service  
2 territory during the compliance period.

3 (4) All alternative compliance payments by alternative  
4 retail electric suppliers shall be deposited in the  
5 Illinois Power Agency Renewable Energy Resources Fund and  
6 used to purchase renewable energy credits, in accordance  
7 with Section 1-56 of the Illinois Power Agency Act.  
8 Beginning April 1, 2012 and by April 1 of each year  
9 thereafter, the Illinois Power Agency shall submit an  
10 annual report to the General Assembly, the Commission, and  
11 alternative retail electric suppliers that shall include,  
12 but not be limited to:

13 (A) the total amount of alternative compliance  
14 payments received in aggregate from alternative retail  
15 electric suppliers by planning year for all previous  
16 planning years in which the alternative compliance  
17 payment was in effect;

18 (B) the amount of those payments utilized to  
19 purchased renewable energy credits itemized by the  
20 date of each procurement in which the payments were  
21 utilized; and

22 (C) the unused and remaining balance in the Agency  
23 Renewable Energy Resources Fund attributable to those  
24 payments.

25 (5) The Commission, in consultation with the Illinois  
26 Power Agency, shall establish a process or proceeding to

1           consider the impact of a federal renewable portfolio  
2           standard, if enacted, on the operation of the alternative  
3           compliance mechanism, which shall include, but not be  
4           limited to, developing, to the extent permitted by the  
5           applicable federal statute, an appropriate methodology to  
6           apportion renewable energy credits retired as a result of  
7           alternative compliance payments made in accordance with  
8           this Section. The Commission shall commence any such  
9           process or proceeding within 35 days after enactment of a  
10          federal renewable portfolio standard.

11          (e) Each alternative retail electric supplier shall, by  
12          September 1, 2010 and by September 1 of each year thereafter,  
13          prepare and submit to the Commission a report, in a format to  
14          be specified by the Commission on or before December 31, 2009,  
15          that provides information certifying compliance by the  
16          alternative retail electric supplier with this Section,  
17          including copies of all PJM-GATS and M-RETS reports, and  
18          documentation relating to banking, retiring renewable energy  
19          credits, and any other information that the Commission  
20          determines necessary to ensure compliance with this Section. An  
21          alternative retail electric supplier may file commercially or  
22          financially sensitive information or trade secrets with the  
23          Commission as provided under the rules of the Commission. To be  
24          filed confidentially, the information shall be accompanied by  
25          an affidavit that sets forth both the reasons for the  
26          confidentiality and a public synopsis of the information.

1 (f) The Commission may initiate a contested case to review  
2 allegations that the alternative retail electric supplier has  
3 violated this Section, including an order issued or rule  
4 promulgated under this Section. In any such proceeding, the  
5 alternative retail electric supplier shall have the burden of  
6 proof. If the Commission finds, after notice and hearing, that  
7 an alternative retail electric supplier has violated this  
8 Section, then the Commission shall issue an order requiring the  
9 alternative retail electric supplier to:

10 (1) immediately comply with this Section; and

11 (2) if the violation involves a failure to procure the  
12 requisite quantity of renewable energy resources or pay the  
13 applicable alternative compliance payment by the annual  
14 deadline, the Commission shall require the alternative  
15 retail electric supplier to double the applicable  
16 alternative compliance payment that would otherwise be  
17 required to bring the alternative retail electric supplier  
18 into compliance with this Section.

19 If an alternative retail electric supplier fails to comply  
20 with the renewable energy resource portfolio requirement in  
21 this Section more than once in a 5-year period, then the  
22 Commission shall revoke the alternative electric supplier's  
23 certificate of service authority. The Commission shall not  
24 accept an application for a certificate of service authority  
25 from an alternative retail electric supplier that has lost  
26 certification under this subsection (f), or any corporate

1 affiliate thereof, for at least one year after the date of  
2 revocation.

