



Sen. James F. Clayborne, Jr.

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LRB099 19038 EGJ 49058 a

1 AMENDMENT TO SENATE BILL 2939

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2939 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Power Agency Act is amended by  
5 changing Section 1-75 as follows:

6 (20 ILCS 3855/1-75)

7 Sec. 1-75. Planning and Procurement Bureau. The Planning  
8 and Procurement Bureau has the following duties and  
9 responsibilities:

10 (a) The Planning and Procurement Bureau shall each year,  
11 beginning in 2008, develop procurement plans and conduct  
12 competitive procurement processes in accordance with the  
13 requirements of Section 16-111.5 of the Public Utilities Act  
14 for the eligible retail customers of electric utilities that on  
15 December 31, 2005 provided electric service to at least 100,000  
16 customers in Illinois. The Planning and Procurement Bureau

1 shall also develop procurement plans and conduct competitive  
2 procurement processes in accordance with the requirements of  
3 Section 16-111.5 of the Public Utilities Act for the eligible  
4 retail customers of small multi-jurisdictional electric  
5 utilities that (i) on December 31, 2005 served less than  
6 100,000 customers in Illinois and (ii) request a procurement  
7 plan for their Illinois jurisdictional load. This Section shall  
8 not apply to a small multi-jurisdictional utility until such  
9 time as a small multi-jurisdictional utility requests the  
10 Agency to prepare a procurement plan for their Illinois  
11 jurisdictional load. For the purposes of this Section, the term  
12 "eligible retail customers" has the same definition as found in  
13 Section 16-111.5(a) of the Public Utilities Act.

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

20 (A) direct previous experience assembling  
21 large-scale power supply plans or portfolios for  
22 end-use customers;

23 (B) an advanced degree in economics, mathematics,  
24 engineering, risk management, or a related area of  
25 study;

26 (C) 10 years of experience in the electricity

1 sector, including managing supply risk;

2 (D) expertise in wholesale electricity market  
3 rules, including those established by the Federal  
4 Energy Regulatory Commission and regional transmission  
5 organizations;

6 (E) expertise in credit protocols and familiarity  
7 with contract protocols;

8 (F) adequate resources to perform and fulfill the  
9 required functions and responsibilities; and

10 (G) the absence of a conflict of interest and  
11 inappropriate bias for or against potential bidders or  
12 the affected electric utilities.

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

19 (A) direct previous experience administering a  
20 large-scale competitive procurement process;

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

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

25 (D) expertise in wholesale electricity market  
26 rules, including those established by the Federal

1 Energy Regulatory Commission and regional transmission  
2 organizations;

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

24 (A) failure to satisfy qualification criteria;

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

26 (C) evidence of inappropriate bias for or against

1 potential bidders or the affected utilities.

2 The Agency shall remove experts or expert consulting  
3 firms from the lists within 10 days if there is a  
4 reasonable basis for an objection and provide the updated  
5 lists to the affected utilities and other interested  
6 parties. If the Agency fails to remove an expert or expert  
7 consulting firm from a list, an objecting party may seek  
8 review by the Commission within 5 days thereafter by filing  
9 a petition, and the Commission shall render a ruling on the  
10 petition within 10 days. There is no right of appeal of the  
11 Commission's ruling.

12 (4) The Agency shall issue requests for proposals to  
13 the qualified experts or expert consulting firms to develop  
14 a procurement plan for the affected utilities and to serve  
15 as procurement administrator.

16 (5) The Agency shall select an expert or expert  
17 consulting firm to develop procurement plans based on the  
18 proposals submitted and shall award contracts of up to 5  
19 years to those selected.

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

1 expert or expert consulting firm so selected with  
2 Commission approval.

3 (b) The experts or expert consulting firms retained by the  
4 Agency shall, as appropriate, prepare procurement plans, and  
5 conduct a competitive procurement process as prescribed in  
6 Section 16-111.5 of the Public Utilities Act, to ensure  
7 adequate, reliable, affordable, efficient, and environmentally  
8 sustainable electric service at the lowest total cost over  
9 time, taking into account any benefits of price stability, for  
10 eligible retail customers of electric utilities that on  
11 December 31, 2005 provided electric service to at least 100,000  
12 customers in the State of Illinois, and for eligible Illinois  
13 retail customers of small multi-jurisdictional electric  
14 utilities that (i) on December 31, 2005 served less than  
15 100,000 customers in Illinois and (ii) request a procurement  
16 plan for their Illinois jurisdictional load.

17 (c) Renewable portfolio standard.

18 (1) The procurement plans shall include cost-effective  
19 renewable energy resources. A minimum percentage of each  
20 utility's total supply to serve the load of eligible retail  
21 customers, as defined in Section 16-111.5(a) of the Public  
22 Utilities Act, procured for each of the following years  
23 shall be generated from cost-effective renewable energy  
24 resources: at least 2% by June 1, 2008; at least 4% by June  
25 1, 2009; at least 5% by June 1, 2010; at least 6% by June 1,  
26 2011; at least 7% by June 1, 2012; at least 8% by June 1,

1 2013; at least 9% by June 1, 2014; at least 10% by June 1,  
2 2015; and increasing by at least 1.5% each year thereafter  
3 to at least 25% by June 1, 2025. To the extent that it is  
4 available, at least 75% of the renewable energy resources  
5 used to meet these standards shall come from wind  
6 generation and, beginning on June 1, 2011, at least the  
7 following percentages of the renewable energy resources  
8 used to meet these standards shall come from photovoltaics  
9 on the following schedule: 0.5% by June 1, 2012, 1.5% by  
10 June 1, 2013; 3% by June 1, 2014; and 6% by June 1, 2015 and  
11 thereafter. Of the renewable energy resources procured  
12 pursuant to this Section, at least the following  
13 percentages shall come from distributed renewable energy  
14 generation devices: 0.5% by June 1, 2013, 0.75% by June 1,  
15 2014, and 1% by June 1, 2015 and thereafter. To the extent  
16 available, half of the renewable energy resources procured  
17 from distributed renewable energy generation shall come  
18 from devices of less than 25 kilowatts in nameplate  
19 capacity. Renewable energy resources procured from  
20 distributed generation devices may also count towards the  
21 required percentages for wind and solar photovoltaics.  
22 Procurement of renewable energy resources from distributed  
23 renewable energy generation devices shall be done on an  
24 annual basis through multi-year contracts of no less than 5  
25 years, and shall consist solely of renewable energy  
26 credits.

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

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

23          (2) For purposes of this subsection (c), the required  
24          procurement of cost-effective renewable energy resources  
25          for a particular year shall be measured as a percentage of  
26          the actual amount of electricity (megawatt-hours) supplied



1 by the electric utility to eligible retail customers in the  
2 planning year ending immediately prior to the procurement.  
3 For purposes of this subsection (c), the amount paid per  
4 kilowatthour means the total amount paid for electric  
5 service expressed on a per kilowatthour basis. For purposes  
6 of this subsection (c), the total amount paid for electric  
7 service includes without limitation amounts paid for  
8 supply, transmission, distribution, surcharges, and add-on  
9 taxes.

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

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

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

25 (C) in 2010, the greater of an additional 0.5% of  
26 the amount paid per kilowatthour by those customers

1           during the year ending May 31, 2009 or 1.5% of the  
2           amount paid per kilowatthour by those customers during  
3           the year ending May 31, 2007;

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

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

20          No later than June 30, 2011, the Commission shall  
21          review the limitation on the amount of renewable energy  
22          resources procured pursuant to this subsection (c) and  
23          report to the General Assembly its findings as to  
24          whether that limitation unduly constrains the  
25          procurement of cost-effective renewable energy  
26          resources.

