

AN ACT concerning utilities.

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

Section 5. The Public Utilities Act is amended by changing Sections 16-115 and 19-110 as follows:

(220 ILCS 5/16-115)

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) (Blank);

(ii) (Blank);

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

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

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

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

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

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

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

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

(vi) The Commission shall, after notice and

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

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

(7) That the applicant meets the requirements of

subsection (a) of Section 16-128; and

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

(d-5) (Blank).

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

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

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

(g) An alternative retail electric supplier may seek confidential treatment for the following information by filing an affidavit with the Commission so long as the affidavit meets the requirements in this subsection (g):

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

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

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

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

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

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

after the date the affidavit is received by the Commission.

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

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

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

confidential treatment for such information.

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

(220 ILCS 5/19-110)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

will comply with all other applicable laws and rules.

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

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

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

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

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

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

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

If the alternative gas supplier has met the affidavit

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

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

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

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

Public Act 099-0332

SB1446 Enrolled

LRB099 10192 AMC 30416 b

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

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