3 (g) All of the provisions of this Section apply to electric  
4 utilities operating outside their service area except under  
5 item (2) of subsection (a) of this Section the quantity of  
6 renewable energy resources shall be measured as a percentage of  
7 the actual amount of electricity (megawatt-hours) supplied in  
8 the State outside of the utility's service territory during the  
9 12-month period June 1 through May 31, commencing June 1, 2009,  
10 and the comparable 12-month period in each year thereafter  
11 except as provided in item (6) of subsection (a) of this  
12 Section.

13 If any such utility fails to procure the requisite quantity  
14 of renewable energy resources by the annual deadline, then the  
15 Commission shall require the utility to double the alternative  
16 compliance payment that would otherwise be required to bring  
17 the utility into compliance with this Section.

18 If any such utility fails to comply with the renewable  
19 energy resource portfolio requirement in this Section more than  
20 once in a 5-year period, then the Commission shall order the  
21 utility to cease all sales outside of the utility's service  
22 territory for a period of at least one year.

23 (h) The provisions of this Section and the provisions of  
24 subsection (d) of Section 16-115 of this Act relating to  
25 procurement of renewable energy resources shall not apply to an  
26 alternative retail electric supplier that operates a combined



1 heat and power system in this State or that has a corporate  
2 affiliate that operates such a combined heat and power system  
3 in this State that supplies electricity primarily to or for the  
4 benefit of: (i) facilities owned by the supplier, its  
5 subsidiary, or other corporate affiliate; (ii) facilities  
6 electrically integrated with the electrical system of  
7 facilities owned by the supplier, its subsidiary, or other  
8 corporate affiliate; or (iii) facilities that are adjacent to  
9 the site on which the combined heat and power system is  
10 located.

11 (i) The obligations specified in this Section of  
12 alternative retail electric suppliers and electric utilities  
13 operating outside their service territories to procure  
14 renewable energy resources, make alternative compliance  
15 payments, and file annual reports, and the obligations of the  
16 Commission to determine and post alternative compliance  
17 payment rates, shall terminate effective with the filing of  
18 reports and full payments made by alternative retail electric  
19 suppliers for energy deliveries to customers for the period  
20 ending May 31, 2016, provided that alternative retail electric  
21 suppliers and electric utilities operating outside their  
22 service territories shall be obligated to make all alternative  
23 compliance payments that they were obligated to pay for periods  
24 through and including May 31, 2016 but were not paid as of that  
25 date and to file all required reports for periods prior to June  
26 1, 2016. The Commission shall continue to enforce the payment

1 of unpaid alternative compliance payments after May 31, 2016 in  
2 accordance with subsections (f) and (g) of this Section. All  
3 alternative compliance payments made after May 31, 2016 shall  
4 be deposited in the Illinois Power Agency Renewable Energy  
5 Resources Fund and used to purchase renewable energy credits in  
6 accordance with Section 1-56 of the Illinois Power Agency Act.

7 (Source: P.A. 96-33, eff. 7-10-09; 96-159, eff. 8-10-09;  
8 96-1437, eff. 8-17-10; 97-658, eff. 1-13-12.)

9 (220 ILCS 5/19-140)

10 Sec. 19-140. On-bill financing program; gas utilities.

11 (a) The Illinois General Assembly finds that Illinois homes  
12 and businesses have the potential to save energy through  
13 conservation and cost-effective energy efficiency measures.  
14 Programs created pursuant to this Section will allow utility  
15 customers to purchase cost-effective energy efficiency  
16 measures, including measures set forth in a  
17 Commission-approved energy efficiency plan under Section 8-104  
18 of this Act, with no required initial upfront payment, and to  
19 pay the cost of those products and services over time on their  
20 utility bill.