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

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

23           (5) Beginning with the year commencing June 1, 2010, an  
24 electric utility subject to this subsection (c) shall apply  
25 the lesser of the maximum alternative compliance payment  
26 rate or the most recent estimated alternative compliance

1 payment rate for its service territory for the  
2 corresponding compliance period, established pursuant to  
3 subsection (d) of Section 16-115D of the Public Utilities  
4 Act to its retail customers that take service pursuant to  
5 the electric utility's hourly pricing tariff or tariffs.  
6 The electric utility shall retain all amounts collected as  
7 a result of the application of the alternative compliance  
8 payment rate or rates to such customers, and, beginning in  
9 2011, the utility shall include in the information provided  
10 under item (1) of subsection (d) of Section 16-111.5 of the  
11 Public Utilities Act the amounts collected under the  
12 alternative compliance payment rate or rates for the prior  
13 year ending May 31. Notwithstanding any limitation on the  
14 procurement of renewable energy resources imposed by item  
15 (2) of this subsection (c), the Agency shall increase its  
16 spending on the purchase of renewable energy resources to  
17 be procured by the electric utility for the next plan year  
18 by an amount equal to the amounts collected by the utility  
19 under the alternative compliance payment rate or rates in  
20 the prior year ending May 31. Beginning April 1, 2012, and  
21 each year thereafter, the Agency shall prepare a public  
22 report for the General Assembly and Illinois Commerce  
23 Commission that shall include, but not necessarily be  
24 limited to:

25 (A) a comparison of the costs associated with the  
26 Agency's procurement of renewable energy resources to

1           (1) the Agency's costs associated with electricity  
2           generated by other types of generation facilities and  
3           (2) the benefits associated with the Agency's  
4           procurement of renewable energy resources; and

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

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

20          (d) Clean coal portfolio standard.

21          (1) The procurement plans shall include electricity  
22          generated using clean coal. Each utility shall enter into  
23          one or more sourcing agreements with the initial clean coal  
24          facility, as provided in paragraph (3) of this subsection  
25          (d), covering electricity generated by the initial clean  
26          coal facility representing at least 5% of each utility's

1 total supply to serve the load of eligible retail customers  
2 in 2015 and each year thereafter, as described in paragraph  
3 (3) of this subsection (d), subject to the limits specified  
4 in paragraph (2) of this subsection (d). It is the goal of  
5 the State that by January 1, 2025, 25% of the electricity  
6 used in the State shall be generated by cost-effective  
7 clean coal facilities. For purposes of this subsection (d),  
8 "cost-effective" means that the expenditures pursuant to  
9 such sourcing agreements do not cause the limit stated in  
10 paragraph (2) of this subsection (d) to be exceeded and do  
11 not exceed cost-based benchmarks, which shall be developed  
12 to assess all expenditures pursuant to such sourcing  
13 agreements covering electricity generated by clean coal  
14 facilities, other than the initial clean coal facility, by  
15 the procurement administrator, in consultation with the  
16 Commission staff, Agency staff, and the procurement  
17 monitor and shall be subject to Commission review and  
18 approval.

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

22 Utilities shall maintain adequate records documenting  
23 the purchases under the sourcing agreement to comply with  
24 this subsection (d) and shall file an accounting with the  
25 load forecast that must be filed with the Agency by July 15  
26 of each year, in accordance with subsection (d) of Section

1 16-111.5 of the Public Utilities Act.

2 A utility shall be deemed to have complied with the  
3 clean coal portfolio standard specified in this subsection  
4 (d) if the utility enters into a sourcing agreement as  
5 required by this subsection (d).

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

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

1 service to:

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

5 (B) in 2011, the greater of an additional 0.5% of  
6 the amount paid per kilowatthour by those customers  
7 during the year ending May 31, 2010 or 1% of the amount  
8 paid per kilowatthour by those customers during the  
9 year ending May 31, 2009;

10 (C) in 2012, the greater of an additional 0.5% of  
11 the amount paid per kilowatthour by those customers  
12 during the year ending May 31, 2011 or 1.5% of the  
13 amount paid per kilowatthour by those customers during  
14 the year ending May 31, 2009;

15 (D) in 2013, the greater of an additional 0.5% of  
16 the amount paid per kilowatthour by those customers  
17 during the year ending May 31, 2012 or 2% of the amount  
18 paid per kilowatthour by those customers during the  
19 year ending May 31, 2009; and

20 (E) thereafter, the total amount paid under  
21 sourcing agreements with clean coal facilities  
22 pursuant to the procurement plan for any single year  
23 shall be reduced by an amount necessary to limit the  
24 estimated average net increase due to the cost of these  
25 resources included in the amounts paid by eligible  
26 retail customers in connection with electric service



1 to no more than the greater of (i) 2.015% of the amount  
2 paid per kilowatthour by those customers during the  
3 year ending May 31, 2009 or (ii) the incremental amount  
4 per kilowatthour paid for these resources in 2013, in  
5 each of cases (i) and (ii) reduced during the period  
6 November 1, 2016 through the termination of the  
7 transitional reliability capacity credit program  
8 provided for in subsection (d-10) of this Section, by  
9 0.114 cents per kilowatthour. These requirements may  
10 be altered only as provided by statute.

11 No later than June 30, 2015, the Commission shall  
12 review the limitation on the total amount paid under  
13 sourcing agreements, if any, with clean coal facilities  
14 pursuant to this subsection (d) and report to the General  
15 Assembly its findings as to whether that limitation unduly  
16 constrains the amount of electricity generated by  
17 cost-effective clean coal facilities that is covered by  
18 sourcing agreements.

19 (3) Initial clean coal facility. In order to promote  
20 development of clean coal facilities in Illinois, each  
21 electric utility subject to this Section shall execute a  
22 sourcing agreement to source electricity from a proposed  
23 clean coal facility in Illinois (the "initial clean coal  
24 facility") that will have a nameplate capacity of at least  
25 500 MW when commercial operation commences, that has a  
26 final Clean Air Act permit on the effective date of this

1       amendatory Act of the 95th General Assembly, and that will  
2       meet the definition of clean coal facility in Section 1-10  
3       of this Act when commercial operation commences. The  
4       sourcing agreements with this initial clean coal facility  
5       shall be subject to both approval of the initial clean coal  
6       facility by the General Assembly and satisfaction of the  
7       requirements of paragraph (4) of this subsection (d) and  
8       shall be executed within 90 days after any such approval by  
9       the General Assembly. The Agency and the Commission shall  
10      have authority to inspect all books and records associated  
11      with the initial clean coal facility during the term of  
12      such a sourcing agreement. A utility's sourcing agreement  
13      for electricity produced by the initial clean coal facility  
14      shall include:

15           (A) a formula contractual price (the "contract  
16           price") approved pursuant to paragraph (4) of this  
17           subsection (d), which shall:

18                   (i) be determined using a cost of service  
19                   methodology employing either a level or deferred  
20                   capital recovery component, based on a capital  
21                   structure consisting of 45% equity and 55% debt,  
22                   and a return on equity as may be approved by the  
23                   Federal Energy Regulatory Commission, which in any  
24                   case may not exceed the lower of 11.5% or the rate  
25                   of return approved by the General Assembly  
26                   pursuant to paragraph (4) of this subsection (d);

1 and

2 (ii) provide that all miscellaneous net  
3 revenue, including but not limited to net revenue  
4 from the sale of emission allowances, if any,  
5 substitute natural gas, if any, grants or other  
6 support provided by the State of Illinois or the  
7 United States Government, firm transmission  
8 rights, if any, by-products produced by the  
9 facility, energy or capacity derived from the  
10 facility and not covered by a sourcing agreement  
11 pursuant to paragraph (3) of this subsection (d) or  
12 item (5) of subsection (d) of Section 16-115 of the  
13 Public Utilities Act, whether generated from the  
14 synthesis gas derived from coal, from SNG, or from  
15 natural gas, shall be credited against the revenue  
16 requirement for this initial clean coal facility;

17 (B) power purchase provisions, which shall:

18 (i) provide that the utility party to such  
19 sourcing agreement shall pay the contract price  
20 for electricity delivered under such sourcing  
21 agreement;

22 (ii) require delivery of electricity to the  
23 regional transmission organization market of the  
24 utility that is party to such sourcing agreement;

25 (iii) require the utility party to such  
26 sourcing agreement to buy from the initial clean

1 coal facility in each hour an amount of energy  
2 equal to all clean coal energy made available from  
3 the initial clean coal facility during such hour  
4 times a fraction, the numerator of which is such  
5 utility's retail market sales of electricity  
6 (expressed in kilowatthours sold) in the State  
7 during the prior calendar month and the  
8 denominator of which is the total retail market  
9 sales of electricity (expressed in kilowatthours  
10 sold) in the State by utilities during such prior  
11 month and the sales of electricity (expressed in  
12 kilowatthours sold) in the State by alternative  
13 retail electric suppliers during such prior month  
14 that are subject to the requirements of this  
15 subsection (d) and paragraph (5) of subsection (d)  
16 of Section 16-115 of the Public Utilities Act,  
17 provided that the amount purchased by the utility  
18 in any year will be limited by paragraph (2) of  
19 this subsection (d); and

20 (iv) be considered pre-existing contracts in  
21 such utility's procurement plans for eligible  
22 retail customers;

23 (C) contract for differences provisions, which  
24 shall:

25 (i) require the utility party to such sourcing  
26 agreement to contract with the initial clean coal

1 facility in each hour with respect to an amount of  
2 energy equal to all clean coal energy made  
3 available from the initial clean coal facility  
4 during such hour times a fraction, the numerator of  
5 which is such utility's retail market sales of  
6 electricity (expressed in kilowatthours sold) in  
7 the utility's service territory in the State  
8 during the prior calendar month and the  
9 denominator of which is the total retail market  
10 sales of electricity (expressed in kilowatthours  
11 sold) in the State by utilities during such prior  
12 month and the sales of electricity (expressed in  
13 kilowatthours sold) in the State by alternative  
14 retail electric suppliers during such prior month  
15 that are subject to the requirements of this  
16 subsection (d) and paragraph (5) of subsection (d)  
17 of Section 16-115 of the Public Utilities Act,  
18 provided that the amount paid by the utility in any  
19 year will be limited by paragraph (2) of this  
20 subsection (d);

21 (ii) provide that the utility's payment  
22 obligation in respect of the quantity of  
23 electricity determined pursuant to the preceding  
24 clause (i) shall be limited to an amount equal to  
25 (1) the difference between the contract price  
26 determined pursuant to subparagraph (A) of

1 paragraph (3) of this subsection (d) and the  
2 day-ahead price for electricity delivered to the  
3 regional transmission organization market of the  
4 utility that is party to such sourcing agreement  
5 (or any successor delivery point at which such  
6 utility's supply obligations are financially  
7 settled on an hourly basis) (the "reference  
8 price") on the day preceding the day on which the  
9 electricity is delivered to the initial clean coal  
10 facility busbar, multiplied by (2) the quantity of  
11 electricity determined pursuant to the preceding  
12 clause (i); and

13 (iii) not require the utility to take physical  
14 delivery of the electricity produced by the  
15 facility;

16 (D) general provisions, which shall:

17 (i) specify a term of no more than 30 years,  
18 commencing on the commercial operation date of the  
19 facility;

20 (ii) provide that utilities shall maintain  
21 adequate records documenting purchases under the  
22 sourcing agreements entered into to comply with  
23 this subsection (d) and shall file an accounting  
24 with the load forecast that must be filed with the  
25 Agency by July 15 of each year, in accordance with  
26 subsection (d) of Section 16-111.5 of the Public

1 Utilities Act;

2 (iii) provide that all costs associated with  
3 the initial clean coal facility will be  
4 periodically reported to the Federal Energy  
5 Regulatory Commission and to purchasers in  
6 accordance with applicable laws governing  
7 cost-based wholesale power contracts;

8 (iv) permit the Illinois Power Agency to  
9 assume ownership of the initial clean coal  
10 facility, without monetary consideration and  
11 otherwise on reasonable terms acceptable to the  
12 Agency, if the Agency so requests no less than 3  
13 years prior to the end of the stated contract term;

14 (v) require the owner of the initial clean coal  
15 facility to provide documentation to the  
16 Commission each year, starting in the facility's  
17 first year of commercial operation, accurately  
18 reporting the quantity of carbon emissions from  
19 the facility that have been captured and  
20 sequestered and report any quantities of carbon  
21 released from the site or sites at which carbon  
22 emissions were sequestered in prior years, based  
23 on continuous monitoring of such sites. If, in any  
24 year after the first year of commercial operation,  
25 the owner of the facility fails to demonstrate that  
26 the initial clean coal facility captured and

1           sequestered at least 50% of the total carbon  
2           emissions that the facility would otherwise emit  
3           or that sequestration of emissions from prior  
4           years has failed, resulting in the release of  
5           carbon dioxide into the atmosphere, the owner of  
6           the facility must offset excess emissions. Any  
7           such carbon offsets must be permanent, additional,  
8           verifiable, real, located within the State of  
9           Illinois, and legally and practicably enforceable.  
10          The cost of such offsets for the facility that are  
11          not recoverable shall not exceed \$15 million in any  
12          given year. No costs of any such purchases of  
13          carbon offsets may be recovered from a utility or  
14          its customers. All carbon offsets purchased for  
15          this purpose and any carbon emission credits  
16          associated with sequestration of carbon from the  
17          facility must be permanently retired. The initial  
18          clean coal facility shall not forfeit its  
19          designation as a clean coal facility if the  
20          facility fails to fully comply with the applicable  
21          carbon sequestration requirements in any given  
22          year, provided the requisite offsets are  
23          purchased. However, the Attorney General, on  
24          behalf of the People of the State of Illinois, may  
25          specifically enforce the facility's sequestration  
26          requirement and the other terms of this contract



1 provision. Compliance with the sequestration  
2 requirements and offset purchase requirements  
3 specified in paragraph (3) of this subsection (d)  
4 shall be reviewed annually by an independent  
5 expert retained by the owner of the initial clean  
6 coal facility, with the advance written approval  
7 of the Attorney General. The Commission may, in the  
8 course of the review specified in item (vii),  
9 reduce the allowable return on equity for the  
10 facility if the facility wilfully fails to comply  
11 with the carbon capture and sequestration  
12 requirements set forth in this item (v);

13 (vi) include limits on, and accordingly  
14 provide for modification of, the amount the  
15 utility is required to source under the sourcing  
16 agreement consistent with paragraph (2) of this  
17 subsection (d);

18 (vii) require Commission review: (1) to  
19 determine the justness, reasonableness, and  
20 prudence of the inputs to the formula referenced in  
21 subparagraphs (A) (i) through (A) (iii) of paragraph  
22 (3) of this subsection (d), prior to an adjustment  
23 in those inputs including, without limitation, the  
24 capital structure and return on equity, fuel  
25 costs, and other operations and maintenance costs  
26 and (2) to approve the costs to be passed through

1 to customers under the sourcing agreement by which  
2 the utility satisfies its statutory obligations.  
3 Commission review shall occur no less than every 3  
4 years, regardless of whether any adjustments have  
5 been proposed, and shall be completed within 9  
6 months;

7 (viii) limit the utility's obligation to such  
8 amount as the utility is allowed to recover through  
9 tariffs filed with the Commission, provided that  
10 neither the clean coal facility nor the utility  
11 waives any right to assert federal pre-emption or  
12 any other argument in response to a purported  
13 disallowance of recovery costs;

14 (ix) limit the utility's or alternative retail  
15 electric supplier's obligation to incur any  
16 liability until such time as the facility is in  
17 commercial operation and generating power and  
18 energy and such power and energy is being delivered  
19 to the facility busbar;

20 (x) provide that the owner or owners of the  
21 initial clean coal facility, which is the  
22 counterparty to such sourcing agreement, shall  
23 have the right from time to time to elect whether  
24 the obligations of the utility party thereto shall  
25 be governed by the power purchase provisions or the  
26 contract for differences provisions;

1           (xi) append documentation showing that the  
2           formula rate and contract, insofar as they relate  
3           to the power purchase provisions, have been  
4           approved by the Federal Energy Regulatory  
5           Commission pursuant to Section 205 of the Federal  
6           Power Act;

7           (xii) provide that any changes to the terms of  
8           the contract, insofar as such changes relate to the  
9           power purchase provisions, are subject to review  
10          under the public interest standard applied by the  
11          Federal Energy Regulatory Commission pursuant to  
12          Sections 205 and 206 of the Federal Power Act; and

13          (xiii) conform with customary lender  
14          requirements in power purchase agreements used as  
15          the basis for financing non-utility generators.

16          (4) Effective date of sourcing agreements with the  
17          initial clean coal facility.

18          Any proposed sourcing agreement with the initial clean  
19          coal facility shall not become effective unless the  
20          following reports are prepared and submitted and  
21          authorizations and approvals obtained:

22               (i) Facility cost report. The owner of the initial  
23               clean coal facility shall submit to the Commission, the  
24               Agency, and the General Assembly a front-end  
25               engineering and design study, a facility cost report,  
26               method of financing (including but not limited to

1 structure and associated costs), and an operating and  
2 maintenance cost quote for the facility (collectively  
3 "facility cost report"), which shall be prepared in  
4 accordance with the requirements of this paragraph (4)  
5 of subsection (d) of this Section, and shall provide  
6 the Commission and the Agency access to the work  
7 papers, relied upon documents, and any other backup  
8 documentation related to the facility cost report.