21 (a-5) As used in this Section:

22 "Eligible gas energy efficiency measure" or "measure"  
23 means a product or service for which one or more of the  
24 following is true:

25 (1) a building energy assessment, performed by an

1 energy auditor who is certified by the Building Performance  
2 Institute or who holds a similar certification, has  
3 recommended the product or service as likely to be  
4 cost-effective over the course of its installed life for  
5 the building in which the measure is to be installed;

6 (2) the projected gas savings (determined by rates in  
7 effect at the time of purchase) are sufficient to cover the  
8 costs of implementing the measures, including finance  
9 charges and any program fees not recovered pursuant to  
10 subsection (f) of this Section;

11 (3) the product or service is included in a  
12 Commission-approved energy efficiency and demand-response  
13 plan under Section 8-104 of this Act and is cost-effective  
14 as that term is defined by that Section; or

15 (4) the product or service is necessary to safely or  
16 correctly install to code or industry standard an  
17 efficiency measure, including, but not limited to  
18 installation work, changes needed to plumbing or  
19 electrical connections, upgrades to wiring or fixtures,  
20 removal of hazardous materials, correction of leaks,  
21 changes to thermostats, controls, or similar devices, and  
22 changes to venting or exhaust necessitated by the measure.

23 "Small commercial customer" for a gas utility shall be  
24 defined in that gas utility's filing that is made under  
25 subsection (c-5) of this Section.

26 (b) Notwithstanding any other provision of this Act, a gas

1 utility serving more than 100,000 customers on January 1, 2009  
2 shall offer a Commission-approved on-bill financing program  
3 ("program") that allows its retail customers who own a  
4 residential single family home, duplex, or other residential  
5 building with 4 or less units, or condominium at which the gas  
6 service is being provided (i) to borrow funds from a third  
7 party lender in order to purchase gas energy efficiency  
8 measures approved under the program for installation in such  
9 home or condominium without any required upfront payment and  
10 (ii) to pay back such funds over time through the gas utility's  
11 bill. Based upon the process described in subsection (b-5) of  
12 this Section, small commercial customers who own the premises  
13 at which gas service is being provided may be included in such  
14 program. After receiving a request from a gas utility for  
15 approval of a proposed program and tariffs pursuant to this  
16 Section, the Commission shall render its decision within 120  
17 days. If no decision is rendered within 120 days, then the  
18 request shall be deemed to be approved. Beginning no later than  
19 December 31, 2013, a gas utility subject to this subsection (b)  
20 shall also offer its program to eligible retail customers that  
21 own a multifamily residential or mixed-use building ~~with no~~  
22 ~~more than 50 residential units,~~ provided, however, that such  
23 customer must either be a residential customer or small  
24 commercial customer and may not use the program in such a way  
25 that repayment of the cost of energy efficiency measures is  
26 made through tenants' utility bills. ~~A gas utility may impose a~~

1 ~~per site loan limit not to exceed \$150,000.~~ The program, and  
2 loans issued thereunder, shall only be offered to customers of  
3 the utility that meet the requirements of this Section and that  
4 also have a gas service account at the premises where the  
5 energy efficiency measures being financed shall be installed.

6 Beginning no later than December 31, 2015, a gas utility  
7 subject to this subsection (b) shall also offer its program to  
8 eligible retail customers that are Unit Owners' Associations,  
9 as defined in subsection (o) of Section 2 of the Condominium  
10 Property Act, or Master Associations, as defined in subsection  
11 (u) of Section 2 of the Condominium Property Act; however, such  
12 customers must either be a residential customer or small  
13 commercial customer and may not use the program in such a way  
14 that repayment of the cost of energy efficiency measures is  
15 made through unit owners' utility bills. The program and loans  
16 issued under the program shall only be offered to customers of  
17 the utility that meet the requirements of this Section and that  
18 also have a gas service account at the premises where the  
19 energy efficiency measures being financed shall be installed.