9 (ii) Commission report. Within 6 months following  
10 receipt of the facility cost report, the Commission, in  
11 consultation with the Agency, shall submit a report to  
12 the General Assembly setting forth its analysis of the  
13 facility cost report. Such report shall include, but  
14 not be limited to, a comparison of the costs associated  
15 with electricity generated by the initial clean coal  
16 facility to the costs associated with electricity  
17 generated by other types of generation facilities, an  
18 analysis of the rate impacts on residential and small  
19 business customers over the life of the sourcing  
20 agreements, and an analysis of the likelihood that the  
21 initial clean coal facility will commence commercial  
22 operation by and be delivering power to the facility's  
23 busbar by 2016. To assist in the preparation of its  
24 report, the Commission, in consultation with the  
25 Agency, may hire one or more experts or consultants,  
26 the costs of which shall be paid for by the owner of

1 the initial clean coal facility. The Commission and  
2 Agency may begin the process of selecting such experts  
3 or consultants prior to receipt of the facility cost  
4 report.

5 (iii) General Assembly approval. The proposed  
6 sourcing agreements shall not take effect unless,  
7 based on the facility cost report and the Commission's  
8 report, the General Assembly enacts authorizing  
9 legislation approving (A) the projected price, stated  
10 in cents per kilowatthour, to be charged for  
11 electricity generated by the initial clean coal  
12 facility, (B) the projected impact on residential and  
13 small business customers' bills over the life of the  
14 sourcing agreements, and (C) the maximum allowable  
15 return on equity for the project; and

16 (iv) Commission review. If the General Assembly  
17 enacts authorizing legislation pursuant to  
18 subparagraph (iii) approving a sourcing agreement, the  
19 Commission shall, within 90 days of such enactment,  
20 complete a review of such sourcing agreement. During  
21 such time period, the Commission shall implement any  
22 directive of the General Assembly, resolve any  
23 disputes between the parties to the sourcing agreement  
24 concerning the terms of such agreement, approve the  
25 form of such agreement, and issue an order finding that  
26 the sourcing agreement is prudent and reasonable.

1           The facility cost report shall be prepared as follows:

2           (A) The facility cost report shall be prepared by  
3           duly licensed engineering and construction firms  
4           detailing the estimated capital costs payable to one or  
5           more contractors or suppliers for the engineering,  
6           procurement and construction of the components  
7           comprising the initial clean coal facility and the  
8           estimated costs of operation and maintenance of the  
9           facility. The facility cost report shall include:

10           (i) an estimate of the capital cost of the core  
11           plant based on one or more front end engineering  
12           and design studies for the gasification island and  
13           related facilities. The core plant shall include  
14           all civil, structural, mechanical, electrical,  
15           control, and safety systems.

16           (ii) an estimate of the capital cost of the  
17           balance of the plant, including any capital costs  
18           associated with sequestration of carbon dioxide  
19           emissions and all interconnects and interfaces  
20           required to operate the facility, such as  
21           transmission of electricity, construction or  
22           backfeed power supply, pipelines to transport  
23           substitute natural gas or carbon dioxide, potable  
24           water supply, natural gas supply, water supply,  
25           water discharge, landfill, access roads, and coal  
26           delivery.

1           The quoted construction costs shall be expressed  
2           in nominal dollars as of the date that the quote is  
3           prepared and shall include capitalized financing costs  
4           during construction, taxes, insurance, and other  
5           owner's costs, and an assumed escalation in materials  
6           and labor beyond the date as of which the construction  
7           cost quote is expressed.

8           (B) The front end engineering and design study for  
9           the gasification island and the cost study for the  
10          balance of plant shall include sufficient design work  
11          to permit quantification of major categories of  
12          materials, commodities and labor hours, and receipt of  
13          quotes from vendors of major equipment required to  
14          construct and operate the clean coal facility.

15          (C) The facility cost report shall also include an  
16          operating and maintenance cost quote that will provide  
17          the estimated cost of delivered fuel, personnel,  
18          maintenance contracts, chemicals, catalysts,  
19          consumables, spares, and other fixed and variable  
20          operations and maintenance costs. The delivered fuel  
21          cost estimate will be provided by a recognized third  
22          party expert or experts in the fuel and transportation  
23          industries. The balance of the operating and  
24          maintenance cost quote, excluding delivered fuel  
25          costs, will be developed based on the inputs provided  
26          by duly licensed engineering and construction firms

1 performing the construction cost quote, potential  
2 vendors under long-term service agreements and plant  
3 operating agreements, or recognized third party plant  
4 operator or operators.

5 The operating and maintenance cost quote  
6 (including the cost of the front end engineering and  
7 design study) shall be expressed in nominal dollars as  
8 of the date that the quote is prepared and shall  
9 include taxes, insurance, and other owner's costs, and  
10 an assumed escalation in materials and labor beyond the  
11 date as of which the operating and maintenance cost  
12 quote is expressed.

13 (D) The facility cost report shall also include an  
14 analysis of the initial clean coal facility's ability  
15 to deliver power and energy into the applicable  
16 regional transmission organization markets and an  
17 analysis of the expected capacity factor for the  
18 initial clean coal facility.

19 (E) Amounts paid to third parties unrelated to the  
20 owner or owners of the initial clean coal facility to  
21 prepare the core plant construction cost quote,  
22 including the front end engineering and design study,  
23 and the operating and maintenance cost quote will be  
24 reimbursed through Coal Development Bonds.

25 (5) Re-powering and retrofitting coal-fired power  
26 plants previously owned by Illinois utilities to qualify as



1 clean coal facilities. During the 2009 procurement  
2 planning process and thereafter, the Agency and the  
3 Commission shall consider sourcing agreements covering  
4 electricity generated by power plants that were previously  
5 owned by Illinois utilities and that have been or will be  
6 converted into clean coal facilities, as defined by Section  
7 1-10 of this Act. Pursuant to such procurement planning  
8 process, the owners of such facilities may propose to the  
9 Agency sourcing agreements with utilities and alternative  
10 retail electric suppliers required to comply with  
11 subsection (d) of this Section and item (5) of subsection  
12 (d) of Section 16-115 of the Public Utilities Act, covering  
13 electricity generated by such facilities. In the case of  
14 sourcing agreements that are power purchase agreements,  
15 the contract price for electricity sales shall be  
16 established on a cost of service basis. In the case of  
17 sourcing agreements that are contracts for differences,  
18 the contract price from which the reference price is  
19 subtracted shall be established on a cost of service basis.  
20 The Agency and the Commission may approve any such utility  
21 sourcing agreements that do not exceed cost-based  
22 benchmarks developed by the procurement administrator, in  
23 consultation with the Commission staff, Agency staff and  
24 the procurement monitor, subject to Commission review and  
25 approval. The Commission shall have authority to inspect  
26 all books and records associated with these clean coal

1 facilities during the term of any such contract.

2 (6) Costs incurred under this subsection (d) or  
3 pursuant to a contract entered into under this subsection  
4 (d) shall be deemed prudently incurred and reasonable in  
5 amount and the electric utility shall be entitled to full  
6 cost recovery pursuant to the tariffs filed with the  
7 Commission.

8 (d-10) Transitional reliability capacity credit program.

9 (1) Beginning November 1, 2016 and ending upon the  
10 termination of the transitional reliability capacity  
11 credit program provided for in this subsection (d-10), each  
12 electric utility subject to subsection (a) of this Section  
13 shall impose a transitional electric generation  
14 reliability support charge of 0.114 cents per kilowatthour  
15 on each kilowatthour of electricity delivered to its  
16 delivery services customers within its service territory.  
17 The electric utility shall include this charge in its  
18 delivery services tariff authorized by Section 16-108 of  
19 the Public Utilities Act. The electric utility shall  
20 maintain a reserve fund to hold all moneys collected  
21 through application of the transitional electric  
22 generation reliability support charge and not used for the  
23 purchase of transitional reliability capacity credits in  
24 accordance with subsection (d-10) of this Section until the  
25 electric utility is authorized to refund the balance, if  
26 any, of moneys in the reserve fund to its retail customers

1 in accordance with subsection (d-10). The electric  
2 utility's administrative costs of billing, collecting, and  
3 accounting for the transitional electric generation  
4 reliability support charge shall be deemed prudently  
5 incurred and reasonable in amount and the electric utility  
6 shall be entitled to full cost recovery pursuant to the  
7 tariff filed with the Commission.

8 (2) Beginning December 1, 2016, and continuing until  
9 the transitional reliability capacity credit program is  
10 terminated in accordance with this subsection (d-10), each  
11 electric utility subject to subsection (a) of this Section  
12 shall purchase transitional reliability capacity credits  
13 in accordance with this subsection (d-10), but not to  
14 exceed the amount of transitional reliability capacity  
15 credits that can be purchased with the revenues collected  
16 by the electric utility through the transitional electric  
17 generation reliability support charge, as provided in this  
18 subsection (d-10). The electric utilities shall purchase  
19 transitional reliability capacity credits in procurement  
20 events conducted by the Agency as provided in this  
21 subsection (d-10).

22 (3) A transitional reliability capacity credit shall  
23 be equal to one megawatt of electric generating capacity of  
24 an eligible electric generating unit, as determined in  
25 accordance with paragraph (5) of this subsection (d-10),  
26 for one day. The megawatts of electric generating capacity

1       on which transitional reliability capacity credits are  
2       based shall be referred to as reliability capacity. A  
3       transitional reliability capacity credit shall represent  
4       the reliability attributes of one megawatt-day of electric  
5       generating capacity of a specified electric generating  
6       unit, but shall not represent a right or entitlement to  
7       utilize or receive the capacity or energy of the electric  
8       generating unit. The electrical capacity of the megawatts  
9       of reliability capacity of an electric generating unit  
10       which is contracted to provide transitional reliability  
11       capacity credits may be sold to an electric utility or to  
12       another purchaser located within the geographic boundaries  
13       of the regional transmission organization in which the  
14       electric generating unit is located, or to an electric  
15       utility subject to subsection (a) of this Section located  
16       outside such boundaries. The electrical energy produced by  
17       megawatts of reliability capacity of an electric  
18       generating unit may be sold to any purchaser, regardless of  
19       location. A megawatt-day of the reliability capacity of an  
20       electric generating unit may be supplied and used only once  
21       as a transitional reliability capacity credit.

22       (4) The total number of transitional reliability  
23       capacity credits to be purchased, in the aggregate, by the  
24       electric utilities subject to subsection (a) of this  
25       Section in a month shall be 5,000 multiplied by the number  
26       of days in the month; provided, that the total number of

1 transitional reliability capacity credits to be purchased  
2 in an annual period (or in a 6-month period in the case of  
3 the initial procurement of transitional reliability  
4 capacity credits) shall be reduced, to the extent  
5 necessary, so that the total estimated dollar obligation of  
6 each electric utility for transitional reliability  
7 capacity credits for the period shall not exceed the moneys  
8 projected to be available from collections of the  
9 transitional electric generation reliability support  
10 charge plus the balance in the electric utility's reserve  
11 fund for transitional electric generation reliability  
12 support charge collections, as provided in paragraph (8) of  
13 this subsection (d-10). The price of each transitional  
14 reliability capacity credit shall be \$150 per megawatt-day  
15 minus the clearing price in the most recent Midcontinent  
16 Independent System Operator, Inc. Planning Resource  
17 Auction. Each electric utility that is subject to  
18 subsection (a) of this Section shall purchase a fraction of  
19 the total reliability capacity credits to be purchased in  
20 the month by all electric utilities (prior to taking into  
21 account any reduction for an individual electric utility  
22 due to a projected insufficiency of funds as hereinabove  
23 provided), where such fraction is equal to the electric  
24 utility's percentage of megawatt hour deliveries to retail  
25 customers in its service area during the calendar year  
26 ended December 31 preceding the procurement event to the

1 total megawatt hour deliveries to retail customers by all  
2 electric utilities subject to subsection (a) of this  
3 Section in their respective service areas during the  
4 calendar year ended December 31.

5 (5) To be eligible for selection as a source of  
6 transitional reliability capacity credits in a procurement  
7 event, an electric generating unit must meet each of the  
8 following requirements, as determined by the Agency. Prior  
9 to each procurement event, the Agency shall determine the  
10 eligibility of each electric generating unit seeking to  
11 participate in that procurement event.

12 (A) The electric generating unit is physically  
13 located within the service area of an electric utility  
14 that served more than 100,000 delivery services  
15 customers in Illinois as of December 31, 2015.

16 (B) The electric generating unit utilizes a solid  
17 fuel, and the owner of the generating unit commits to  
18 maintain an inventory of the fuel equal to at least 20  
19 days supply at the site of the generating unit during  
20 the period that the generating unit is providing  
21 transitional reliability capacity credits.

22 (C) For the 3 consecutive calendar years ending on  
23 December 31 immediately prior to the procurement  
24 event, the generating unit achieved an equivalent  
25 availability factor of at least 75%.

26 (D) The owner of the electric generating unit

1           certifies (i) that, if the electric generating unit is  
2           selected as a supplier of transitional reliability  
3           capacity credits, the owner will continue to operate  
4           the electric generating unit during the period in which  
5           the transitional reliability capacity credits are to  
6           be provided, and (ii) that the owner has no reason to  
7           believe that the generating unit will be unable to  
8           achieve an equivalent availability factor of at least  
9           75% for the period for which transitional reliability  
10           capacity credits are to be provided.

11           (E) The owner and the operator (which may be  
12           separate entities) of the electric generating unit is  
13           or are registered with the North American Electric  
14           Reliability Corporation as the generator owner and  
15           generator operator for the generating unit and are  
16           subject to the North American Electric Reliability  
17           Corporation's mandatory reliability standards  
18           applicable to generator owners and generator  
19           operators, adopted in accordance with Section 215(d)  
20           of the Federal Power Act, for the electric generating  
21           unit.

22           (F) The electric generating unit is connected to  
23           the bulk electric system at an interconnection voltage  
24           of at least 100 kilovolts.

25           (G) On and after June 1, 2017, the electric  
26           generating unit is located within the geographic

1 boundaries of a regional transmission organization  
2 that the Agency determines does not meet the criteria  
3 specified in paragraph (9) of this subsection (d-10).  
4 This requirement is not applicable to procurement  
5 events to procure transitional reliability capacity  
6 credits for periods beginning prior to June 1, 2017.

7 (H) For the period to be covered by the procurement  
8 event, the electric generating unit has capacity that  
9 has not been committed for sale to any purchaser or  
10 purchasers located within the geographic boundaries of  
11 a regional transmission organization other than the  
12 regional transmission organization in which the  
13 electric generating unit is located, other than an  
14 electric utility subject to subsection (a) of this  
15 Section. The owner of the electric generating unit  
16 shall commit that if the electric generating unit is  
17 selected to provide transitional reliability capacity  
18 credits, then during the period covered by the  
19 procurement event, the reliability capacity on which  
20 the transitional reliability capacity credits are  
21 based shall not be contracted for sale or committed to  
22 any purchaser, other than an electric utility subject  
23 to subsection (a) of this Section, that is located  
24 within the geographic boundaries of a regional  
25 transmission organization other than the regional  
26 transmission organization in which the electric



1 generating unit is physically located.

2 (I) The electric generating unit is not eligible to  
3 sell or provide renewable energy credits or zero  
4 emission credits.

5 (J) The electric generating unit is not owned by a  
6 municipal utility, an electric cooperative, or a group  
7 or consortium of municipal utilities or electric  
8 cooperatives whose end user customers do not pay the  
9 transitional electric generation reliability support  
10 charge.

11 (K) The owner of the electric generating unit  
12 commits to pay any fees assessed by the Agency to  
13 recover the Agency's costs of conducting the  
14 procurement event and related activities, as provided  
15 in subparagraph (C) of paragraph (7) of this subsection  
16 (d-10).