20 ~~For purposes of this Section, a small commercial customer~~  
21 ~~for a gas utility shall be defined in that gas utility's~~  
22 ~~informational filing that is made under subsection (c-5) of~~  
23 ~~this Section.~~

24 (b-5) Within 30 days after the effective date of this  
25 amendatory Act of the 96th General Assembly, the Commission  
26 shall convene a workshop process during which interested

1 participants may discuss issues related to the program,  
2 including program design, eligible gas energy efficiency  
3 measures, vendor qualifications, and a methodology for  
4 ensuring ongoing compliance with such qualifications,  
5 financing, sample documents such as request for proposals,  
6 contracts and agreements, dispute resolution, pre-installment  
7 and post-installment verification, and evaluation. The  
8 workshop process shall be completed within 150 days after the  
9 effective date of this amendatory Act of the 96th General  
10 Assembly.

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

16 (1) A description of how the program will determine if  
17 measures to be financed are eligible electric energy  
18 efficiency measures, as defined in subsection (a-5) of this  
19 Section. A list of recommended gas energy efficiency  
20 measures that will be eligible for on-bill financing. An  
21 eligible gas energy efficiency measure ("measure") shall  
22 be a product or service for which one or more of the  
23 following is true:

24 ~~(A) (blank);~~

25 ~~(B) the projected gas savings (determined by rates~~  
26 ~~in effect at the time of purchase) are sufficient to~~

1 ~~cover the costs of implementing the measures,~~  
2 ~~including finance charges and any program fees not~~  
3 ~~recovered pursuant to subsection (f) of this Section;~~  
4 ~~or~~

5 ~~(C) the product or service is included in a~~  
6 ~~Commission approved energy efficiency plan under~~  
7 ~~Section 8-104 of this Act.~~

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

16 (3) The utility shall work with the lenders selected  
17 pursuant to the RFP process, and with vendors, to establish  
18 the terms and processes pursuant to which a participant can  
19 purchase eligible gas energy efficiency measures using the  
20 financing obtained from the lender. The vendor shall  
21 explain and offer the approved financing packaging to those  
22 customers identified in subsection (b) of this Section and  
23 shall assist customers in applying for financing. As part  
24 of such process, vendors shall also provide to participants  
25 information about any other incentives that may be  
26 available for the measures.

1           (4) The lender shall conduct credit checks or undertake  
2 other appropriate measures to limit credit risk, and shall  
3 review and approve or deny financing applications  
4 submitted by customers identified in subsection (b) of this  
5 Section. If a customer is not approved for financing as a  
6 result of a credit check, the lender shall determine  
7 whether to approve or deny financing by considering the  
8 customer's utility bill repayment history and the bill  
9 reductions likely from the energy efficiency measures to be  
10 financed and other appropriate measures. Following the  
11 lender's approval of financing and the participant's  
12 purchase of the measure or measures, the lender shall  
13 forward payment information to the gas utility, and the  
14 utility shall add as a separate line item on the  
15 participant's utility bill a charge showing the amount due  
16 under the program each month.

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



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

5           (6) The gas utility shall remit payment in full to the  
6           lender each month on behalf of the participant. In the  
7           event a participant defaults on payment of its gas utility  
8           bill, the gas utility shall continue to remit all payments  
9           due under the program to the lender, up to the larger of  
10          \$10,000,000 or 50% of the total allowable outstanding  
11          amount financed under paragraph (7) of this subsection (c),  
12          and the utility shall be entitled to recover all costs  
13          related to a participant's nonpayment, up to the larger of  
14          \$10,000,000 or 50% of the total allowable outstanding  
15          amount financed under paragraph (7) of this subsection (c),  
16          through the automatic adjustment clause tariff established  
17          pursuant to Section 19-145 of this Act. In addition, the  
18          gas utility shall retain a security interest in the measure  
19          or measures purchased under the program, and the utility  
20          retains its right to disconnect a participant that defaults  
21          on the payment of its utility bill.

22          (7) The total outstanding amount financed under the  
23          program in this subsection and subsection (c-5) of this  
24          Section shall not exceed \$20,000,000 ~~\$2.5 million~~ for a gas  
25          utility or gas utilities under a single holding company,  
26          provided that the gas utility or gas utilities may petition

1 the Commission for an increase in such amount.