17 (6) On or before October 31, 2016, the Agency shall  
18 conduct a procurement event for the procurement of  
19 transitional reliability capacity credits by the electric  
20 utilities for the period December 1, 2016 through May 31,  
21 2017. On or before March 31, 2017 and on or before March 31  
22 of each year thereafter until the termination of the  
23 transitional reliability capacity credit program, the  
24 Agency shall conduct a procurement event for the  
25 procurement of transitional reliability capacity credits  
26 by the electric utilities for the period beginning the

1       following June 1 and ending on May 31 of the following  
2       calendar year. The Agency is authorized to retain one or  
3       more third-party consultants or contractors to assist the  
4       Agency in conducting each procurement event and related  
5       activities required by this subsection (d-10). At least 30  
6       days prior to the date of each procurement event, the  
7       Agency shall:

8               (A) announce the date of the procurement event and  
9               the period for which transitional reliability capacity  
10              credits will be procured;

11              (B) receive expressions of interest from owners of  
12              electric generating units that their electric  
13              generating units be selected as providers of  
14              transitional reliability capacity credits in the  
15              procurement event, which expressions of interest shall  
16              include (i) a statement of the electric generating unit  
17              or units and the amount of transitional reliability  
18              capacity credits from each electric generating unit  
19              that the owner intends to offer for selection in the  
20              procurement event, and (ii) information demonstrating  
21              that each electric generating unit meets the  
22              eligibility requirements for selection specified in  
23              paragraph (5) of this subsection (d-10), with the  
24              information to be submitted to the Agency on such forms  
25              and through such processes as established by the  
26              Agency;

1           (C) request and obtain from each electric utility  
2           (i) a forecast of the electric utility's kilowatthour  
3           deliveries of electricity to its retail customers in  
4           its service area during the period to be covered by the  
5           procurement event and (ii) the estimated balance in the  
6           electric utility's reserve fund for transitional  
7           electric generation reliability support charge  
8           collections, as of the start of the period to be  
9           covered by the procurement event; provided, that for  
10           purposes of this subparagraph (C), the Agency may use  
11           the load forecast of an electric utility for the period  
12           to be covered by the procurement event that the Agency  
13           obtained in connection with the preparation of a  
14           procurement plan pursuant to subsection (a) of this  
15           Section;

16           (D) announce an estimate of the number of  
17           transitional reliability capacity credits to be  
18           procured by each electric utility in the procurement  
19           event, taking into account the electric utilities'  
20           forecast of electricity deliveries, the amounts of the  
21           transitional electric generation reliability support  
22           charge estimated to be collected by each electric  
23           utility during the period beginning one month prior to  
24           the start of and ending one month prior to the end of  
25           the period to be covered by the procurement event and  
26           the estimated balance in the electric utility's

1           reserve fund as of the start of the period to be  
2           covered by the procurement event, with the total number  
3           of transitional reliability capacity credits to be  
4           procured for all electric utilities subject to  
5           subsection (a) of this Section not to exceed the  
6           transitional reliability capacity credits associated  
7           with 5,000 megawatts of reliability capacity for the  
8           period to be covered by the procurement event; and

9           (E) notify the owners of all electric generating  
10          units seeking to be selected as providers of  
11          transitional reliability capacity credits in the  
12          procurement event, and the electric utilities, as to  
13          which electric generating units the Agency has  
14          determined are eligible to be selected as providers of  
15          transitional reliability capacity credits in the  
16          procurement event.

17          (7) The procurement events for transitional  
18          reliability capacity credits shall be conducted as  
19          follows:

20          (A) The owner of each electric generating unit that  
21          the Agency has determined to be eligible to be selected  
22          as a provider of transitional reliability capacity  
23          credits shall specify the amount of transitional  
24          reliability capacity credits per day that is being  
25          offered from the electric generating unit for the  
26          period to be covered by the procurement event. The same

1           number of transitional reliability capacity credits  
2           being offered from the electric generating unit shall  
3           be offered for every day of the entire period to be  
4           covered by the procurement event. The owner shall not  
5           offer transitional reliability capacity credits from  
6           an electric generating unit based on megawatts of  
7           capacity of the electric generating unit that have been  
8           sold or committed to one or more purchasers, other than  
9           an electric utility subject to subsection (a) of this  
10           Section, that is located within the geographic  
11           boundaries of a regional transmission organization  
12           other than the regional transmission organization in  
13           which the electric generating unit is physically  
14           located.

15           (B) If more transitional reliability capacity  
16           credits are offered for purchase by an electric utility  
17           than the amount which the Agency has determined should  
18           be purchased for the period to be covered by the  
19           procurement event, the Agency shall select the  
20           electric generating units to provide the transitional  
21           reliability capacity credits, and the associated  
22           amount of reliability capacity of each electric  
23           generating unit, based on the equivalent availability  
24           factor achieved by each electric generating unit  
25           during the 3 calendar years ended on December 31  
26           preceding the procurement event, with the electric

1 generating units achieving the highest equivalent  
2 availability factor in the 3-year period selected  
3 first, and so forth, until the required amount of  
4 transitional reliability capacity credits is obtained.

5 (C) Costs incurred by the Agency to conduct a  
6 procurement event, including the activities of the  
7 Agency described in paragraphs (5), (6), and (7) of  
8 this subsection (d-10), and including any costs  
9 incurred by the Agency to retain consultants or  
10 contractors to assist in conducting the procurement  
11 event and related activities, shall be recovered by the  
12 Agency through fees charged to the owners of electric  
13 generating units that are selected in the procurement  
14 event as the providers of transition reliability  
15 capacity credits to the electric utilities. Any such  
16 fees to recover the Agency's costs shall be charged to  
17 the owners of the electric generating units on a  
18 proportional basis based on the amounts of  
19 transitional reliability capacity credits that are to  
20 be supplied by each owner's electric generating unit or  
21 units.

22 (8) The owner of each electric generating unit selected  
23 by the Agency to provide transitional reliability capacity  
24 credits to an electric utility, and the electric utility,  
25 shall enter into binding contractual arrangements for the  
26 provision of and payment for the transitional electric

1 reliability credits, using forms developed by the Agency  
2 with consideration of input provided by the electric  
3 utilities and interested suppliers. The contractual  
4 arrangements shall include the following provisions:

5 (A) The source of moneys to be used to pay for the  
6 transitional reliability capacity credits for the  
7 period covered by all contracts awarded pursuant to a  
8 procurement event shall be (i) the electric utility's  
9 collection of transitional electric generation  
10 reliability support charges during the period  
11 beginning one month prior to the start of, and ending  
12 one month prior to the end of, the period covered by  
13 the contracts, plus the balance in the electric  
14 utility's reserve fund during the period covered by the  
15 contracts; and the electric utility shall not be  
16 obligated to pay for any transitional reliability  
17 capacity credits for which there are insufficient  
18 funds from such sources. In the event of a shortfall of  
19 funding to pay for all of the contracted transitional  
20 reliability capacity credits for an annual period (or  
21 6-month period in the case of the original procurement  
22 event), the number of transitional reliability  
23 capacity credits for which the electric utility is  
24 required to make payment shall be reduced pro rata for  
25 each generating unit based on the number of  
26 transitional reliability capacity credits contracted

1           for from the generating unit relative to the total  
2           number of transitional reliability capacity credits  
3           contracted by the electric utility for the period.

4           (B) On or before the 10th day of each month,  
5           subject to the limitation set forth in subparagraph  
6           (A), the electric utility shall pay the owner of the  
7           generating unit for transitional reliability capacity  
8           credits in the preceding month, based on the number of  
9           days in the preceding month.