2 (c-5) Within 120 days after the effective date of this  
3 amendatory Act of the 98th General Assembly, each covered gas  
4 utility shall submit an informational filing to the Commission  
5 that describes its plan for implementing the provisions of this  
6 amendatory Act of the 98th General Assembly on or before  
7 December 31, 2013. A gas utility subject to this Section shall  
8 cooperate with any electric utility that provides electric  
9 service to buildings within the gas utility's service territory  
10 so that it is practical and feasible for the owner of a  
11 multifamily building to make a single application to access  
12 loans for both gas and electric energy efficiency measures in  
13 any individual building.

14 Within 60 days after the effective date of this amendatory  
15 Act of the 99th General Assembly, each electric utility subject  
16 to the requirements of this Section shall submit a filing to  
17 the Commission that describes its plan for implementing the  
18 provisions of this amendatory Act of the 99th General Assembly  
19 on or before December 31, 2015. The Commission shall seek  
20 public comment on the utility's plan and shall issue an order  
21 approving or disapproving each plan within 120 days of its  
22 submission. If the Commission disapproves a plan, the  
23 Commission shall, within 30 days, describe in detail the  
24 reasons for the disapproval and describe a path by which the  
25 utility may file a revised draft of the plan to address the  
26 Commission's concerns satisfactorily.

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

3 (1) guidelines for financing of measures installed  
4 under a program, including, but not limited to, RFP  
5 criteria and limits on both individual loan amounts and the  
6 duration of the loans;

7 (2) criteria and standards for identifying and  
8 approving measures;

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

12 (4) sample contracts and agreements necessary to  
13 implement the measures and program; and

14 (5) the types of data and information that utilities  
15 and vendors participating in the program shall collect for  
16 purposes of preparing the reports required under  
17 subsection (g) of this Section.

18 (e) The proposed program submitted by each gas utility  
19 shall be consistent with the provisions of this Section that  
20 define operational, financial, and billing arrangements  
21 between and among program participants, vendors, lenders, and  
22 the gas utility.

23 (f) A gas utility shall recover all of the prudently  
24 incurred costs of offering a program approved by the Commission  
25 pursuant to this Section, including, but not limited to, all  
26 start-up and administrative costs and the costs for program

1 evaluation. All prudently incurred costs under this Section  
2 shall be recovered from the residential and small commercial  
3 retail customer classes eligible to participate in the program  
4 through the automatic adjustment clause tariff established  
5 pursuant to Section 8-104 of this Act.

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

1 considered in the independent evaluation, if any.

2 (h) A gas utility offering a Commission-approved program  
3 pursuant to this Section shall not be required to comply with  
4 any other statute, order, rule, or regulation of this State  
5 that may relate to the offering of such program, provided that  
6 nothing in this Section is intended to limit the gas utility's  
7 obligation to comply with this Act and the Commission's orders,  
8 rules, and regulations, including Part 280 of Title 83 of the  
9 Illinois Administrative Code.

10 (i) The source of a utility customer's gas supply shall not  
11 disqualify a customer from participation in the utility's  
12 on-bill financing program. Customers of alternative gas  
13 suppliers may participate in the program under the same terms  
14 and conditions applicable to the utility's supply customers.

15 (Source: P.A. 98-586, eff. 8-27-13.)

16 Section 15. The Environmental Protection Act is amended by  
17 changing Section 9.1 as follows:

18 (415 ILCS 5/9.1) (from Ch. 111 1/2, par. 1009.1)

19 Sec. 9.1. (a) The General Assembly finds that the federal  
20 Clean Air Act, as amended, and regulations adopted pursuant  
21 thereto establish complex and detailed provisions for  
22 State-federal cooperation in the field of air pollution  
23 control, provide for a Prevention of Significant Deterioration  
24 program to regulate the issuance of preconstruction permits to

1 insure that economic growth will occur in a manner consistent  
2 with the preservation of existing clean air resources, and also  
3 provide for plan requirements for nonattainment areas to  
4 regulate the construction, modification and operation of  
5 sources of air pollution to insure that economic growth will  
6 occur in a manner consistent with the goal of achieving the  
7 national ambient air quality standards, and that the General  
8 Assembly cannot conveniently or advantageously set forth in  
9 this Act all the requirements of such federal Act or all  
10 regulations which may be established thereunder.

11 It is the purpose of this Section to avoid the existence of  
12 duplicative, overlapping or conflicting State and federal  
13 regulatory systems.

14 (b) The provisions of Section 111 of the federal Clean Air  
15 Act (42 USC 7411), as amended, relating to standards of  
16 performance for new stationary sources, and Section 112 of the  
17 federal Clean Air Act (42 USC 7412), as amended, relating to  
18 the establishment of national emission standards for hazardous  
19 air pollutants are applicable in this State and are enforceable  
20 under this Act. Any such enforcement shall be stayed consistent  
21 with any stay granted in any federal judicial action to review  
22 such standards. Enforcement shall be consistent with the  
23 results of any such judicial review.

24 (b-5) (1) Upon the promulgation by the U.S. Environmental  
25 Protection Agency (USEPA) of a final rule regulating carbon  
26 dioxide emissions from existing electric generating units

1 under 42 U.S.C. 7411(d) that allows for mass-based compliance  
2 and maintains state flexibility to achieve compliance using  
3 market-based tools (USEPA Rule), the Illinois Environmental  
4 Protection Agency shall develop a state implementation plan  
5 (Plan) to comply with the requirements of the USEPA rule by  
6 creating a market-based system to reduce carbon dioxide and  
7 create a revenue stream to be used by the State of Illinois  
8 consistent with paragraphs (2) through (4) of this subsection  
9 (b-5).

10 (2) The Illinois Environmental Protection Agency (Agency)  
11 is authorized to create and implement a cap and invest program  
12 or similar market mechanism (Program) to comply with the USEPA  
13 rule, after undertaking a robust and open stakeholder process  
14 and a comprehensive analysis and modeling of the impact of such  
15 a program on Illinois' energy system, ratepayers, and  
16 communities.

17 (A) The Illinois Environmental Protection Agency shall  
18 adopt rules to implement the Program consistent with this  
19 Act.

20 (B) A comprehensive market-based program shall, at a  
21 minimum, achieve the carbon emissions reductions required  
22 to meet Illinois' mass-based goal under its Plan and create  
23 a mechanism to achieve additional emissions reductions  
24 from the power sector when implemented in conjunction with  
25 other State policies, including Illinois' Renewable Energy  
26 Standard and Energy Efficiency Resource Standard.

1           (C) The Illinois Environmental Protection Agency is  
2           authorized to evaluate, establish, implement, and manage  
3           an annual cap on CO2 emissions and administer an auction  
4           program to sell power sector CO2 allowances in a  
5           market-based program consistent with this Act and the USEPA  
6           rule. The Program shall include a minimum emissions  
7           allowance price calibrated to ensure compliance with the  
8           State's obligations under the USEPA rule.

9           (D) The Agency shall make every effort to participate  
10           in a regional program and regional allowance auctions with  
11           other states if it results in greater carbon dioxide  
12           emission reductions at a lower cost for Illinois' residents  
13           over time. The Agency may conduct Illinois-only auctions if  
14           such auctions are found to be in the best interests of  
15           Illinois ratepayers, as determined by the Agency, and after  
16           consultation with the Illinois Commerce Commission, taking  
17           into account the impact on the State's goals under the  
18           USEPA rule, State residents' health, and ratepayers.  
19           Participation in a regional program does not relieve the  
20           Agency of its obligations to comply with the provisions of  
21           this Act.

22           (E) The Agency shall perform an environmental justice  
23           analysis of its Plan to ensure compliance with the USEPA  
24           rule and Federal Executive Order No. 12898, including a  
25           cumulative impacts assessment as part of its environmental  
26           impact assessment of the Program, following existing USEPA



1 methodologies.