10          (9) The program for provision and purchase of  
11          transitional reliability capacity credits provided for in  
12          this subsection (d-10) and the obligation of electric  
13          utilities to purchase transitional reliability capacity  
14          credits shall terminate on May 31 next following the date  
15          that the Agency determines that each electric utility that  
16          on December 31, 2015 provided delivery services to at least  
17          100,000 retail electric customers have become members of a  
18          regional transmission organization meeting the following  
19          criteria:

20                (A) The regional transmission organization  
21                maintains a market for the provision and acquisition of  
22                electric generation capacity resources that includes  
23                an electric generation capacity auction process that  
24                has the following characteristics: (i) a  
25                downward-sloping demand curve for electric generation  
26                capacity resources; (ii) buyer-side and supplier-side



1       market power mitigation mechanisms sufficient to  
2       prevent manipulation of the electric capacity market  
3       by both buyers and sellers of electric generation  
4       capacity, such as must-offer requirements for electric  
5       generation capacity resources, mandatory participation  
6       by load-serving entities for all load, structural  
7       market power tests based on numbers of suppliers, and  
8       minimum and maximum offer price requirements with  
9       energy and ancillary services revenue offsets; (iii) a  
10       forward term for the base electric generation capacity  
11       auction of at least 3 years from the date of each base  
12       electric generation capacity auction to the date when  
13       the electric generation capacity acquired in the  
14       auction is to be provided by the supplier; and (iv) an  
15       explicit capacity performance product component  
16       designed to drive improved generator reliability (A)  
17       that provides incentives to generators to make  
18       investments that help ensure that they perform  
19       reliably during extreme weather events and (B) that  
20       places value upon dependable fuel supplies; and

21       (B) At least 50% of the electric utilities that are  
22       members of the regional transmission organization  
23       primarily serve retail electricity customers located  
24       in states offering retail electricity competition, or  
25       the option to choose the customer's electricity  
26       supplier, to a majority of the retail customers in the

1           State.

2           Following the termination of the program provided for in  
3 this subsection (d-10) and the completion of all contractual  
4 arrangements for the provision of and payment for transitional  
5 reliability capacity credits, any balance remaining in an  
6 electric utility's reserve fund shall be refunded to the  
7 electric utility's delivery services customers at the rate of  
8 0.114 cents per kilowatthour until exhausted.

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

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

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

19           (h) The Agency shall assess fees to each bidder to recover  
20 the costs incurred in connection with a competitive procurement  
21 process.

22           (Source: P.A. 97-325, eff. 8-12-11; 97-616, eff. 10-26-11;  
23 97-618, eff. 10-26-11; 97-658, eff. 1-13-12; 97-813, eff.  
24 7-13-12; 98-463, eff. 8-16-13.)

25           Section 10. The Public Utilities Act is amended by changing

1 Sections 16-108 and 16-126.1 as follows:

2 (220 ILCS 5/16-108)

3 Sec. 16-108. Recovery of costs associated with the  
4 provision of delivery services and certain other charges.

5 (a) An electric utility shall file a delivery services  
6 tariff with the Commission at least 210 days prior to the date  
7 that it is required to begin offering such services pursuant to  
8 this Act. An electric utility shall provide the components of  
9 delivery services that are subject to the jurisdiction of the  
10 Federal Energy Regulatory Commission at the same prices, terms  
11 and conditions set forth in its applicable tariff as approved  
12 or allowed into effect by that Commission. The Commission shall  
13 otherwise have the authority pursuant to Article IX to review,  
14 approve, and modify the prices, terms and conditions of those  
15 components of delivery services not subject to the jurisdiction  
16 of the Federal Energy Regulatory Commission, including the  
17 authority to determine the extent to which such delivery  
18 services should be offered on an unbundled basis. In making any  
19 such determination the Commission shall consider, at a minimum,  
20 the effect of additional unbundling on (i) the objective of  
21 just and reasonable rates, (ii) electric utility employees, and  
22 (iii) the development of competitive markets for electric  
23 energy services in Illinois.

24 (b) The Commission shall enter an order approving, or  
25 approving as modified, the delivery services tariff no later

1 than 30 days prior to the date on which the electric utility  
2 must commence offering such services. The Commission may  
3 subsequently modify such tariff pursuant to this Act.

4 (c) The electric utility's tariffs shall define the classes  
5 of its customers for purposes of delivery services charges.  
6 Delivery services shall be priced and made available to all  
7 retail customers electing delivery services in each such class  
8 on a nondiscriminatory basis regardless of whether the retail  
9 customer chooses the electric utility, an affiliate of the  
10 electric utility, or another entity as its supplier of electric  
11 power and energy. Charges for delivery services shall be cost  
12 based, and shall allow the electric utility to recover the  
13 costs of providing delivery services through its charges to its  
14 delivery service customers that use the facilities and services  
15 associated with such costs. Such costs shall include the costs  
16 of owning, operating and maintaining transmission and  
17 distribution facilities. The Commission shall also be  
18 authorized to consider whether, and if so to what extent, the  
19 following costs are appropriately included in the electric  
20 utility's delivery services rates: (i) the costs of that  
21 portion of generation facilities used for the production and  
22 absorption of reactive power in order that retail customers  
23 located in the electric utility's service area can receive  
24 electric power and energy from suppliers other than the  
25 electric utility, and (ii) the costs associated with the use  
26 and redispatch of generation facilities to mitigate

1 constraints on the transmission or distribution system in order  
2 that retail customers located in the electric utility's service  
3 area can receive electric power and energy from suppliers other  
4 than the electric utility. Nothing in this subsection shall be  
5 construed as directing the Commission to allocate any of the  
6 costs described in (i) or (ii) that are found to be  
7 appropriately included in the electric utility's delivery  
8 services rates to any particular customer group or geographic  
9 area in setting delivery services rates.

10 (d) The Commission shall establish charges, terms and  
11 conditions for delivery services that are just and reasonable  
12 and shall take into account customer impacts when establishing  
13 such charges. In establishing charges, terms and conditions for  
14 delivery services, the Commission shall take into account  
15 voltage level differences. A retail customer shall have the  
16 option to request to purchase electric service at any delivery  
17 service voltage reasonably and technically feasible from the  
18 electric facilities serving that customer's premises provided  
19 that there are no significant adverse impacts upon system  
20 reliability or system efficiency. A retail customer shall also  
21 have the option to request to purchase electric service at any  
22 point of delivery that is reasonably and technically feasible  
23 provided that there are no significant adverse impacts on  
24 system reliability or efficiency. Such requests shall not be  
25 unreasonably denied.

26 (e) Electric utilities shall recover the costs of

1 installing, operating or maintaining facilities for the  
2 particular benefit of one or more delivery services customers,  
3 including without limitation any costs incurred in complying  
4 with a customer's request to be served at a different voltage  
5 level, directly from the retail customer or customers for whose  
6 benefit the costs were incurred, to the extent such costs are  
7 not recovered through the charges referred to in subsections  
8 (c) and (d) of this Section.

9 (f) An electric utility shall be entitled but not required  
10 to implement transition charges in conjunction with the  
11 offering of delivery services pursuant to Section 16-104. If an  
12 electric utility implements transition charges, it shall  
13 implement such charges for all delivery services customers and  
14 for all customers described in subsection (h), but shall not  
15 implement transition charges for power and energy that a retail  
16 customer takes from cogeneration or self-generation facilities  
17 located on that retail customer's premises, if such facilities  
18 meet the following criteria:

19 (i) the cogeneration or self-generation facilities  
20 serve a single retail customer and are located on that  
21 retail customer's premises (for purposes of this  
22 subparagraph and subparagraph (ii), an industrial or  
23 manufacturing retail customer and a third party contractor  
24 that is served by such industrial or manufacturing customer  
25 through such retail customer's own electrical distribution  
26 facilities under the circumstances described in subsection

1 (vi) of the definition of "alternative retail electric  
2 supplier" set forth in Section 16-102, shall be considered  
3 a single retail customer);

4 (ii) the cogeneration or self-generation facilities  
5 either (A) are sized pursuant to generally accepted  
6 engineering standards for the retail customer's electrical  
7 load at that premises (taking into account standby or other  
8 reliability considerations related to that retail  
9 customer's operations at that site) or (B) if the facility  
10 is a cogeneration facility located on the retail customer's  
11 premises, the retail customer is the thermal host for that  
12 facility and the facility has been designed to meet that  
13 retail customer's thermal energy requirements resulting in  
14 electrical output beyond that retail customer's electrical  
15 demand at that premises, comply with the operating and  
16 efficiency standards applicable to "qualifying facilities"  
17 specified in title 18 Code of Federal Regulations Section  
18 292.205 as in effect on the effective date of this  
19 amendatory Act of 1999;

20 (iii) the retail customer on whose premises the  
21 facilities are located either has an exclusive right to  
22 receive, and corresponding obligation to pay for, all of  
23 the electrical capacity of the facility, or in the case of  
24 a cogeneration facility that has been designed to meet the  
25 retail customer's thermal energy requirements at that  
26 premises, an identified amount of the electrical capacity

1 of the facility, over a minimum 5-year period; and

2 (iv) if the cogeneration facility is sized for the  
3 retail customer's thermal load at that premises but exceeds  
4 the electrical load, any sales of excess power or energy  
5 are made only at wholesale, are subject to the jurisdiction  
6 of the Federal Energy Regulatory Commission, and are not  
7 for the purpose of circumventing the provisions of this  
8 subsection (f).