2 (F) The Agency shall develop, in coordination with the  
3 Illinois Environmental Justice Commission, through an open  
4 and inclusive stakeholder process, a list of Environmental  
5 Justice Communities, defined as distinct geographic areas  
6 of low-income and minority communities that are  
7 disproportionately impacted by power plant pollution and  
8 co-pollutant emissions.

9 (G) Any Program shall address and mitigate the  
10 displacement of Illinois carbon dioxide emissions to other  
11 states as well as establish appropriate spatial  
12 restrictions on allowance trading to avoid the creation of  
13 co-pollutant hotspots or areas with high concentrations of  
14 co-pollutants, defined in terms of cumulative impacts.

15 (H) After a Program is in place, the Agency shall  
16 require existing electric generating units located in  
17 low-income and minority communities to install and  
18 maintain monitors that provide detailed information on  
19 co-pollutant emissions tied to the purchase of allowances  
20 under the program. Information on these trading  
21 transactions and reports on emission levels shall be  
22 available to the public.

23 (I) The authority in this subsection (b-5) is  
24 restricted to verifiable carbon dioxide emissions  
25 allowances and credits within the power sector and does not  
26 permit inclusion of carbon emissions allowances, credits,

1 or offsets from other sectors of the economy.

2 (3) The Illinois Environmental Protection Agency is  
3 authorized to invest the auction proceeds under this Act in  
4 strategies to meet the State's goal under the USEPA rule,  
5 create jobs in the State's renewable energy and energy  
6 efficiency industries (as defined in the Illinois Power Agency  
7 Act), enable workers' transition to renewable energy jobs, and  
8 mitigate adverse health and economic impacts of fossil  
9 fuel-fired power plants on minority and low-income  
10 communities, in a manner consistent with this Act.

11 (A) A minimum of 65% of the revenue the Agency receives  
12 from the Program (Revenue) shall be directed to the  
13 Illinois Power Agency to spend on new energy efficiency and  
14 renewable energy investments anywhere in the State. At  
15 least 20% of this portion must be invested to support  
16 energy efficiency and renewable energy investments in  
17 low-income communities and low-income households, where  
18 preference shall be given to investments in communities  
19 designated as Environmental Justice Communities, followed  
20 by investments in communities where power plants are or  
21 have been located. A portion of these funds shall support  
22 energy efficiency and renewable energy projects designed  
23 to assist public institutions, including, but not limited  
24 to, hospitals, health care facilities, long-term care  
25 facilities, schools, preschools, daycare facilities, and  
26 wastewater and drinking water treatment plant operators,

1 with reducing their operating costs.

2 (B) A minimum of 5% of the Revenue shall be directed to  
3 the Low Income Home Energy Assistance Program for bill  
4 assistance.

5 (C) A minimum of 5% of the Revenue shall be directed to  
6 assist workers in the fossil fuel-fired power plant  
7 industry to transition to renewable energy and energy  
8 efficiency jobs.

9 (D) A minimum of 10% of the Revenue shall be directed  
10 to communities in which power plants are or have been  
11 located to mitigate the adverse health and economic impacts  
12 of power plants on those communities. Priority shall be  
13 given to areas that are designated non-attainment for any  
14 criteria pollutant under the Clean Air Act.

15 (E) A maximum of 5% of the Revenue shall be reserved  
16 for program administration, pollutant and co-pollutant  
17 monitoring as required under item (H) of paragraph (2) of  
18 this subsection (b-5), to invest in innovative strategies  
19 to reduce carbon emissions in the power sector, mitigate  
20 the impacts of climate change, and to increase public  
21 awareness of the impacts of climate change.

22 (4) In the development and operation of the Program, the  
23 Illinois Environmental Protection Agency is prohibited from  
24 doing the following:

25 (A) Implementing any program that leads to the  
26 degradation of air quality, or significantly hindering the

1       attainment of other air quality standards under this Act.

2       (B) Allocating CO2 allowances to sources covered under  
3       the Program for free.

4       (C) Approving of any CO2 credits for emission  
5       reductions, allowances, or offsets from outside the scope  
6       of the Program.

7       (c) The Board may adopt regulations establishing permit  
8       programs meeting the requirements of Sections 165 and 173 of  
9       the Clean Air Act (42 USC 7475 and 42 USC 7503) as amended. The  
10       Agency may adopt procedures for the administration of such  
11       programs.

12       (d) No person shall:

13               (1) violate any provisions of Sections 111, 112, 165 or  
14               173 of the Clean Air Act, as now or hereafter amended, or  
15               federal regulations adopted pursuant thereto; or

16               (2) construct, install, modify or operate any  
17               equipment, building, facility, source or installation  
18               which is subject to regulation under Sections 111, 112, 165  
19               or 173 of the Clean Air Act, as now or hereafter amended,  
20               except in compliance with the requirements of such Sections  
21               and federal regulations adopted pursuant thereto, and no  
22               such action shall be undertaken (A) without a permit  
23               granted by the Agency whenever a permit is required  
24               pursuant to (i) this Act or Board regulations or (ii)  
25               Section 111, 112, 165, or 173 of the Clean Air Act or  
26               federal regulations adopted pursuant thereto or (B) in

1 violation of any conditions imposed by such permit. Any  
2 denial of such a permit or any conditions imposed in such a  
3 permit shall be reviewable by the Board in accordance with  
4 Section 40 of this Act.

5 (e) The Board shall exempt from regulation under the State  
6 Implementation Plan for ozone the volatile organic compounds  
7 which have been determined by the U.S. Environmental Protection  
8 Agency to be exempt from regulation under state implementation  
9 plans for ozone due to negligible photochemical reactivity. In  
10 accordance with subsection (b) of Section 7.2, the Board shall  
11 adopt regulations identical in substance to the U.S.  
12 Environmental Protection Agency exemptions or deletion of  
13 exemptions published in policy statements on the control of  
14 volatile organic compounds in the Federal Register by amending  
15 the list of exemptions to the Board's definition of volatile  
16 organic material found at 35 Ill. Adm. Code Part 211. The  
17 provisions and requirements of Title VII of this Act shall not  
18 apply to regulations adopted under this subsection. Section  
19 5-35 of the Illinois Administrative Procedure Act, relating to  
20 procedures for rulemaking, does not apply to regulations  
21 adopted under this subsection. However, the Board shall provide  
22 for notice, a hearing if required by the U.S. Environmental  
23 Protection Agency, and public comment before adopted rules are  
24 filed with the Secretary of State. The Board may consolidate  
25 into a single rulemaking under this subsection all such federal  
26 policy statements published in the Federal Register within a

1 period of time not to exceed 6 months.

2 (f) (Blank).

3 (Source: P.A. 97-95, eff. 7-12-11; 98-284, eff. 8-9-13.)

4 Section 99. Effective date. This Act takes effect upon  
5 becoming law.

1 INDEX  
2 Statutes amended in order of appearance

- 3 20 ILCS 3855/1-5
- 4 20 ILCS 3855/1-10
- 5 20 ILCS 3855/1-20
- 6 20 ILCS 3855/1-56
- 7 20 ILCS 3855/1-75
- 8 220 ILCS 5/8-101 from Ch. 111 2/3, par. 8-101
- 9 220 ILCS 5/8-103
- 10 220 ILCS 5/8-104
- 11 220 ILCS 5/16-107
- 12 220 ILCS 5/16-108.5
- 13 220 ILCS 5/16-108.8
- 14 220 ILCS 5/16-111.5
- 15 220 ILCS 5/16-111.5B
- 16 220 ILCS 5/16-111.5C new
- 17 220 ILCS 5/16-111.7
- 18 220 ILCS 5/16-115D
- 19 220 ILCS 5/19-140
- 20 415 ILCS 5/9.1 from Ch. 111 1/2, par. 1009.1