9 If a generation facility located at a retail customer's  
10 premises does not meet the above criteria, an electric utility  
11 implementing transition charges shall implement a transition  
12 charge until December 31, 2006 for any power and energy taken  
13 by such retail customer from such facility as if such power and  
14 energy had been delivered by the electric utility. Provided,  
15 however, that an industrial retail customer that is taking  
16 power from a generation facility that does not meet the above  
17 criteria but that is located on such customer's premises will  
18 not be subject to a transition charge for the power and energy  
19 taken by such retail customer from such generation facility if  
20 the facility does not serve any other retail customer and  
21 either was installed on behalf of the customer and for its own  
22 use prior to January 1, 1997, or is both predominantly fueled  
23 by byproducts of such customer's manufacturing process at such  
24 premises and sells or offers an average of 300 megawatts or  
25 more of electricity produced from such generation facility into  
26 the wholesale market. Such charges shall be calculated as



1 provided in Section 16-102, and shall be collected on each  
2 kilowatt-hour delivered under a delivery services tariff to a  
3 retail customer from the date the customer first takes delivery  
4 services until December 31, 2006 except as provided in  
5 subsection (h) of this Section. Provided, however, that an  
6 electric utility, other than an electric utility providing  
7 service to at least 1,000,000 customers in this State on  
8 January 1, 1999, shall be entitled to petition for entry of an  
9 order by the Commission authorizing the electric utility to  
10 implement transition charges for an additional period ending no  
11 later than December 31, 2008. The electric utility shall file  
12 its petition with supporting evidence no earlier than 16  
13 months, and no later than 12 months, prior to December 31,  
14 2006. The Commission shall hold a hearing on the electric  
15 utility's petition and shall enter its order no later than 8  
16 months after the petition is filed. The Commission shall  
17 determine whether and to what extent the electric utility shall  
18 be authorized to implement transition charges for an additional  
19 period. The Commission may authorize the electric utility to  
20 implement transition charges for some or all of the additional  
21 period, and shall determine the mitigation factors to be used  
22 in implementing such transition charges; provided, that the  
23 Commission shall not authorize mitigation factors less than  
24 110% of those in effect during the 12 months ended December 31,  
25 2006. In making its determination, the Commission shall  
26 consider the following factors: the necessity to implement

1 transition charges for an additional period in order to  
2 maintain the financial integrity of the electric utility; the  
3 prudence of the electric utility's actions in reducing its  
4 costs since the effective date of this amendatory Act of 1997;  
5 the ability of the electric utility to provide safe, adequate  
6 and reliable service to retail customers in its service area;  
7 and the impact on competition of allowing the electric utility  
8 to implement transition charges for the additional period.

9 (g) The electric utility shall file tariffs that establish  
10 the transition charges to be paid by each class of customers to  
11 the electric utility in conjunction with the provision of  
12 delivery services. The electric utility's tariffs shall define  
13 the classes of its customers for purposes of calculating  
14 transition charges. The electric utility's tariffs shall  
15 provide for the calculation of transition charges on a  
16 customer-specific basis for any retail customer whose average  
17 monthly maximum electrical demand on the electric utility's  
18 system during the 6 months with the customer's highest monthly  
19 maximum electrical demands equals or exceeds 3.0 megawatts for  
20 electric utilities having more than 1,000,000 customers, and  
21 for other electric utilities for any customer that has an  
22 average monthly maximum electrical demand on the electric  
23 utility's system of one megawatt or more, and (A) for which  
24 there exists data on the customer's usage during the 3 years  
25 preceding the date that the customer became eligible to take  
26 delivery services, or (B) for which there does not exist data

1 on the customer's usage during the 3 years preceding the date  
2 that the customer became eligible to take delivery services, if  
3 in the electric utility's reasonable judgment there exists  
4 comparable usage information or a sufficient basis to develop  
5 such information, and further provided that the electric  
6 utility can require customers for which an individual  
7 calculation is made to sign contracts that set forth the  
8 transition charges to be paid by the customer to the electric  
9 utility pursuant to the tariff.

10 (h) An electric utility shall also be entitled to file  
11 tariffs that allow it to collect transition charges from retail  
12 customers in the electric utility's service area that do not  
13 take delivery services but that take electric power or energy  
14 from an alternative retail electric supplier or from an  
15 electric utility other than the electric utility in whose  
16 service area the customer is located. Such charges shall be  
17 calculated, in accordance with the definition of transition  
18 charges in Section 16-102, for the period of time that the  
19 customer would be obligated to pay transition charges if it  
20 were taking delivery services, except that no deduction for  
21 delivery services revenues shall be made in such calculation,  
22 and usage data from the customer's class shall be used where  
23 historical usage data is not available for the individual  
24 customer. The customer shall be obligated to pay such charges  
25 on a lump sum basis on or before the date on which the customer  
26 commences to take service from the alternative retail electric

1 supplier or other electric utility, provided, that the electric  
2 utility in whose service area the customer is located shall  
3 offer the customer the option of signing a contract pursuant to  
4 which the customer pays such charges ratably over the period in  
5 which the charges would otherwise have applied.

6 (i) An electric utility shall be entitled to add to the  
7 bills of delivery services customers charges pursuant to  
8 Sections 9-221, 9-222 (except as provided in Section 9-222.1),  
9 and Section 16-114 of this Act, Section 5-5 of the Electricity  
10 Infrastructure Maintenance Fee Law, Section 6-5 of the  
11 Renewable Energy, Energy Efficiency, and Coal Resources  
12 Development Law of 1997, and Section 13 of the Energy  
13 Assistance Act. Beginning November 1, 2016, an electric utility  
14 required to impose the transitional electric generation  
15 reliability support charge provided for in subsection (d-10) of  
16 Section 1-75 of the Illinois Power Agency Act shall add such  
17 charge to the bills of its delivery services customers. The  
18 electric utility shall use the collections from imposition of  
19 the transitional electric generation reliability support  
20 charge to pay for transitional reliability capacity credits in  
21 accordance with subsection (d-10) of Section 1-75 of the  
22 Illinois Power Agency Act, with any collections in excess of  
23 current period payment obligations to be maintained in a  
24 reserve fund until the electric utility is authorized to refund  
25 the balance, if any, in the reserve fund to its delivery  
26 services customers in accordance with subsection (d-10) of

1 Section 1-75 of the Illinois Power Agency Act.

2 (j) If a retail customer that obtains electric power and  
3 energy from cogeneration or self-generation facilities  
4 installed for its own use on or before January 1, 1997,  
5 subsequently takes service from an alternative retail electric  
6 supplier or an electric utility other than the electric utility  
7 in whose service area the customer is located for any portion  
8 of the customer's electric power and energy requirements  
9 formerly obtained from those facilities (including that amount  
10 purchased from the utility in lieu of such generation and not  
11 as standby power purchases, under a cogeneration displacement  
12 tariff in effect as of the effective date of this amendatory  
13 Act of 1997), the transition charges otherwise applicable  
14 pursuant to subsections (f), (g), or (h) of this Section shall  
15 not be applicable in any year to that portion of the customer's  
16 electric power and energy requirements formerly obtained from  
17 those facilities, provided, that for purposes of this  
18 subsection (j), such portion shall not exceed the average  
19 number of kilowatt-hours per year obtained from the  
20 cogeneration or self-generation facilities during the 3 years  
21 prior to the date on which the customer became eligible for  
22 delivery services, except as provided in subsection (f) of  
23 Section 16-110.

24 (Source: P.A. 91-50, eff. 6-30-99; 92-690, eff. 7-18-02.)

1           Sec. 16-126.1. Regional transmission organization  
2 memberships. The State shall not directly or indirectly  
3 prohibit an electric utility that on December 31, 2005 provided  
4 electric service to at least 100,000 customers in Illinois from  
5 membership in a Federal Energy Regulatory Commission approved  
6 regional transmission organization of its choosing. Nothing in  
7 this Section limits any authority the Commission otherwise has  
8 to regulate that electric utility. This Section ceases to be  
9 effective on July 1, 2016 ~~2022~~ unless extended by the General  
10 Assembly by law.

11           (Source: P.A. 95-481, eff. 8-28-07.)

12           Section 99. Effective date. This Act takes effect upon  
13 becoming law."